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WHO OWNS OUR PUBLIC ENTERPRISES IN MONTENEGRO?



**A review of aspects of
transparency and accountability
of state-owned enterprises**

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That is why we have negative phenomena in almost every enterprise, from the smallest to the largest one. Take an example of unjustified procurement and purchases of cars.

If someone criticized the director, they would immediately get demoted, and little by little, they would end up thrown out from the company.

Regarding employment, nowadays almost no one can get a job without having a connection, starting from an unqualified worker to a highly qualified individual.

Due to those connections and preferential treatments, there is a large number of incompetent employees in enterprises and institutions, which presents a burden for those entities. Institutions are looking to hire more people who would be engaged on a permanent basis. However, their employment was not established in a legal way, and they fail to fulfil their work obligations. The employment competition has completely faded away in our surroundings. It is known in advance who will and who will not become a director, and often thanks to those interventions by our irresponsible comrades, we are stuck with people who do not possess any moral or political qualifications to do a certain job”.

From the keynote address by Blažo Jovanović
Fifth Plenum of the Central Committee of the League
of Communists of Montenegro, 1958.¹

¹ Quoted from: Economy of Wastefulness (Features of the Montenegrin Economy 1945-1989), Ekonomija rasipništva (odlike crnogorske ekonomije 1945-1989), Dragutin Papović

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INTRODUCTION – WHY STATE-OWNED ENTERPRISES?

There are (at least) 56 enterprises in Montenegro in which the state has majority ownership (hereinafter: state-owned enterprises), which employ over 12 thousand people and spend almost 200 million a year on salaries. More than half a billion euro of loans given to state-owned enterprises are at present guaranteed by the state and they can at any moment become a burden on a budget. In the meantime, most of enterprises make losses, and out of the top 20 legal entities which are on the tax debtors blacklist, 11 are state-owned enterprises owing about 50 million based on taxes and employee contributions. At the same time, in the current year only, three new state-owned enterprises have been established, in spite of the fact that the Government has not yet produced a legal framework which would enable the state to have an insight into the state of affairs in its enterprises and give it authority to prevent or solve problems in their work.


This report provides an overview of burning issues in the field of supervision of state-owned enterprises, problems regarding financial audit and control mechanisms, insufficiently defined conditions for appointment of boards of directors and CEOs, lack of staff payment and human resources management policy, numerous fiscal risks and low level of information availability and transparency of state-owned enterprises.

Finally, the report gives concrete recommendations, whose implementation would address the accumulated problems, the need for a new legal framework for state-owned enterprises and the establishment of a central body responsible for regulatory and supervisory policy in state-owned enterprises, being the most important ones.

The report does not deal specifically with the work of 120 enterprises founded and owned by local self-governments. Although the problems described for state-owned enterprises can largely apply to enterprises at the local level, there are also particularities arising from the special regime provided by the Law on Local Self-Government, which require the separation of these two groups of companies.

As part of the work on this report, we collected a significant amount of information on individual state-owned enterprises, which we organised and published on the website “Who owns our public enterprises” available at: <https://javnapreduzeca.mojnovac.me>. All the information we were able to gather through free access to information, including documentation on staff numbers, salaries, sponsorships, donations, financial aid, severance pay, directors’ contracts, board of directors’ decisions etc., have been shared on this website. The report also includes our assessment of their transparency, ranking the enterprises according to the level of their openness to the public and the availability of the information on their work.

The report and the internet portal have been created under the project financed by the British Embassy Podgorica, and implemented by the Institute Alternative. The views expressed in both the report and the internet portal do not necessarily reflect the views of the British Embassy Podgorica.



All the documents and data on SOEs collected during the research process available at:

<https://javnapreduzeca.mojnovac.me>



1.

OVERSIGHT OF STATE-OWNED ENTERPRISES – A VACUUM OF COMPETENCE

After the Law on Public Enterprises was revoked in 2010, the work of state-owned enterprises remained regulated by the Law on Companies, which does not recognise their particularities or the need for additional accountability, transparency or necessity for the Government's interference in the work of enterprises.

Lines of accountability between enterprises and competent administration bodies have not been defined - there is no competent administration body that is responsible for regulatory policy in the field of state-owned enterprises or centralised supervision of their work. Supervisory responsibilities for the work of state-owned enterprises is further complicated by the fragmented structure of public ownership because the share of public ownership is often divided among several different public entities (funds, ministries, other state-owned enterprises), all of which are entitled to exercise their ownership rights.

Initial attempts by the Ministry of Capital Investments to monitor the situation in state-owned enterprises have been limited in scope, dealing only with a third of existing enterprises. On the other hand, in the Ministry of Finance and Social Welfare, true supervision of state-owned enterprises exists only in their work plans, but not in reality.

In addition to the main Law on Companies, memorandum of association and the articles of association, the work of some enterprises in specific aspects is regulated in more detail by their main laws, which impose certain obligations in terms of transparency and accountability that do not exist in other state-owned enterprises. The memoranda of association of companies adopted by the Government from 2005 until today contain significant differences in terms of the founders' powers, which are not consistently or uniformly applied in different cases. In some enterprises, the Government as a founder does not have any powers, while in certain enterprises, the Government is responsible for the appointment of directors, management of assets, taking loans, deciding on staff payment policy. Regarding new enterprises established during 2021, the Government made unconstitutional decisions on their establishment which were against legal provisions.

DISAPPEARANCE OF “PUBLIC ENTERPRISES” FROM THE LEGAL SYSTEM

Until 2010, public enterprises functioned in accordance with two laws from 1991, which regulated their establishment, functioning and management - the Law on Public Enterprises and the Law on Realisation of Public Interest in Public Enterprises and Public Institutions.² Since 2010, companies and public enterprises in which the state is a majority shareholder and a founder have been operating in compliance with the Law on Companies, separate laws and their memoranda of association. In order to improve the conditions for smooth functioning and improvement of the business environment, the Law on the Improvement of the Business Environment was adopted in 2010, revoking the Law on Public Enterprises from 1991 and obliging public enterprises to reorganise in accordance with the Law on Companies (as a joint-stock company or a limited liability company), within three years of the date of entry into force of this Law.³ The Law on Realisation of Public Interest in Public Enterprises and Public Institutions is still in force, but it is applied to only three public enterprises (RTCG, Morsko dobro and National Parks) which have not yet been restructured into JSC or LLC.

The Law on Companies does not see as different the enterprises in which the state is majority shareholder or has controlling ownership of the enterprise. Consequently, they have the same status (obligations regarding the transparency, accountability, powers of founders etc.) as “private” companies.

There is no single act defining the scope of powers of Ministries over enterprises, neither are they divided by Ministries’ departments, with a few exceptions of individual enterprises where the lines of responsibilities are defined by a special law or memorandum of association. When the Government obliged Ministries to submit information on the operations of companies in which the state has majority ownership in 2019,⁴ the information was prepared only by the then Ministry of Economy. and the Ministry of Sustainable Development and Tourism for a total of 22 enterprises, while the remaining 30 enterprises failed to attract the Government’s attention regarding this.

The new Decree on Organisation and Manner of Work of State Administration which was adopted in 2004, does not mention public enterprises and state bodies’ responsibilities to deal with them in terms of monitoring their work and their restructuring at that time, which were covered in the version of this act which was in force

² Law on Realisation of Public Interest in Public Enterprises and Institutions (Official Gazette of the Socialist Republic of Montenegro 13/91 and 16/91 and Official Gazette of Montenegro 73/10)

³ Article 13, Law on the Improvement of the Business Environment, Official Gazette of Montenegro 40/10 of 22 July 2010.

⁴ Government of Montenegro’s Conclusion no: 07-4282 of 3 October 2019 from the session held on 26 September 2019.



since 1993.⁵ The Decree on Organisation and Manner of Work of State Administration in force⁶ does not mention competencies for state-owned enterprises - not even in the context of the Ministry of Finance and Social Welfare or the Ministry of Capital Investments.

FRAGMENTATION OF PUBLIC OWNERSHIP

The competence to supervise the work of state-owned enterprises is further complicated by the fragmented structure of public ownership, which divides competencies between different departments and institutions. Out of the 26 joint stock companies which are considered to be state-owned enterprises, only 5 are fully (100%) owned by the state. The percentage of public ownership in other enterprises is smaller and it is often divided among several different public entities.

There are two terms used for the ownership structure of joint stock companies - "Government of Montenegro" and "State / Republic of Montenegro", which are used as two different determinants of ownership. Therefore, in some enterprises shares are held by the Government, in some by the State / Republic, and in some of them the shares are held by both of them, as separate shareholders. In the Black Metallurgy Institute, for example, the "Government of Montenegro" holds 1.31% of ownership, while the "State of Montenegro" holds 19.11%.

In addition to the "Government / State / Republic of Montenegro", the most common shareholders are the **Employment Bureau** (which has shares in 30 companies, ranging up to 9% of the total number of shares) and the **Pension and Disability Insurance Fund** (which has shares in 29 joint stock companies, with more significant shares than Employment Bureau, even up to 25% of total shares, and the founder is the sole owner of the company PDI LLC Ulcinj).

In some enterprises, shares are held by individual Government departments. Thus, the "Ministry of Finance" owns 86.73% of shares of Castello Montenegro JSC Pljevlja and 57.88% of shares of the Sports Centre Ada Pljevlja (while the Public Works Directorate also holds 25.96% of shares in the same enterprise), and the Ministry of Health holds 38,55% of shares of Habitpharm JSC Podgorica. Due to frequent reorganisations, both names of ministries are changed and their responsibilities allocated differently, and the question arises as to how this affects the rights of founders and supervising responsibilities of the enterprise, as well as participation in the work of enterprise bodies.

⁵ Decree on Organisation and Manner of Work of State Administration, Official Gazette of the Republic of Montenegro 008/93 of 5 March 1993, 039/93 of 23 September 1993, 019/95 of 9 June 1995, 013/96 of 23 April 1996, 024/96 of 5 August 1996, 007/97 of 12 March 1997, 013/98 of 28 April 1998, 027/98 of 24 July 1998, 038/98 of 4 November 1998, 018/99 of 6 May 1999, 031/99 of 19 August 1999, 059/00 of 27 December 2000, 031/01 of 19 June 2001, 033/01 of 29 June 2001, 009/03 of 18 February 2003, 019/03 of 26 March 2003, 062/03 of 7 November 2003, 067/03 of 15 December 2003, 013/04 of 26 February 2004, 034/04 of 28 May 2004)

⁶ Decree on Organisation and Manner of Work of State Administration, Official Gazette of Montenegro 118/20 of 7 December 2020, 121/20 of 10 December 2020, 001/21 of 4 January 2021, 002/21 of 5 January 2021, 029/21 of 17 March 2021, 034/21 of 2 April 2021, 041/21 of 20 April 2021.



State-owned enterprises are also shareholders in other companies and they exercise their special ownership rights based on these fragments of the public ownership, which they are holding. Thus, EPCG is the sole shareholder of Coal Mine and CEDIS, and holds a significant share in the Montenegrin Power Exchange together with other public enterprises, the Electricity Transmission System of Montenegro and the Montenegrin Electricity Market Operator, Budvanska rivijera, which is the largest shareholder of MontenegroTunist, or Montefarm, which holds 95% of Businessmontenegro shares. A case of the Investment and Development Fund is specific, since due to the nature of its activities it also has a significant percentage of ownership in other state-owned enterprises: Montepranzo 51%, Institute Dr Simo Milosevic 23.64%, Plantaže 22.2%, Marina 16.6%, Barska plovdba 16,25%. In a rare number of cases, shareholders in public enterprises are the Compensation Fund, the Health Insurance Fund and various other public entities.

● - TABLE 11: STRUCTURE OF PUBLIC OWNERSHIP IN JOINT STOCK COMPANIES

ENTERPRISE	STRUCTURE OF PUBLIC OWNERSHIP						TOTAL PUBLIC OWNERSHIP
Airports of Montenegro JSC Podgorica	State - 100%						100,00%
Investment and Development Fund of Montenegro JSC Podgorica	State - 100%						100,00%
Postal Service JSC Podgorica	State - 100%						100,00%
Crnogorska plovdba JSC Kotor	State - 99,98%	EMPLOYMENT BUREAU - 0,02%					100,00%
Montenegro Airlines JSC Podgorica	State - 99,91%	Institute Dr Simo Milošević - 0,01%					99,92%
HG Budvanska rivijera JSC Budva	State - 41,63%	PDI fund - 12,82%	EMPLOYMENT BUREAU - 4,27%				58,72%
Sveti Stefan hoteli JSC Budva	State - 41,63%	PDI fund - 12,82%	EMPLOYMENT BUREAU - 4,27%				58,72%
Institut Dr Simo Milošević	State - 19,19%	EMPLOYMENT BUREAU - 3,41%	IDF - 23,64%	Republic Health Fund - 10,23%			56,47%
HTP Ulcinjska rivijera JSC Ulcinj	State - 10,14%	PDI Fund - 25,29%	EMPLOYMENT BUREAU - 8,43%	IDF - 7,64%	Compensation Fund - 12,01%	HTP Ulcinjska rivijera JSC Ulcinj - 11,87%	75,38%
Businessmontenegro JSC Podgorica	State - 5%	Montefarm - 95%					100,00%
13. jul Plantaže JSC Podgorica	State - 3,66%	PDI Fund - 21,49%	EMPLOYMENT BUREAU - 8,52%	IDF - 22,22%			55,89%
Institut crne metalurgije JSC Nikšić	State - 20,42%	PDI Fund - 19,03%	EMPLOYMENT BUREAU - 6,34%	Compensation Fund - 5,3%			51,09%
Rudnik uglja JSC Pljevlja	EPCG - 100%						100,00%
Elektroprivreda Crne Gore JSC Nikšić	State - 88,65%	EPCG - 9,99%					98,64%
Željeznički prevoz Crne Gore JSC Podgorica	State - 90,79%	PDI Fund - 0,97%	EMPLOYMENT BUREAU - 0,38%				92,14%
Castello Montenegro JSC Pljevlja	EPCG - 1,5%	Ministry of Finance - 86,73%	Common Reserves Republic Fund - 1,32%				89,55%
Montecargo	State - 85,44%	PDI Fund - 1,54%	EMPLOYMENT BUREAU - 0,61%				87,59%
Održavanje željezničkih voznih sredstava JSC Podgorica	State - 85,44%	PDI Fund - 1,54%	EMPLOYMENT BUREAU - 0,61%				87,59%
Željeznička infrastruktura Crne Gore JSC Podgorica	State - 72,44%	PDI Fund - 2,91%	EMPLOYMENT BUREAU - 1,16%				76,51%
Montepranzo-Bokaprodukt JSC Tivat	PDI Fund - 17,74%	EMPLOYMENT BUREAU - 5,9%	IDF - 51,4%				75,04%
Market JSC	PDI Fund - 20,02%	EMPLOYMENT BUREAU - 5,89%	IDF - 40,07%				65,98%
MontenegroTunist JSC Budva	PDI Fund - 22,25%	EMPLOYMENT BUREAU - 7,41%	HG Budvanska rivijera JSC - 35,9%				65,56%
Crnogorski elektroprivredni sistem JSC Podgorica	State - 55%	CGES - 0,37%					55,37%
Marina JSC Bar	State - 19,47%	PDI Fund - 13,4%	EMPLOYMENT BUREAU - 4,46%	IDF - 16,99%			54,32%
Luka Bar JSC Bar	State - 54,05%						54,05%
Barska Plovdba JSC Bar	State - 18,63%	PDI Fund - 12,83%	EMPLOYMENT BUREAU - 4,27%	IDF - 16,15%			51,88%

GOVERNMENT'S SPECIAL MEASURES DUE TO THE OPERATIONAL ISSUES

The Law on Public Enterprises provided that in the event of “operational issues”, the founder may take special measures to ensure the conditions for its smooth functioning.⁷ This possibility is elaborated in more detail by the Law on Realisation of Public Interest in Public Enterprises and Institutions, which gives the Government the authority to apply extraordinary (drastic) measures against enterprises in situations when they face “operational issues” and do not fulfil their statutory obligations. The measures include:

- **dismissal of the director and dissolution of the management body (board of directors, management committee),**
 - **dismissal of employees and changes in internal organisation,**
 - **restriction of the rights of certain parts of a public enterprise,**
 - **restriction of management of certain funds of an enterprise,**
 - **suspension of the implementation of an act of an enterprise,**
- which is in breach of law and puts at risk the core functions of the enterprise, etc.**⁸

Situations in which “operational issues” occur have a broad definition in the Law, in a way that allows for different interpretations. In short, the Government’s special measures are applied to the enterprise if its work does not secure continuous and uninterrupted process of production and provision of services or if the way the profits are distributed changes the core purpose of the use of funds and operations.⁹ The difficulty of proving the existence of “operational issues” of enterprises on the basis of norms defined in this way can lead to unfounded implementation of measures in enterprises regardless of true state of affairs, and gives room to those who have been dismissed on the basis of these measures for acquiring compensation in court proceedings for illegal dismissal prior to expiry of their office.

Regardless of the general definition of situations in which the measures can be applied, the Law gave significant powers to the Government to take greater part in the work of state-owned enterprises and to find a simpler way to exercise its role as owner and founder than the one provided by the Law on Companies. However, due to the wording used in the Law (“public enterprises”), the Government can apply these measures only to three state-owned enterprises, which have not yet been restructured in accordance with the Law on Companies – Morsko dobro, National Parks and RTCG.

Upon the proposal of the Ministry of Ecology, Spatial Planning and Urbanism, the Government applied this Law in order to dismiss the CEO and the Board of Directors of Morsko dobro in March 2021.¹⁰ The

⁷ Article 8, Law on Public Enterprises, Official Gazette of the Socialist Republic of Montenegro 006/91, 19 February 1991.

⁸ Articles 2, 3 and 4 of the Law on Realisation of Public Interest in Public Enterprises and Institutions (Official Gazette of the Socialist Republic of Montenegro 13/91 and 16/91 and Official Gazette of Montenegro 73/10)

⁹ Article 3 of the Law on Realisation of Public Interest in Public Enterprises and Institutions (Official Gazette of the Socialist Republic of Montenegro 13/91 and 16/91 and Official Gazette of Montenegro 73/10)

¹⁰ Proposal for dismissal and appointment of Director of Public Enterprise for Coastal Zone Management of Montenegro <https://www.gov.me/dokumenta/f5d722d5-325a-4b93-93d0-5e741529c435>; Proposal for dismissal and appointment of President and four members of the Management Committee of the Public Enterprise for Coastal Zone Management of Montenegro: <https://www.gov.me/dokumenta/8d34a48d-8c14-4c55-8d8c-6b76bd0f9f90>



Ministry stated that operational issues referred to in the Law took place because:

“(...) the Special State Prosecutor’s Office is conducting an investigation against the Director of the Public Enterprise for Coastal Zone Management of Montenegro and other former and current officials of the Public Enterprise for Coastal Zone Management of Montenegro on suspicion that they abused their official position to enable the transfer of state-owned property in the coastal zone to private ownership, which certainly led to damaging the reputation and inflicting immeasurable damage to the public enterprise founded by the State of Montenegro even before the end of the investigative criminal proceedings.”

However, even after 5 months following the implementation of the measures, the Government did not inform the Parliament in the manner prescribed by the Law.¹¹ The law stipulates that after taking some of these measures, the Government must inform the Parliament about the reasons for such a decision and the results achieved by these measures in the protection of the public interest,¹² which the Government failed to do.

SPECIAL OBLIGATIONS FOR 10 ENTERPRISES

In addition to the main Law on Companies, the memorandum of association and the articles of association, some aspects of work of particular enterprises is regulated in more detail by special laws.

● - TABLE 1.2: SPECIAL LAWS FOR STATE-OWNED ENTERPRISES

ENTERPRISE	SPECIAL LAW REGULATING ESTABLISHMENT AND WORK OF THE ENTERPRISE
Public Enterprise for Coastal Zone Management of Montenegro	Law on Coastal Zone (Official Gazette of the Republic of Montenegro 14/92, 59/92, 27/94 and Official Gazette of Montenegro 51/08, 21/09, 73/10 and 40/11)
Investment and Development Fund	Law on Investment and Development Fund of Montenegro (Official Gazette of Montenegro 88/09, 40/10 and 80/17)
Public Enterprise National Parks	Law on National Parks (Official Gazette of Montenegro 28/14 and 39/16)
Regional Water Provider	Law on Regional Water Supply of Montenegrin Coastal Zone (Official Gazette of Montenegro 56/16)
Environmental Protection Fund (Eco-Fund)	Law on Environment (Official Gazette of Montenegro 52/16 and 73/19)
Radio and Television of Montenegro	Law on National Public Broadcaster Radio and Television of Montenegro (Official Gazette of Montenegro 80/20)
Science and Technology Park, Innovation and Entrepreneurship Centre Tehnopolis, Innovation Fund	Law on Innovation Activity (Official Gazette of Montenegro 82/20)

For some business enterprises these laws prescribe in more detail their obligations towards the founder, procedures and methods of appointing management and governing bodies by publicly advertising those positions, the Government’s powers in producing a work plan, enterprises’ reporting to the Government and the Parliament and the transparency of their work. Obligations prescribed by special laws for some of these enterprises do not apply on other state-owned enterprises.

¹¹ Response of the Parliament of Montenegro’s Department to the freedom of information request submitted by the Institute Alternative, 8 September 2021. no. 00-41/21-36/5

¹² Article 7 of the Law on Realisation of Public Interest in Public Enterprises and Institutions (Official Gazette of the Socialist Republic of Montenegro 13/91 and 16/91 and Official Gazette of Montenegro 73/10)

● THE ROLE OF THE PARLIAMENT OF MONTENEGRO

The only state-owned enterprise in which the Parliament of Montenegro performs a role in supervision and management is RTCG. According to the Law, the change of core activity or privatisation of RTCG cannot be carried out without the Parliament's approval. The members of the RTCG Council are appointed by the Parliament, taking into account nominations by other institutions and associations done on the basis of prescribed procedures.¹³

● PUBLICLY ADVERTISED POSITIONS FOR DIRECTOR

The Law stipulates that a position for director general of RTCG must be publicly advertised, and the Council is responsible for the consequent selection and the appointment decision¹⁴. This is the unique case where the legal obligation to publicly advertise the position for a director in a state-owned enterprise is prescribed.

● TRANSPARENCY OF WORK

The RTCG Council is obliged to publish a performance report, a report on financial operations, a report of a certified auditor on the financial operations of RTCG, an annual work program, as well as contracts if they do not fall within a trade secret. The sessions of the RTCG Council are open to the public, and the minutes of the sessions must be published on the RTCG website within five working days following their adoption.¹⁵

In addition to the performance reports and annual financial statements with the auditor's comments, the IDF is obliged to publish on its website information on their financial support programs, which define the conditions for access to the Fund's resources and information about the approved funding such as: name of beneficiary, amount of approved funding, purpose of the approved funding and location of their use.¹⁶

The Regional Water Provider is obliged to publish on its website information on the general conditions of water supply, which is approved by the Government, as well information on the use of the regional water supply system.¹⁷

13 Articles 6 and 30, Law on National Public Broadcaster Radio and Television of Montenegro (Official Gazette of Montenegro 80/20)

14 Article 25 paragraph 1 item 3 and Article 56, Law on National Public Broadcaster Radio and Television of Montenegro (Official Gazette of Montenegro 80/20)

15 Article 26 and 49, Law on National Public Broadcaster Radio and Television of Montenegro (Official Gazette of Montenegro 80/20)

16 Article 18, Law on Investment and Development Fund of Montenegro (Official Gazette of Montenegro 88/09, 40/10 and 80/17).

17 Articles 13 and 18, Law on Regional Water Supply of Montenegrin Coastal Zone (Official Gazette of Montenegro 56/16)



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● PARTICIPATORY DECISION MAKING

RTCG is obliged to conduct a public debate when introducing newservices and developing annual program and production plans.¹⁸

National Parks are obliged to notify the interested bodies, organisations and the public when they start working on management plan, to allow for opinions and remarks.¹⁹

● GOVERNMENT'S PERMISSION OF PLANNING DOCUMENTS AND OBLIGATION TO REPORT

The IDF needs the Government's approval to establish the criteria and conditions for the use of the Fund's resources²⁰ and to adopt the annual work plan, financial plan and mid-term work program. The Board of Directors of the IDF is obliged to submit the report on the work and annual financial statements along with the auditor's opinion to the Government and the Parliament of Montenegro by the end of June of the current year for the previous year.²¹

The Public Enterprise that manages National Parks develops a management plan adopted by the Government of Montenegro for a five-year period, while the annual management program is adopted by the enterprise itself, with the prior approval of the ministry. The report on the implementation of the annual management plan has to be submitted to the responsible ministry by 1 March of the current year for the previous year.²²

Regional Water Provider of the Montenegrin Coastal Zone performs its activities on the basis of a development program adopted by the Government of Montenegro. Also, the Government gives the approval on the annual work plan of the Regional Water Provider, and the company submits the annual report on the implementation of the work plan to the Government by 30 April of the current year for the previous year.²³

● GOVERNMENT'S PERMISSION FOR FEES AND USE OF FUNDS

The Government approves the prices of Regional Water Provider services.²⁴

The Environmental Protection Fund (Eco-Fund) is financed through eco-fees, the amount, method of calculation and payment of which is determined by the Government.²⁵

18 Article 10, Law on National Public Broadcaster Radio and Television of Montenegro (Official Gazette of Montenegro 80/20)

19 Article 33, Law on National Parks (Official Gazette of Montenegro 28/14 and 39/16).

20 Article 10 paragraph 1, Law on Investment and Development Fund of Montenegro (Official Gazette of Montenegro 88/09, 40/10 and 80/17)

21 Articles 10 and 15, Law on Investment and Development Fund of Montenegro (Official Gazette of Montenegro 88/09, 40/10 and 80/17).

22 Articles 14 and 15, Law on National Parks (Official Gazette of Montenegro 28/14 and 39/16)

23 Articles 3 and 11, Law on Regional Water Supply of Montenegrin Coastal Zone (Official Gazette of Montenegro 56/16).

24 Article 3, Law on Regional Water Supply of Montenegrin Coastal Zone (Official Gazette of Montenegro 56/16)

25 Article 77 paragraph 1, Law on Environment (Official Gazette of Montenegro 52/16 and 73/19)



Users of national park resources are charged a fee, which is the income of the public enterprise and is determined by the general act of the Public Enterprise, with the approval of the Ministry.²⁶

The Public Enterprise is paid a fee for the use of coastal zone, and these funds are used for the purposes and improvement of the coastal zone by the Plan for the use of funds, which is adopted by the public enterprise with the approval of the Government.²⁷

LACK OF UNIFORMITY OF THE AUTHORISATION OF THE FOUNDERS ACCORDING TO MEMORANDA OF ASSOCIATION

The memoranda of association of enterprises adopted by the Government from 2005 until today contain significant differences in terms of the founders' powers, which are not consistently or uniformly applied in different cases. In certain enterprises, the Government, as a founder, does not have any powers, while in certain enterprises, the Government is even responsible for the appointment of directors, management of assets, taking loans, deciding on staff payment policy.

The level of detail ranges from memoranda of association of Monteput, Postal Service²⁸ or Crnogorska plovidba²⁹ where the responsibilities of the founder were not defined at all, or the Airports where it is only stated that "the company is managed by the founder, in the manner and under the conditions defined by law and articles of association of the company"³⁰ to memorandum of association of Regional Water Provider, which is amongst the most detailed in terms of the responsibilities of the founder.

Based on the memoranda of association, the competence of the Government as the founder in almost all other cases is to adopt articles of association, adopt financial and business reports, give approval to the annual work plan and financial plan, and decide on changing the founding capital. In most cases, the Government, as a founder, decides on the distribution of profits and the manner of covering losses, and the appointment and dismissal of members of the Board of Directors (this is not the case with Postal Service, Monteput, Crnogorska plovidba).

In several cases, the founder **approves the election of the CEO** (ProCon, CGES, EcoFund, Spatial Protection, ToMontenegro). In several cases, it is the Government that **appoints the independent auditor** (ProCon, RDC, CGES, CETI).

26 Article 21, Law on National Parks (Official Gazette of Montenegro 28/14 and 39/16).

27 Article 8, Law on Coastal Zone (Official Gazette of the Republic of Montenegro 14/92, 59/92, 27/94 and Official Gazette of Montenegro 51/08, 21/09, 73/10 and 40/11).

28 Decision on the establishment of a one-member Joint Stock Company Postal Service of Montenegro Podgorica, Official Gazette of Montenegro 060/11 of 16 December 2011.

29 Decision on participation in the establishment of the Company Crnogorska plovidba JSC Kotor, Official Gazette of the Republic of Montenegro 041/03 of 10 July 2003.

30 Decision on the establishment of a company for servicing tax cash registers - limited liability companies, Official Gazette of Montenegro 038/13 of 2 August 2013.



The only company in which the founder, i.e. the Government, has the authority **to approve the act on job description and organisation** is Procon.

The Government's approval with regard to the **company's acts for asset management or new loans** is required only in the Regional Water Provider, whose memorandum of association is amongst the most detailed in terms of the responsibilities of the founders.³¹ For example, in accordance with the founder's responsibilities defined in such a detailed way, when in 2013 the Regional Water Provider intended to sell apartments in its ownership, it had to acquire the Government's approval.³²

The only companies in which the Government has a say in **the staff salary policy in general and the compensation of the members of the board of directors** are ToMontenegro and Innovation Fund, both established in 2021.

Memorandum of association of the Broadcasting Centre stipulates that the supervision of its work is performed by the ministry in charge of electronic communications.³³ This is a unique example of the founding act precisely defining the department responsible for supervision: it is common for the founding act to give a general wording that defines that "the work of the company is supervised by the founder" or that "the work of the company is supervised by the responsible state administration bodies, through inspectors, in accordance with the law". There are also cases where responsibility for supervision over the work of the company is not at all defined by the memorandum of association.³⁴

31 Article 9, Memorandum of Association of the Limited Liability Company Regional Water Provider of the Montenegrin Coastal Zone, Official Gazette of Montenegro 079/17 of 29 November 2017.

32 Information and conclusions of the Government on the sale of apartments in the ownership of PE Regional Water Provider of the Montenegrin Coastal Zone" Budva in order to resolve housing issues of employees, 24 May 2013
<http://arhiva.gov.me/ResourceManager/FileDownload.aspx?rId=135003&rType=2>

33 Memorandum of Association of Limited Liability Company Broadcasting Centre - Podgorica, (Official Gazette of Montenegro 021/09 of 20 March 2009, 024/12 of 4 May 2012, 016/13 of 29 March 2013, 038/19 of 5 July 2019)

34 Memorandum of Association of Limited Liability Company Ski resorts of Montenegro



◎ - TABLE 1.3: COMPETENCES OF FOUNDERS PRESCRIBED BY THE GOVERNMENT'S MEMORANDUM OF ASSOCIATION OF COMPANIES 2005-2021

	Monte put	Crnogorska plovidba JSC	ProCon	BCC	CGES	Postal Service	CETI	Tehnopolis - Nikšić	Regional Water Provider	Ski Resorts	Environmental Protection Fund	Montenegrin Spatial Protection	ToMontenegro	Innovation Fund
Adopting articles of association			✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
Deciding on status changes			✓		✓		✓	✓		✓	✓			
Adopting financial and business reports			✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
Deciding on profit distribution and how to cover profits			✓	✓	✓		✓	✓		✓	✓	✓		✓
Approving annual work plan and financial plan			✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
Deciding on the change of the founding capital			✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
Appointing and dismissal of members of the Board of Directors					✓		✓	✓	✓	✓			✓	✓
Approving appointment of CEO			✓		✓						✓	✓	✓	
Appointing an independent auditor			✓	✓	✓		✓							
Deciding on the compensation policy and on the compensation of the members of the Board of Directors													✓	✓
Adopting a decision on restructuring or termination of the company				✓					✓				✓	✓
Approving to the act on organisation and systematisation			✓											
Approving disposal of the company's assets									✓					
Approving the company's loans									✓					

ESTABLISHING A COMPANY - UNCONSTITUTIONAL AND INSUFFICIENTLY THOUGHT THROUGH PRACTICES

The state can establish a new company only if this has already been prescribed by a legal act or the Parliament of Montenegro's special decision. For example, establishment of the Innovation Fund in the form of LLC with precise responsibilities and financing method was provided by the Law on Innovation Activity, and therefore the Government issued a memorandum of association as a founding act, adopting a bylaw for implementation of the obligation under the Law.³⁵ When establishing an enterprise (Montenegro Works, ToMontenegro), the Government refers to the Law on Companies as a legal basis for the adoption of the "founding act", i.e. a memorandum of association of a company. According to the Constitution, the Government issues "decrees, decisions and other acts for the enforcement of laws",³⁶ i.e. decisions only in the form of bylaws that enforce laws, while the Parliament is responsible for adopting decisions in the form of general acts.³⁷

35 "In order to effectively implement the innovation policy, provide and implement funds in order to encourage innovation, the Government establishes the Innovation Fund of Montenegro. The Fund is established as a limited liability company." Article 37, Law on Innovation Activity, Official Gazette of Montenegro 82/2020.

36 Article 100, Constitution of Montenegro

37 Article 82, Constitution of Montenegro



At the local level, the competence is clearly defined, thus only the local parliament can adopt an act on the establishment of a new enterprise at the municipal level.³⁸ i.e.

Regardless of whether the basis for establishing a company is found in a law, strategic act or memorandum of association adopted at a Government session, there are no clear rules on how to conduct a fiscal impact assessment when it comes to setting up new enterprises, the obligation to prepare a feasibility study or business plan. Although establishing a company requires long-term financial commitments through the founding contribution, as well as possible fiscal risks for the state budget, neither a feasibility study substantiating the need for establishing those companies was presented to the Montenegrin public, nor was a timely report on impact assessment for the regulations (RIA form) published for either of the enterprises established during the mandate of the 42nd Government outside the explicit legal basis (ToMontenegro and Montenegro Works).

RIA for the founding act of Montenegro Works³⁹ has 25 sentences in response to seven questions. It does not provide more precise definition of the problem, the consideration of options for its resolution and the impact of the chosen solution. It does not contain detailed financial estimates of the company's operating costs, number of employees, business plan or an indication of how revenues will be generated when the founding contribution of €490,000 from the state budget is spent. The Ministry states in the form that no one (the public, experts) was consulted in the process of establishment. No indicators have been given to measure the fulfilment of the objectives of the regulations, nor are the objectives stated in a clear and measurable way. When asked about the options considered for solving the identified problem (beyond the establishment of this company), scenarios considered, including what will happen if no change is made (status quo), the Ministry responded only that solving the identified problems is only possible by adopting the decisions on this issue. The poor quality of this RIA form is particularly worrying keeping in mind that it was produced by the Ministry of Finance and Social Welfare, which, according to the Government's Rules of Procedure, is responsible for conducting quality control of RIA forms submitted by other departments and commenting on the submitted RIA forms regarding whether RIA was adequately implemented.⁴⁰

38 Article 38, paragraph 1 Law on Local Self-Government, Official Gazette of Montenegro 002/18 of 10 January 2018, 034/19 of 21 June 2019, 038/20 of 25 April 2020

39 The insight was achieved through a freedom of information request, Decision of the Ministry of Finance and Social Welfare, 1 September 2021, no. 01-6-150/3

40 Article 41, Rules of Procedure of Montenegro, Official Gazette of Montenegro 003/12 of 13 January 2012, 031/15 of 18 June 2015, 048/17 of 24 July 2017, 062/18 of 21 September 2018.



SUPERVISORY ROLE OF THE MINISTRY OF FINANCE

The role of the Ministry of Finance in the supervision of state-owned enterprises is almost non-existing - there are systemic, legal obstacles to full coverage of all enterprises, organisational inadequacies within the Ministry regarding the structure for supervision of enterprises and persistent problems related to budget inspection dysfunction.

According to the Law on Budget and Fiscal Responsibility, budget affairs include, among other things, “monitoring and analysis of financial plans and financial reports of public enterprises”.⁴¹ In this way, the Law stipulates that the ministry in charge of budget affairs must also deal with “public enterprises”. However, if we interpret this provision literally, budget affairs at the time of writing this report would include monitoring and analysis of only 3 of the 52 state-owned enterprises – Morsko dobro, National Parks and RTCG, as the only three public enterprises which have not yet been transformed into one of the organisational forms under the Law on Companies. Although the systemic budget law was adopted four years after the Law on Public Enterprises was repealed together with the term “public enterprises”, it was then again used in the text of the Law, significantly narrowing the scope of competencies.

In terms of organisational capacity to cover enterprises, the Ministry has undergone frequent structural changes, but state-owned enterprises have never occupied a significant place. Until 2013, the Ministry of Finance had a Department for Public Enterprises within the Budget Sector, which was in charge of monitoring the work of public and state-owned enterprises and reporting on their work, including monitoring state aid granted to these enterprises.⁴² Although it was specified that the Department has to produce reports on the work of state-owned enterprises, neither the frequency of reporting nor the detailed content of these reports were specified, and they were never produced regularly, except for ad hoc purposes of notifying the Government or answering MPs’ questions. Since 2013, the Ministry has undergone several organisational changes, but the definition of its responsibility for enterprises remained the same. According to the

41 Article 72, Law on Budget and Fiscal responsibility, Official Gazette of Montenegro 020/14 of 25 April 2014, 056/14 of 24 December 2014, 070/17 of 27 October 2017, 004/18 of 26 January 2018, 055/18 of 1 August 2018.

42 According to the Rulebook, the Department for Public Enterprises performed activities related to: analysis of the financial state of affairs of public and state-owned enterprises, monitoring and assessing the quality of their operations, analysis of development projects of public enterprises, keeping records and preparing reports on the work of public and state-owned enterprises and enterprises, monitoring the process of restructuring public enterprises, collecting, processing and monitoring state aid data, keeping records on state aid, participating in the drafting of legislation related to state aid, monitoring compliance of the Law and other regulations in this area with EU standards and regulations.



new organisational structure which was set up in June 2021,⁴³ there is a Directorate for Local Self-Government and State-Owned Enterprises in Majority State Ownership in the Ministry, and the Directorate for State-Owned Enterprises in the Majority State Ownership is a part of it. This Directorate, which has five executive positions, is also responsible for regulatory bodies, which are completely separate from local self-government or state-owned enterprises. The small number of executive positions and illogical decisions in the development of organisational structure and division of responsibilities for state-owned enterprises illustrate that the Ministry's policy in this area is still insufficiently defined.

DEPARTMENT FOR CORPORATE GOVERNANCE IMPROVEMENT

In 2021, the Department for Corporate Governance Improvement was formed within the Ministry of Capital Investments, with four positions in its staff structure. The Rulebook⁴⁴ does not specify which specific companies the Department will deal with, and the first outputs of the Department show that these are 20 state-owned enterprises that are (according to an unofficial division) under the jurisdiction of the Ministry of Capital Investments (from the field of energy, transport, mining).

In addition to “passive responsibilities” related to analysing the state of affairs and monitoring the work of enterprises, the scope of the Department's responsibilities includes proactive responsibilities, such as “determining the development policy of legal entities whose shares are owned by the state and which are founded by the state, determining strategic plans, programs and projects in this area”, but also “participating in the work of the board of directors of legal entities and in the work of general meetings of shareholders in accordance with legal regulations”. One of the key innovations is the competence in relation to “implementation of conclusions of the Government and its working bodies” and “monitoring (...) implementation of the Government's measures in relation to these legal entities”, which has not been defined in any department so far, and was done only *ad hoc*, based on the Government's decision.

The Department's responsibilities related to determining the development policies of state-owned enterprises, as well as determining strategic documents in this area are incomplete and unenforceable - the Department can perform analytical tasks and propose draft documents for Ministry's consideration, Government's commissions and the Government, and only the Government can “confirm” i.e. adopt strategic documents, in any field and for any responsibility.

In July 2021, the Department published the first quarterly report

43 Rulebook on internal organisation and systematisation of the Ministry of Finance and Social Welfare, July 2021, available at:

<https://www.gov.me/clanak/pravilnik-o-unutrasnjoj-organizaciji-i-sistemizaciji-ministarstva-finansija-i-socijalnog-staranja>

44 Rulebook on internal organization and systematisation of the Ministry of Capital Investments, February 2021, available at:

<https://www.gov.me/dokumenta/21e753cc-101f-4ef8-8629-060647bda84a>



on the operations of companies, as well as a base for collecting documentation from companies that includes articles of association, collective agreement, job descriptions, guides for access to information, audit and financial reports.⁴⁵ The department depends on the data provided by enterprises, the accuracy of which does not have to be guaranteed, having in mind the reliability of the financial statements, which the SAI has repeatedly called into question.⁴⁶

The Department's responsibility to participate "in the work of the board of directors of legal entities and in the work of general meeting of shareholders" is particularly problematic, bearing in mind that the state has already appointed persons in these bodies, while existing regulations do not allow persons who are not members of enterprise's management bodies to participate in their work. Even if the Law allows for this possibility, the question arises regarding the mandate and authority based on which the employees of the Ministry's Department would participate in the work of the mentioned governing bodies.

Unclear definition of the Department's responsibilities, its position within one section of the Government, lack of legal obligation of enterprises to provide information to the Department, as well as narrowing of the scope to almost one third of state enterprises are some of the problems faced in the first attempt to institutionalize corporate governance in state enterprises.

45 Data base and report available at the Ministry of Capital Investments' website: <https://www.gov.me/mki/privredna-drustva>

46 For details on irregularities in financial reporting, see the chapter: "Audit and Financial Supervision of State-Owned Enterprises - State Audit of Public Enterprises"



2

FINANCIAL SUPERVISION - A MULTITUDE OF DYSFUNCTIONAL MECHANISMS

There are numerous mechanisms of financial supervision over the work of state-owned enterprises, but in practice, they all face a number of problems that question their effectiveness.

Not all state-owned enterprises are obliged to get their annual commercial audit, but those that are, fail to submit their audit reports to the Government in timely manner. The choice of audit companies is controversial due to data showing consecutive audits conducted by the same companies, as well as most frequent hiring of those audit companies that were punished by the responsible inspection.

As a relatively new mechanism, audit committees have been dissolved twice in four years at the level of all companies due to irregularities in appointment and work, but systemic problems resulting from poor oversight and vague norms of the Law on Audit have not yet been resolved.

In spite of their obligation, state-owned enterprises do not report to the Government on the work of internal audit and the state of financial management and control, and this practice has been tolerated by the Ministry of Finance. The unclear lines of supervision of certain departments over companies make it impossible for the internal audit units of certain ministries to conduct audits of state-owned enterprises.

Due to lack of capacities and a huge scope of responsibilities, the State Audit Institution fails to deal with state-owned enterprises more often, and since its establishment until today, it has reached only one fifth of them. Although few in number, audit reports are thorough, but their effectiveness is questionable due to insufficient attention they receive from decision makers, the board of directors, the Government and the Parliament.

The Budget Inspection of the Ministry of Finance, which would have the authority to check the application of the law in all state-owned enterprises, has not been functional for 5 years. At the same time, the new Law on Public Procurement exempts a significant number of state-owned enterprises from the application of this law, which has not improved the control and transparency of their operations.

COMMERCIAL (EXTERNAL) AUDIT

The way in which the Law on Audit defines financial statements leaves some state-owned enterprises outside the group of companies which have to get their accounts audited.⁴⁷

A state-owned enterprise that is organized as a limited liability company, and is not a medium or large legal entity (in accordance with the official classification under the Law on Accounting), has no obligation to get its financial statements audited annually by hiring an audit company, to establish audit committees, or to establish an internal audit function. The Law on Audit also defines a special category of **“entities of public interest”**⁴⁸, but even amongst them, state-owned enterprises are not explicitly recognised as a separate category, except for those that are defined as joint stock companies or large legal entities based on the Law on Accounting. This exempts 23 state-owned enterprises from the obligation to have their annual reports audited on a regular basis.⁴⁹

Enterprises that are among those obliged to have their accounts audited annually, are required to submit to the administration body responsible for taxes the audit a report with the auditor’s comments on the financial statements, no later than 30 June of the current year. The administration body publishes the audit report along with the

47 Obligation to have accounts audited, i.e. the list of legal entities where it is obligatory are defined by Article 29 Law on Audit, Official Gazette of Montenegro 001/17 of 9 January 2017.

48 Entities of public interest are: 1) legal entities that issue securities and other financial instruments traded on the organised market 2) banks and other financial institutions 3) insurance companies; and 4) legal entities classified in the category of large legal entities in accordance with the Law on Accounting, Article 29 of the Law on Audit, Official Gazette of Montenegro 001/17 of 9 January 2017.

49 Those are: Castello Montenegro JSC Pljevlja, PE National Parks of Montenegro - Podgorica, Montenegrin Electricity Market Operator LLC Podgorica, Centre for Ecotoxicological Research LLC Podgorica, Businessmontenegro JSC Podgorica, LLC Innovation and Entrepreneurship Centre Tehnopolis Nikšić, Project - Consulting LLC Podgorica (PROCON), Sveti Stefan Hotels JSC Budva, Montepranzo - Bokaprodukt JSC Tivat, Barska plovidba JSC Bar, Vodacom LLC Tivat. Ski Resorts of Montenegro LLS Mojkovac, Zeta Energy LLC Danilovgrad, Regional Diving Centre for Underwater Demining and Divers Training LLC Herceg Novi, Science and Technology Park of Montenegro Gore LLC Podgorica, Environmental Protection Fund LLC Podgorica, THE Miločer LLC Budva, PDI LLC Ulcinj, Spatial Protection of Montenegro Danilovgrad, Montenegrin Power Exchange LLC Podgorica, Tourist Centre Durmitor LLC Žabljak, Market JSC Podgorica, Montenegro Bonus LLC Cetinje.



comments on the financial statements on its website.⁵⁰ According to available data from the administrative body's database, a significant number of state-owned enterprises did not get their financial statements audited - only 27 enterprises submitted at least one audit report in the previous three years, while the other 24 enterprises failed to do so. Even in the case of enterprises that had their accounts audited, it was mostly done on irregular basis or consecutive audits were carried out by the same audit companies.

● - TABLE 2.1: WHO CONDUCTED AUDIT OF STATE-OWNED ENTERPRISES

ENTERPRISE	2018	2019	2020
Regional Water Provider of the Montenegrin Coastal Zone LLC Budva		Crowe MNE	Crowe MNE
PE for Coastal zone Management of Montenegro - Budva	A & C Company	ERC System	ERC System
Electric Power Enterprise of Montenegro JSC Nikšić	BDO	BDO	BDO
Airports of Montenegro JSC Pogorica	EURORev	EURORev	
Monteput LLC Podgorica	Omega	Omega	Omega
13. jul Plantaže JSC Podgorica	BDO		
Port Bar LLC Bar	BDO	Reviko	
Institute Dr Simo Milošević JSC Igalo	EURORev	EURORev	
THE Ulcinjska rivijera JSC Ulcinj		Racio-mont	Racio-mont
Montenegro Airlines JSC Podgorica	MV Konsalt	MV Konsalt	
Hotel Group Budvanska rivijera JSC Budva	BDO	BDO	BDO
Electricity Transmission System of Montenegro JSC Podgorica	PwC	PwC	PwC
Black Metallurgy Institute JSC Nikšić	Racio-mont	Racio-mont	Racio-mont
Marina JSC Bar	BDO		
Crnogorska plovidba JSC Kotor	MV Konsalt	Crowe MNE	
Postal Service of Montenegro JSC Podgorica	MV Konsalt	MV Konsalt	MV Konsalt
Coal Mine JSC Pljevlja	BDO	BDO	BDO
Railway Infrastructure of Montenegro JSC Podgorica	BDO	BDO	BDO
Railway transport of Montenegro JSC Podgorica	Racio-mont	Racio-mont	
Montecargo JSC Podgorica	Accounting and Audit	Accounting and Audit	Accounting and Audit
Maintenance of Railway Vehicles JSC Podgorica	Accounting and Audit		
Broadcasting Centre LLC Podgorica	BDO	BDO	BDO
Health Institution Pharmacies of Montenegro Montefarm Podgorica	EURORev	EURORev	
PE RT of Montenegro - Podgorica	Reviko	Reviko	
Investment and Development Fund of Montenegro JSC Podgorica	Deloitte	Crowe MNE	
Montenegroturist JSC Budva	MV Konsalt		
Montenegrin Electricity Distribution System LLC Podgorica	BDO	BDO	

Out of 61 audits of state-owned enterprises conducted in the previous three years, one third or 20 were performed by the audit company BDO LLC Podgorica. This company was fined €2,000 by the Directorate for Audit Supervision of the Ministry of Finance in 2019, for non-compliance with the section of the Law on Audit that stipulates that the audit can be performed by an audit company in which “ma-

50 Portal of the Revenue and Customs Administration of Montenegro - <https://eprijava.tax.gov.me/TaxisPortal>

jority voting rights are exercised by authorised auditors who meet the requirements (...)” and in which “the majority, up to three quarters of the members of the company’s management are certified auditors (...)”.⁵¹The authorised inspection of the Ministry of Finance found irregularities in Omega LLC Podgorica and “A & C Company” LLC Herceg Novi as well, which were also hired by state-owned enterprises.⁵² Only four audits of state-owned enterprises in the previous three years were conducted by renowned audit companies that belong to the so-called “big four”.⁵³

● - TABLE 2.2: FREQUENCY OF CONDUCTING AUDITS OF STATE-OWNED ENTERPRISES BY AUDIT COMPANIES IN THE PERIOD 2018-2020

AUDIT COMPANY	NUMBER OF CONDUCTED AUDITS OF PUBLIC ENTERPRISES IN THE PERIOD 2018-2020
BDO LLC Podgorica	20
“MV Konsalt” LLC Podgorica	7
Racio-mont LLC Kolašin	7
EURORev LLC Podgorica	6
Accounting and Audit LLC Tivat	4
“Crowe MNE” LLC Podgorica	4
Omega LLC Podgorica	3
Reviko LLC Podgorica	3
PricewaterhouseCoopers LLC Podgorica	3
“ERC System” LLC Herceg Novi	2
“A & C Company” LLC Herceg Novi	1
Deloitte LLC Podgorica	1

AUDIT COMMITTEES

The Law on Audit prescribes the obligation for legal entities that must have their accounts audited to appoint an audit committee consisting of at least three members.⁵⁴ The role of these committees is to monitor all forms of financial controls in the company and give recommendations to management bodies: from financial reporting, through internal audit, to mandatory commercial audit where they give recommendations when selecting an audit company and monitor their work.

The Law came into force in 2017, and dissatisfied by the way the audit committees were appointed, the Government has twice issued a conclusion about their dismissal and reappointment. In March 2020, the Ministry of Finance produced information⁵⁵ noting problems regarding implementation of the Law on Audit and obligations of the audit committee in state-owned enterprises. The Ministry found that a formal representative of the state (as the majority shareholder) was

51 Response to the Institute Alternative’s freedom of information request submitted by the Ministry of Finance and Social Welfare, Directorate for Audit Supervision of 3 June 2021, no. 01-6-96/2.

52 Ministry of Finance and Social Welfare, Report on Conducted Controls submitted to the Audit Council on 15 April 2021

53 Deloitte, Pricewaterhouse (PWC), Ernst & Young (i.e. EY) and KPMG.

54 Article 29, Law on Audit, Official Gazette of Montenegro 001/17 of 9 January 2017.

55 Information on membership in audit committees in public enterprises’ and companies in which the majority of shares are held by the state Ministry of Finance, March 2020.



not appointed in the majority of audit committees, and that they included persons who were otherwise heads of state bodies or bodies of other public enterprises, often simultaneously in several audit committees of the same enterprises. After considering the information, the Government adopted a conclusion to dismiss the members of all audit committees and make new appointments, with the prior approval of the Ministry of Finance.

Almost a year later, the Ministry of Capital Investments conducted a similar analysis for enterprises in the transport, energy and mining sectors, casting a critical eye on their work⁵⁶, highlighting new problems, while failing to refer to problems identified in the previous year and developments in the meantime. However, the new information was sufficient for the Government to once again “restart” the audit committees in all state-owned enterprises, ordering new dismissal of the existing ones and appointment of new members. The Government instructed the Ministry of Finance and Social Welfare to review the payment policy for members of audit committees (which was found not to be consistent and differed between companies), as well as to consider amendments to the Law on Audit in terms of audit committees’ responsibilities, their appointments and dismissals. In the time of writing of this report, the conclusion has not been implemented: neither the analytical material in this area nor the proposed amendments to the Law were discussed at the Government’s sessions.

● - TABLE 2.3: HIGHEST PAID CEO

COMPANY	CEO'S SALARY
ToMontenegro LTD Podgorica	4 400
Investment and Development Fund of Montenegro	3 193
Marina JSC Bar	3 145
Montenegrin Electric Enterprise JSC Nikšić	3 097
Regional Water Provider of the Montenegrin Coastal Zone	2 867
PE RT of Montenegro - Podgorica	2 845
PE for Coastal Zone Management of Montenegro	2 839
Broadcasting Centre LTD Podgorica	2 607
Airports of Montenegro JSC Pogorica	2 369
Monteput LLC Podgorica	2 298
Barska plovidba JSC Bar	2 268
13. jul Plantaže JSC Podgorica	2 250
Electricity Transmission System of Montenegro	2 146
Hotel Group Budvanska rivijera	2 082
Montenegrin Electricity Market Operator	2 068
Centre for Ecotoxicological Research	2 033
Black Metallurgy Institute JSC Nikšić	2 008

56 Information on membership in audit committees in public enterprises and companies in which the majority of shares are held by the state, Ministry of Capital Investments, January 2021.

Apart from the initial problems regarding work and appointments, in line with the Law on Audit, audit committees are not obligatory for all state-owned enterprises. According to official information, they were appointed in only 28 of the 52 state-owned enterprises.⁵⁷ There is no prescribed mechanism for regular reporting by the audit committee to the Government, i.e. the founder, nor the obligation of the Ministry of Finance to provide opinion on the appointment of members. There is also no obligation to keep records of membership in these bodies, which would enable avoiding the noted problems regarding the appointments.

INTERNAL AUDIT

The Law on Management and Internal Control in the Public Sector unequivocally recognises state-owned enterprises as part of the public sector:

“For the purposes of this Law, the public sector includes the following: (...) joint stock companies and other legal entities in which the state or a local self-government unit owns the majority of shares.”⁵⁸

In line with this Law, while other public sector entities report to the Ministry of Finance or the Parliament, state-owned enterprises submit reports such as report on internal audit work and report on activities relating to implementation and improvement of management and control, to the general meeting of shareholders, i.e. to the founder, along with the annual performance report.⁵⁹ In other words, state-owned enterprises established as JSC (26 of them) have no obligation to report to any state body, but only to their own general meeting of shareholders, while only those which still operate as “public enterprises” (3 of them) and LLC (23) must report to their “founder”, i.e. the state, the Government or the Parliament. However, even those state-owned enterprises that are required to report to the Government (public enterprises and LLCs) fail to do so: only nine enterprises officially submitted annual reports to the Ministry of Finance for 2020,⁶⁰ and none of them includes reports relating to the work of internal audit or management and control. At the same time, the *Annual Consolidated Report on Management and Internal Control in the Public Sector*⁶¹ does not contain any information on the functioning of internal controls in state-owned enterprises.

The law provides for a possibility for an internal audit unit of an entity “which is responsible for supervising another entity in line with the law” to conduct audit of the state-owned enterprises that do not have their own audit unit.⁶² For example, an internal audit of the Min-

57 Information on membership in audit committees in public enterprises and companies in which the majority of shares are held by the state, Ministry of Finance, March 2020.

58 Article 2, Law on Management and Internal Control in the Public Sector, Official Gazette of Montenegro 075/18 of 23 November 2018.

59 Articles 18 and 29, Law on Management and Internal Control in the Public Sector, Official Gazette of Montenegro 075/18 of 23 November 2018.

60 Those are: “LLC for Centre for Ecotoxicological Research, Monteput, PROCON, Postal Service of Montenegro, PE for Coastal Zone Management, Montenegro Bonus, PE Regional Water Provider of the Montenegrin Coastal Zone, Airport of Montenegro, Crnogorska plovidba. Source: Response to freedom of information request.

61 Available at: <https://www.gov.me/dokumenta/f735aa85-b9bf-4b42-8899-e60e228d1809>

62 Article 49, Law on Management and Internal Control in the Public Sector, Official



istry of Capital Investments would have a legal basis to conduct audit of Montecargo or ToMontenegro, if they do not already have their own audit unit. However, the lines of supervision over enterprises by individual Government's departments are not regulated by law, except in the case of a few exceptions.⁶³ Therefore, it is difficult to implement this provision in practice, since enterprises could challenge the ministries' intentions to conduct audits, referring to the lack of legal basis for supervision.

Pursuant to the same Law, the heads of public sector entities are obliged to establish a system for detecting and acting on reports of suspected fraud. However, state-owned enterprises are completely exempted by the Law from the obligation to submit an annual report to the Ministry of Finance on notifications of suspected irregularities and fraud and measures taken.⁶⁴

STATE AUDIT OF PUBLIC ENTERPRISES

Since the beginning of the work of the State Audit Institution (SAI) in 2004 until today, 10 state-owned enterprises have been audited, approximately one every two years (not counting several audits of local companies).⁶⁵ A control audit was conducted for one report only (Regional Water Provider).

The SAI's capacity to conduct audit in state-owned enterprises is not large, while the range of entities subject to audit in the relevant sector is huge. In addition to more than 50 enterprises at the central level, sector V is also responsible for 120 enterprises at the local level, as well as 24 local self-government units, the Equalization Fund, grants by municipalities and the Senate of the Royal Capital. In addition to the member of the Senate and the head of the Sector, there are 7 state auditors and 2 associate auditors in this sector⁶⁶, which is less than in sector I (10 auditors, 1 associate) or sector II (12 auditors, 1 associate).

So far, no thematic or cross-sectional audits covering only one issue that would be examined in a large number of enterprises have been conducted. Although these entities are diverse, the analysis of the reports published so far indicates that the enterprises face similar problems and make almost the same irregularities in their work. Common problems in the functioning of state-owned enterprises are most often related to the area of financial management and internal controls, public procurement, labour relations and employment, as well

Gazette of Montenegro 075/18 of 23 November 2018.

⁶³ See the chapter "Special obligations of 10 enterprises

⁶⁴ Article 53, Law on Management and Internal Control in the Public Sector, Official Gazette of Montenegro 075/18 of 23 November 2018.

⁶⁵ Reports on the audit conducted in state-owned enterprises available at: http://www.dri.co.me/1/index.php?option=com_content&view=article&id=101&Itemid=132&lang=sr

⁶⁶ List of Employees in State Audit Institution on 26 July 2021, available at: <http://www.dri.co.me/1/doc/Spisak%20zaposlenih%20u%20Drzavnoj%20revizorskoj%20instituciji%20na%20dan%2026.07.2021.%20godine.pdf>



as management of state assets. At the time when the audit was conducted, the internal financial control system was not established at all in several cases, general acts of enterprises were not in compliance with the regulations of higher legal force, neither FMC manager nor audit committee were appointed etc. Problems observed with regard to public procurement are unrealistic planning, procurement amounts higher than contracted, exceeding the limit of 10% for the implementation of direct agreement, delay in publishing contracts at the public procurement portal, etc. Some of the problems relating to labour relations and employment are a higher number of employees than the number provided by acts on organisation and systematisation, employment without vacancy announcement, failure to meet job description conditions, salary increase contrary to the collective agreement, incompatibility of the collective agreement with the general collective agreement in case of severance pay, etc. There are numerous problems regarding state asset management, with frequent discrepancies between the state of affairs of the property listed in bookkeeping and in reality.

Although previous reports on audits of state-owned enterprises have been quite rare, their publication has generally attracted a great deal of public attention, but they were also often opposed or challenged by management of those enterprises (Montenegro Airlines, Regional Water Provider and Plantaže cases). At the same time, although rare, these reports have never been properly addressed by the Parliament of Montenegro, because MPs did not consider to what degree recommendations were implemented, or address systemic problems in the operation of state-owned enterprises based on the SAI.

● - TABLE 2.4. COMMON PROBLEMS OF PUBLIC ENTERPRISES BASED ON SAI'S AUDIT REPORTS

	PROBLEMS NOTICED BY THE SAI			
	INTERNAL CONTROLS	PUBLIC PROCUREMENT	STATE ASSET MANAGEMENT	LABOUR RELATIONS AND EMPLOYMENT
Morsko dobro	✓	✓		
Airports Montenegro	✓	✓	✓	✓
RTCG	✓	✓	✓	✓
Montefarm	✓	✓	✓	✓
CETI	✓		✓	✓
Montenegro Airlines	✓	✓	✓	✓
Monteput	✓	✓	✓	✓
National Parks	✓	✓	✓	✓
Regional Water Provider of the Montenegrin Coastal Zone	✓	✓	✓	✓
13. jul Plantaže	✓		✓	✓



NON-EXISTENT BUDGET INSPECTION

The Budget Inspection of the Ministry of Finance has the authority to carry out inspection control in all state-owned enterprises. This is provided by the Law on Salaries of Public Sector Employees and the Law on Budget and Fiscal Responsibility, whose application it supervises, and the Law on Inspection Control on the basis of which it operates.⁶⁷ This Inspection could be a strong supervisory body having direct insight into the work of state-owned enterprises, punishing non-compliance with law and the Government's conclusions regarding staff payment or financial management policy, and informing the founder about operational problems, as well as about compliance with provisions from the systemic budget law relating to guarantees and taking loans. However, the position of head budget inspector has been vacant since 2016, thus the inspection has not been functional for five years. Even when the inspection was functioning, it did not provide good results – it did not file misdemeanour charges, and the information about its work were not available to the public (the records were classified internally as confidential).⁶⁸ The Budget Inspection could play a key role in introducing more order in the way money is spent throughout the public sector, including state-owned enterprises, control previous practices, but also prevent them from repeating in the future. However, it is necessary to strengthen human resources and establish an organisational structure in which each of the three systemic laws within its remit will have a recognized place.

PUBLIC PROCUREMENT

The Law on Public Procurement defines that state-owned enterprises which have an “industrial or commercial character”⁶⁹ are not obliged to apply the Law, i.e. they are not considered to be public procuring authorities. If a state-owned enterprise performs “activity in a particular sector” (activities in the field of: electricity, gas and heat, water management, transport, airports and seaports, postal services, exploration and production of oil, coal and other solid fuels), it is then considered to be a so-called sectoral procuring authority and is obliged to apply the Law. A number of exceptions have also been defined in this area, as well as the provision which stipulates that the Law on Public Procurement does not have to be applied in case of an activity in a particular sector that is directly exposed to competition in a market to which access is not restricted.⁷⁰

While the procedure for determining sectoral activity directly exposed to market competition is prescribed by the Law, it is not clearly defined what is meant by the industrial or commercial character of an enterprise.

⁶⁷ The Budget Inspection was established by the Law on Budget and Fiscal Responsibility in 2014, and the Law on Salaries of Public Sector Employees (2016) and the Law on Financing of Local Self-Government (2019) were subsequently added to its remit.

⁶⁸ More detail is available in the press release of the Institute Alternative: Budgetary Inspection to become functional urgently, 2017:

<https://institut-alternativa.org/saopstenje-hitno-obezbjediti-rad-budzetske-inspekcije/>

⁶⁹ Article 2, Law on Public Procurement, Official Gazette of Montenegro 074/19 of 30 December 2019.

⁷⁰ Article 170, Law on Public Procurement, Official Gazette of Montenegro 074/19 of 30 December 2019.



WHO OWNS OUR PUBLIC ENTERPRISES IN MONTENEGRO?

A review of aspects of transparency and accountability of state-owned enterprises

In practice, the application of the Law exempted one third of state-owned enterprises from the application of the Law on Public Procurement: while 34 enterprises were registered as public procuring authorities,⁷¹ the other 18 were not. Among state-owned enterprises that are not officially considered to be public procuring authorities, there are some that do not fall within the exceptions defined by the Law, while among registered procuring authorities, there are those enterprises that obviously have an “industrial or commercial” character, such as PROCON, Ski resorts, Businessmontenegro, etc.

● - TABLE 2.5: PUBLIC ENTERPRISES AND APPLICATION OF THE LAW ON PUBLIC PROCUREMENT

OBVEZNICI	NISU OBVEZNICI
PE National Parks of Montenegro- Podgorica	13. jul Plantaže JSC Podgorica
Regional Water Provider of the Montenegrin Coastal Zone	Institute Dr Simo Milošević AD Igalo
PE for Coastal Zone Management of Montenegro	THE Ulcinjska rivijera JSC Ulcinj
Electric Power Enterprise of Montenegro JSC Nikšić	Montenegro Airlines JSC Podgorica
Airports of Montenegro JSC Podgorica	Hotel Group Budvanska rivijera JSC Budva
Monteput LLC Podgorica	Black Metallurgy Institute JSC Nikšić
Port of Bar JSC Bar	Montepranzo - Bokaprodukt JSC Tivat
Electricity Transmission System of Montenegro JSC Podgorica	Barska plovodba JSC Bar
Postal Service of Montenegro JSC Podgorica	Marina JSC Bar
Castello Montenegro JSC Pljevlja	Crnogorska plovodba JSC Kotor
Montenegrin Electricity Market Operator LLC	Sveti Stefan Hotels JSC Budva
Centre for Ecotoxicological Research	Montenegroturist JSC Budva
Montenegro Bonus LLC Cetinje	THE Miločer LLC Budva
Coal Mine JSC Pljevlja	Montenegrin Power Exchange LLC Podgorica
Railway Infrastructure of Montenegro JSC Podgorica	Tourist Centre Durmitor LLC Žabljak
Railway Transport of Montenegro JSC Podgorica	Market JSC Podgorica
Montecargo JSC Podgorica	ToMontenegro LLC Podgorica
Maintenance of Railway Vehicles	Sports Centre Ada LLC Pljevlja
Broadcasting Centre LLC Podgorica	
Businessmontenegro JSC Podgorica	
LLC Innovation and Entrepreneurship Centre Tehnopolis Nikšić	
Project - Consulting LLC Podgorica (PROCON)	
Montefarm Podgorica	
PE RT of Montenegro- Podgorica	
Investment and Development Fund of Montenegro JSC Podgorica	
Montenegrin Electricity Distribution System	
Vodacom LLC Tivat	
Ski Resorts of Montenegro LLC Mojkovac	
Zeta Energy LLC Danilovgrad	
Regional Diving Centre for Underwater Demining and Divers Training	
Science and Technology Park of Montenegro LLC Podgorica	
Environmental Protection Fund LLC Podgorica	
PDI LLC Ulcinj	
Spatial protection of Montenegro LLC Danilovgrad	

71 Registry of procuring authorities available at: <https://cejn.gov.me/ca-organizacija-list>



Exemption of the state-owned enterprises from the obligation to comply with the Law on Public Procurement will not improve the control and transparency of their work. On the other hand, the obligation to comply with the Law on Public Procurement can be a problem for the state-owned enterprises that actually operate in a competitive environment, reducing their business flexibility along with imposing administrative burdens that their private sector competitors are not subject to, by investing in human resources specialised in procurement, and by “unveiling” their *savoir - faire* to the competition.

Instead of addressing general problems regarding the efficiency and excessive bureaucracy of public procurement procedures for all procuring authorities, by introducing exceptions to the Law from 2019, the legislator “rescued” some enterprises, while condemning others to continue to apply the system that the Government itself considers to be burdened by “unnecessary formalities and requirements that are not of essential importance for the quality of offer and the certainty of the implementation of the future contract”.⁷²

Using the possibility of joint procurement, i.e. centralised procurement⁷³ is one of the possible solutions for enterprises to remain competitive in the market and reduce the administrative burden, while maintaining the transparency and competitiveness of consumption required by their public character that is currently not in use.

Exemption of public enterprises from the obligation to implement the Law on Public Procurement is not in line with the OECD Guidelines on Corporate Governance of State-Owned Enterprises.⁷⁴ In the chapter “State-owned enterprises in the marketplace”, the Guidelines advise, inter alia, that:

e. As a guiding principle, SOEs undertaking economic activities should not be exempt from the application of general laws, tax codes and regulations (...)

g. When SOEs engage in public procurement, whether as bidder or procurer, the procedures involved should be competitive, non-discriminatory and safeguarded by appropriate standards of transparency.

⁷² Cancelling tenders for state-owned enterprises, daily Dan, 16 May 2017, available at: <https://old.dan.co.me/?nivo=3&rubrika=Drustvo&clanak=598792&datum=2017-05-16>

⁷³ Articles 73 and 74 of the Law on Public Procurement, Official Gazette of Montenegro 074/19 of 30 December 2019.

⁷⁴ OECD (2015), OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 Edition, OECD Publishing, Paris, <https://doi.org/10.1787/9789264244160-en>



3

WHO RUNS OUR ENTERPRISES

One of the key objections to the work of state-owned enterprises is poor management caused by the appointment of unqualified staff for the positions in management and governing bodies, not chosen on the basis of knowledge and experience but by party allegiance. The legal framework that defines this issue allows for almost complete discretion to employ staff who are “tailored” to the needs of the current ruling structures, without prescribing the conditions for appointment or management body structures that would be demanding, based on work experience and expertise.

WHO CAN BE A MEMBER OF A BOARD OF DIRECTORS?

Board of directors is a management body of companies which, among other things, provides guidelines to a CEO regarding the management of company's activities, adopts internal acts and supervises the company's work.⁷⁵ After the Law on Public Enterprises was revoked, the rules on the structure of these bodies and the criteria that members must meet are defined by the Law on Business Enterprises in the same way as for all other companies. This leads to the application of institutes which are not adapted to state-owned enterprises, such as the so-called "independent members". In the vast majority of state-owned enterprises, neither the composition of the board of directors in terms of the representation of various interest or professional groups, nor the special conditions that members need to meet are defined. There are also rare examples of good practice, defined by the articles of association of individual enterprises, but they also suffer from the lack of precision leading to the possibility of multiple interpretations.

● **NO RESTRICTIONS IN LAW**

The Law on Public Enterprises stipulated that "a certain number of members of enterprises' management bodies shall be scientists or experts with reputation in the field of public enterprise, and employees' representatives"; and that the number of members and the composition of a board will be determined by the memorandum of association. After the law was revoked, only the Law on Companies remained in force, defining just the general conditions that a member of the board of directors must meet: a candidate has not been convicted of certain crimes, they are not currently or have never conducted an audit of a company and they have not been imposed a measure prohibiting the performance of an activity that is considered to be predominant in the company. A more detailed definition of the membership structure of the board of directors, except for the issue of "independent members", is left to be defined by the articles of association or the memorandum of association.

● **"INDEPENDENT" MEMBERS OF THE BOARD OF DIRECTORS**

The Law on Companies does not define the structure of a board of directors, except for the provision which stipulates that one third of the members must be the so-called "independent members of the board of directors". Within the meaning of this Law, the term "independent" refers to members not being blood relatives with the other members of the enterprise or owners, independence from the ownership or management structure of the enterprise and the lack of significant financial reward to that person by the company in the previous two years.⁷⁶ This provision, which has a purpose in the context of "private" enterprises, loses its significance and is almost inapplicable in the context of "state-owned" enterprises. Being a blood relative with the owners (the state) is not applicable in this case, while the is-

⁷⁵ A full description of the responsibilities of the board of directors is given in the Law on Companies, Official Gazette of Montenegro 065/20 of 3 July 2020, Article 161.

⁷⁶ Article 156, Law on Companies, Official Gazette of Montenegro 065/20 of 3 July 2020.

sues of public officials' conflicts of interest (which include members of the management bodies of state-owned enterprises) are already regulated in detail by the Law on Prevention of Corruption.⁷⁷ However, some of the state-owned enterprises use this wording – according to the Railway Infrastructure of Montenegro's Articles of Association, the Board of Directors has five members, two of whom must be “independent”⁷⁸. The same applies to Marina Bar.

◎ SOMEWHAT POSITIVE EXAMPLES OF CONDITIONS FOR BOARDS OF DIRECTORS

In practice, very few state-owned enterprises have any definition of their board of directors' structure, and even in cases where those definitions exist, they allow for wide interpretation and possible abuses due to the lack of their precision.

A good example of a concrete definition of the management body structure which includes special conditions for members is the Public Enterprise for Coastal Zone Management. According to its Memorandum of Association, out of six members of the Board, two must be experts and scientists in the field of environmental protection, marine biology and maritime law, two are representatives of entities for catering and tourism, and two are employees of the enterprise.

In National Parks, out of five members of the Management Committee, three are appointed from among scientists and professionals, and two from among employees of the enterprise. However, without specifying in detail the meaning or field to which they refer, the terms “scientific and professional” allow for a broad interpretation and possible abuse of this norm.

According to Vodacom's Articles of Association, the Board of Directors counts seven members and consists of the founders' representatives (municipalities and the Government), but also persons involved in water supply and wastewater management. However, the Articles of Association does not prescribe the ratio of representatives of the founders and professional members to seven seats on the board – having in mind that 6 founder municipalities and the Government must be represented in the Board, this does not leave room for the so-called expert members, who then exist only in the articles of association.

A lone example of a state-owned enterprise whose board of directors also has a place for civil society is PROCON. The board of directors of the company consists of seven members: two representatives of the Government, three representatives of local self-government, one representative of employees and one representative of interested parties (NGOs, scientific and professional organizations, individuals). However, the proposal of the seventh member, their selection procedure and the public call, i.e. competition, are insufficiently elaborated, which calls into question the implementation of this norm.

The constitution of the board of directors in the remaining state

⁷⁷ Articles 7 and 8, Law on Prevention of Corruption, Official Gazette of Montenegro 053/14 of 19 December 2014, 042/17 of 30 June 2017.

⁷⁸ Article 35, Articles of Association of Railway infrastructure of Montenegro JSC – Podgorica.



enterprises is not defined in terms of representation of different interest or expert groups. Special conditions imposed on members are not defined either, other than the same general conditions prescribed by the Law on Companies, or general and non-measurable references. This can be illustrated by the framework norms on the necessity for the members of the board of directors to dispose of “appropriate knowledge and experience in company’s field”, which is the case with the Institute Dr Simo Milosevic, Coal Mine, Port of Bar and IDF. An exception in terms of management experience is the Postal Service, where members of the board of directors are required to have at least five years of experience in management positions.

● - TABLE 3.1: OVERVIEW OF THE WORK OF MANAGING BOARDS

ENTERPRISE	2018		2019	
	No of sessions held	No of decisions made	No of sessions held	No of decisions made
Montenegro Airlines JSC Podgorica	22	69	16	64
Postal Service of Montenegro JSC Podgorica	19	156	23	157
Railway Transport of Montenegro JSC Podgorica	19	54	15	43
Montecargo JSC Podgorica	19	49	17	47
Barska plovidba JSC Bar	17	31	18	23
Castello Montenegro JSC Pljevlja	14	18	11	11
Regional Water Provider of the Montenegrin Coastal Zone LLC Budva	12	52	11	71
Project - Consulting LLC Podgorica (PROCON)	11	12	7	10
Black Metallurgy Institute JSC Nikšić	9	35	9	30
Vodacom LLC Tivat	9	22	6	11
Innovation and Entrepreneurship Centre Tehnopolis Nikšić LLC	8	9	8	4
Montenegrin Electricity Distribution System LLC Podgorica	8	66	9	80
Montenegro Bonus LLC Cetinje	7	15	7	19
Montenegroturist JSC Budva	7	6	6	6
Centre for Ecotoxicological Research LLC Podgorica	4	15	4	17
Businessmontenegro JSC Podgorica	4	5	4	5
Zeta Energy LLC Danilovgrad	3	2	3	4
Montenegrin Power Exchange LLC Podgorica	3	10	8	25

WHO IS ELIGIBLE FOR THE CEO POSITION OF A STATE-OWNED ENTERPRISE?

The special conditions that a CEO of a state-owned company should meet are neither defined by law, nor by internal acts of even 15 enterprises. In rare cases where special conditions are prescribed, they even less often include years of work experience in management positions, special certificates, and professional knowledge in the company's field or work in a particular profession, company's activities. Only 16 enterprises are obliged to conduct an open competition for the position of CEO.

● SPECIAL CONDITIONS REQUIREMENTS

According to the Law on Companies, a CEO must fulfil the same legal conditions as the members of the board of directors⁷⁹, as well as additional conditions prescribed by the articles of association of a company. Based on the articles of association, decisions on establishment and separate laws defining the functioning of certain enterprises, it has been determined that CEOs of as many as 15 enterprises do not need to meet special conditions. These are:

THE Ulcinjska rivijera JSC Ulcinj, Montenegro Airlines JSC Podgorica, Hotel Group Budvanska rivijera JSC Budva, Montepranzo - Bokaproduct JSC Tivat, Barska plovdba JSC Bar, Castello Montenegro JSC Pljevlja, Montenegro Bonus LLC Cetinje, Business Montenegro JSC Podgorica, Health Institution Pharmacies of Montenegro Montefarm Podgorica, MontenegroTunist JSC Budva, Vodacom LLC Tivat, Zeta Energy LLC Danilovgrad, PDI LLC Ulcinj, Tourist Centre Durmitor LLC Žabljak, Market JSC Podgorica.

As for the other 36 enterprises, special conditions that a CEO must meet include education, length of service, management experience, special knowledge and certificates, as well as foreign language knowledge, with significant differences among enterprises. The findings are presented in the table below:

79 Article 157, Law on Companies, Official Gazette of Montenegro, 065/20 of 3 July 2020



● - TABLE 3.2: SPECIAL CONDITIONS THAT CEOS MUST MEET

ENTERPRISE	Years of working experience	Years of experience in management positions	Special certificates, expert knowledge of the company field, expert work experience in particular field	Foreign language as condition
Broadcasting Centre LLC Podgorica	9	5		
Montenegrin Electricity Market Operator LLC Podgorica	5		Yes	Yes
Marina JSC Bar	5		Yes	Yes
Science and Technology Park of Montenegro LLC Podgorica	5		Yes	Yes
Investment and Development Fund of Montenegro JSC Podgorica	5		Yes	
Crnogorska plovidba JSC Kotor	5			
Montenegrin Power Exchange LLC Podgorica	5			
PE RT of Montenegro - Podgorica	5			
Port of Bar JSC Bar	3		Yes	Yes
Railway Infrastructure of Montenegro JSC Podgorica	3		Yes	
Coal Mine JSC Pljevlja	3		Yes	
Railway Transport of Montenegro JSC Podgorica	3		Yes	
Montecargo JSC Podgorica	3			
Maintenance of Railway Vehicles JSC Podgorica	3			
PE National Parks of Montenegro - Podgorica	3			
PE for Coastal Zone Management of Montenegro - Budva	3			
Sveti Stefan Hotels JSC Budva		3		Yes
Regional Diving Centre for Underwater Demining and Divers Training LLC Herceg Novi			Yes	
Monteput LLC Podgorica			Yes	
Institute Dr Simo Milošević JSC Igalo			Yes	
13. jul Plantaže JSC Podgorica		10		
Centre for Ecotoxicological Research LLC Podgorica		5		
THE Miločer LLC Budva		5		
Black Metallurgy Institute JSC Nikšić		5		
Ski Resorts of Montenegro LLC Mojkovac		5		
Regional Water Provider of the Montenegrin Coastal Zone LLC Budva		5		
ToMontenegro LLC Podgorica		5		
Spatial Protection of Montenegro LLC Danilovgrad		5		
Environmental Protection Fund LLC Podgorica		5		
Postal Service of Montenegro JSC Podgorica		5		
Project - Consulting LLC Podgorica (PROCON)		4		
LLC Innovation and Entrepreneurship Centre Tehnopolis Nikšić		3		
Airports of Montenegro JSC Pogorica		3		
Montenegrin Electricity Distribution System LLC Podgorica				
Electric Power Enterprise of Montenegro JSC Nikšić				
Electricity Transmission System of Montenegro JSC Podgorica				

● “ORGANISATIONAL AND MANAGEMENT SKILLS”

A university degree (VII degree) is required in all enterprises where special conditions apply, except in Railway Transport where the necessary educational level of a CEO is not prescribed.

In six enterprises where special conditions apply, the years of work experience are not required, which means that a CEO can be a person with no work experience (Institute Dr Simo Milosevic, CEDIS, EPCG, CGES, Monteput, Regional Diving Centre). CEO is required to have work experience along with general and management experience only in the Broadcasting Centre, with the emphasis on at least five years of work experience in management positions. In other enterprises, the requirements are either one or the other – in 14 enterprises, out of 36 where special conditions apply, a CEO is required to have specific number of years of work experience in management positions, the most in Plantaže (9) and the least in Tehnopolis, Airports and Sveti Stefan (3). At the same time, the term “management position” is not defined in detail nor is the required scope of competencies (managing specific number of people, turnover of goods, scope of value) specified. In as many as 16 enterprises, only general unspecified experience, from nine to three years is required as a special condition for a CEO. In certain enterprises, general definitions and non-measurable references are used to define the management experience candidates are required to have, such as:

- “Organisational and management skills” (Montecargo, MRV, RIM)
- “Adequate level of knowledge and appropriate organisational and management skills” (BELEM)
- “Adequate professional and management skills” (CEDIS, EPCG, CGES)
- “Professional and organisational skills” (National Parks)
- “Management decision-making skills, high ethical standards and integrity” (RM) ŽPCG).

Only in 11 enterprises, work experience in a particular field, i.e. field of an enterprise, special expert knowledge and certificates are also required as special condition for the CEO position. Fluency in foreign language is a special condition for a CEO position in only five enterprises.

In the process of CEO election, candidates are obliged to submit a plan and program for a company development, in addition to the technical documentation for application, in only five enterprises, (Black Metallurgy Institute, PROCON, RTCG, Tehnopolis Nikšić, Montefarm).



● PUBLICLY ADVERTISED POSITION FOR DIRECTORS

The obligation of public advertisement for the position of CEO is not prescribed by the Law on Companies, or even by articles of association of the majority of the state-owned enterprises. Public vacancy announcement is required by articles of association, memorandum of association or specific law defining the establishment of the enterprise only in 16 state-owned enterprises while this is not the case in other 35.

● - TABLE 3.3: OBLIGATION TO PUBLICLY ADVERTISE POSITION OF CEO

PRESCRIBED OBLIGATION TO PUBLICLY ADVERTISE POSITION OF CEO	
YES	NO
Black Metallurgy Institute JSC Nikšić	PE National Parks of Montenegro - Podgorica
Project - Consulting LLC Podgorica (PROCON)	PE for Coastal Zone Management of Montenegro - Budva
Environmental Protection Fund LLC Podgorica	Electric Power Enterprise of Montenegro JSC Nikšić
Institute Dr Simo Milošević JSC Igalo (vacancy as possibility, not obligatory)	Airports of Montenegro JSC Podgorica
PE RT of Montenegro - Podgorica	Monteput LLC Podgorica
Regional Diving Centre for Underwater Demining and Divers Training LLC Herceg Novi	13. jul Plantaže JSC Podgorica
Regional Water Provider of the Montenegrin Coastal Zone LLC Budva	Port of Bar JSC Bar
Centre for Ecotoxicological Research LLC Podgorica	THE Ulcinjska rivijera JSC Ulcinj
THE Miločer LLC Budva	Montenegro Airlines JSC Podgorica
LLC Innovation and Entrepreneurship Centre Tehnopolis Nikšić	Hotel Group Budvanska rivijera JSC Budva
Ski Resorts of Montenegro LLC Mojkovac	Electricity Transmission System of Montenegro JSC Podgorica
Spatial Protection of Montenegro LLC Danilovgrad	Montepranzo - Bokaprodukt JSC Tivat
Broadcasting Centre LLC Podgorica	Barska plovidba JSC Bar
Vodacom LLC Tivat	Marina JSC Bar
Health Institution Pharmacies of Montenegro Montefarm Podgorica	Crnogorska plovidba JSC Kotor
Science and Technology Park of Montenegro LLC Podgorica	Postal Service of Montenegro JSC Podgorica
	Castello Montenegro JSC Pljevlja
	Montenegrin Electricity Market Operator LLC Podgorica
	Montenegro Bonus LLC Cetinje
	Coal Mine JSC Pljevlja
	Railway Infrastructure of Montenegro JSC Podgorica
	Railway Transport of Montenegro JSC Podgorica
	Montecargo JSC Podgorica
	Maintenance of Railway Vehicles JSC Podgorica
	Businessmontenegro JSC Podgorica
	Investment and Development Fund of Montenegro JSC Podgorica
	Sveti Stefan Hotels JSC Budva
	MontenegroTurst JSC Budva
	Montenegrin Electricity Distribution System LLC Podgorica
	Zeta Energy LLC Danilovgrad
	PDI LLC Ulcinj
	Montenegrin Power Exchange LLC Podgorica
	Tourist Centre Durmitor LLC Žabljak
	Market JSC Podgorica
	ToMontenegro LLC Podgorica

4

STAFF PAYMENT AND HUMAN RESOURCES MANAGEMENT POLICY

According to the financial reports that companies submit to the Revenue and Customs Administration, state-owned companies employ almost 12 thousand employees, whereby around 188 billion euro a year on average is spent on their salaries. This data is unreliable and imprecise due to the lack of central record on employees in state-owned enterprises and their salaries with the competent ministry, even though they are unequivocally recognised by law as part of the public sector.

● - TABLE 4.1: OVERVIEW OF SOE EMPLOYMENT NUMBERS

	2018	2019	2020
Number of employees in public enterprises	11 848	11 827	11 687
Total salary expenditure in public enterprises (mil.) EUR	191,5	193,4	180,2

Human resource management was not part of the previous attempts to achieve optimisation of the public sector, nor is it included in the current plans for future strategic documents in this field. The Government's instrument for staff payment in state-owned enterprises and human resources management has so far only included occasional data collection and adoption of conclusions whose application was not supervised, and whose implementation was avoided by enterprises, with no consequences.

Law on Salaries of Public Sector Employees of 2016 does not precisely define the staff payment policy in state-owned enterprises. It establishes a relation between business results of enterprises and staff payments, which does not work in practice due to the lack of decision's precision and supervision. Such poorly defined relation does not hold management accountable for business results, but rather all staff. It is "cheaper" for an enterprises as legal entities to be fined for not complying with the obligation to reduce salary fund, than to conduct the requested reduction of salaries. The limits for salaries of management bodies of an enterprise have been defined, with no sanctions foreseen for non-compliance. The salary ratio determined for CEOs is also prescribed, but there is almost no enterprise where salaries are determined in compliance with the Law. The Law does not define the general rules for determined directors' bonuses or severance pay. Despite the legal obligation to ask for the Government's approval when adopting or amending their collective contracts, the enterprises fail to do so. On the other hand, all rules and limitations that the Law imposes on enterprises are exclusively applicable to enterprises operating at loss, whereas the management structure has no limitations neither in terms of staff payment policy nor obligations towards the state regarding reporting or asking for approval.

EXEMPTION FROM PLANNING DOCUMENTS

Over the past decade, mainly in response to increased public attention or initiatives coming from the Parliament, the Government has taken several measures to regulate compensation and staff payment policies for the management staff of public enterprises, as well as general human resources management issues. Failure to implement this is a common trait to all these attempts.

● - TABLE 4.2: GOVERNMENT'S ATTEMPTS TO REGULATE STAFF PAYMENT POLICIES IN PUBLIC ENTERPRISES

	GOVERNMENT'S ACTIVITY	FORESEEN MEASURES FOR PUBLIC ENTERPRISES
2008	Information on severance pay in the Railways of Montenegro and conclusions adopted	Members of the Board of Directors to return the severance pay received by the decision of the Auditor General Assembly (...)
2012	Information on determining the maximum amount of salaries of managers in public institutions and enterprises in which the state has majority ownership and conclusions adopted	Limitation of compensation to executive managers
2012	Information on additional fiscal adjustment measures and conclusions adopted	Deprofessionalisation of board of director's members, restrictions on management and governing bodies' salaries
2013	Information on the amount of salaries of employees in legal entities, JSC and LLC adopted	Restriction of salaries, regulation of profit payments to the state budget
2013	Plan for Internal Restructuring of the Public Sector	Reduction of the number of employees, revision of collective agreements in public enterprises, improvement of the legislative framework
2015	The Law on Salaries of Public Sector Employees adopted	Limiting the salaries of management and governing bodies, linking business results and salary policy
2020	The Third Package of Socio-Economic Measures adopted	Reduction of salaries for management staff, limitation of the highest salary

The last official data on the number of employees in state-owned enterprises dates back to 2012 and is part of the Plan for Internal Restructuring of the Public Sector⁸⁰. The plan contained data on a smaller number of public enterprises (31 compared to 52 that are the subject of this research), which at the end of 2012 included 8,589 employees. In addition to the figures, the Plan states that the structure of employees in state-owned enterprises is more unfavourable in terms of age compared to the state administration, that professional and technical staff are better paid than employees in the state administration, and that salaries for management positions are more than 20% higher than in the private sector. The measures related to state-owned enterprises in the Plan for Internal Restructuring of the Public Sector also include the improvement of ownership control over state-owned enterprises,

⁸⁰ Ministry of Interior, Ministry of Finance, Plan for Internal Restructuring of the Public Sector, July 2013

through the adoption of a special law that would regulate issues relevant to their work, as well as the revision of collective agreements. None of the above has ever been implemented.

By adopting the new plan in this area, i.e. the Public Administration Optimisation Plan 2018–2020, the Government decided to completely exclude enterprises in majority public ownership from the measures and the list of public administration employees (except for enterprises at the local level). This was explained by the fact that these are “companies that are showing an increasing privatisation trend, which would automatically excluded them from the public sector and mark them as incompetent to monitor the optimisation process”.⁸¹ By excluding public enterprises at the central level from optimisation measures, space was made for “transferring” staff from institutions to this part of the public sector. There is no legal mechanism that would prevent former employees of the public or local self-government sector who use the possibility of termination of employment by mutual consent and the right to severance pay, to immediately find a job in state-owned enterprises.

According to the new strategic document for public administration reform for the period 2022–2024, state-owned enterprises will also be exempted from all measures related to human resources management, personnel records and optimisation.⁸²

The key instrument that attempted to regulate the staff payment policy in state-owned enterprises is the Law on Salaries of Public Sector Employees of 2016. Due to poor and illogical solutions in this area, the Law is almost inapplicable to state-owned enterprises and does not impose any restrictions on management and governing bodies.

UPPER LIMITS FOR MANAGEMENT

According to the Law on Salaries of Public Sector Employees adopted in 2016, employees in state-owned enterprises are unequivocally considered to be part of the public sector.⁸³ As an attempt to regulate the salary policy in these enterprises, the Law sets a threshold for salaries for management bodies (president and members of the board of directors). The restriction for management bodies relies on Government’s conclusions of 2013, which aimed to limit these compensations in the range of one to three average salaries in the enterprise⁸⁴. The norm is not accompanied by a sanction for non-compliance, therefore the penal provisions do not include a penalty for non-compliance with the compensation limit for management committee/board of directors.

81 Vijesti, “Continued uncontrolled employment: When parties move, few chairs are left”, 11 March 2018

<https://www.vijesti.me/nasa-uprava/39867/nastavljeno-nekontrolisano-zaposljavanje-kad-partije-krenu-malo-je-stolica>

82 Draft PAR Strategy 2022–2026 with Action Plan for 2022–2024

83 Article 2, Law on Salaries of Public Sector Employees, Official Gazette of Montenegro, 016/16 of 8 March 2016, 083/16 of 31 December 2016, 021/17 of 31 March 2017, 042/17 of 30 June 2017, 012/18 of 23 February 2018, 039/18 of 15 June 2018, 042/18 of 29 June 2018, 034/19 of 21 June 2019

84 Article 30. *ibid*



According to the Law, the salary of a CEO in a state-owned enterprise cannot exceed the ratio of 20.75, which falls under the group of jobs including the special prosecutor, higher court judge, secretary general of the Government, Parliament, president and the deputy protector of human rights and freedoms. In practice, without past length of service, this ratio corresponds to the amount of €1,270⁸⁵. For comparison, the ratio for the President of Montenegro is 27.67, the Prime Minister 23.34, and MPs and ministers 22.48. In practice, out of 19 enterprises that experienced loss in 2018 and were unequivocally obliged by the law, salaries were known for 16 enterprises, of which the salary of CEOs of 11 enterprises was significantly above the mentioned limit, and in some cases significantly higher than for example the salary of the President of Montenegro.

The Law does not regulate CEO's bonuses. However, it allows state-owned enterprises to reward their employees in the amount of one to five average net salaries in that legal entity during the year, provided that they generate their own revenues in any percentage (which is the case with all state-owned enterprises, even those mostly financed directly from the state budget, such as RTCG).⁸⁶ Bonuses foreseen by management contracts are not specifically treated, neither in terms of limiting the amount nor conditionality of the payment by the financial results of the enterprise (in those cases where enterprise's activity, number of passengers etc., conditions the bonus). On the other hand, if a state-owned enterprise is not operating at loss, it is exempt from applying even the possibility of rewards in accordance with the Law.

Another issue that arises, in addition to basic salaries, is securing a director in case of termination of their office sooner than foreseen, which is not addressed by management contracts. There are no prescribed limits or a unique procedure determining director's severance pay that the board of directors could refer to when deciding and concluding contracts. Contracts foresee severance pay in different amounts in respect of the number of months to be calculated or the amount by which the number of months is multiplied. Thus, directors are entitled to 12, 24 or more of their monthly net earnings, or average earnings in the previous three months, or average salary in the entire enterprise. Severance pay amount can be changed during the director's office, as was the case after the 2020 parliamentary elections. For example, the board of directors of the state-owned Broadcasting Centre signed a new contract with the same CEO in December 2020 – with a double amount of severance pay in the event of dismissal before the termination of their office. Under the 2017 contract, the director would receive 12 monthly salaries or a total of €25,200. Under the new contract, the director would receive more than double, €55,900. A similar thing happened in the case of the Black Metallurgy Institute's CEO, whose contract did not include a severance pay, but following the August elections, an annex was adopted stipulating a severance pay amounting to almost €50,000 in case of dismissal. The new management of the IDF has filed criminal charges against the previous management, accusing them of illegally contracting the right to severance pay amounting to 24 net salaries in case of dismissal or resignation⁸⁷.

85 Article 24, *ibid*

86 Article 24 *ibid*

87 IDF's Press release: <https://www.irfcg.me/me/naslovna/127-saopstenje-za-medije/656-saopstenje-za-medije-investiciono-razvojnog-fonda-crne-gore.html>



LIMITATIONS FOR ENTERPRISES OPERATING AT LOSS

The Law on Salaries of Public Sector Employees attempts to define the reduction of the salary fund for the enterprises that operate at a loss:

Legal entities (...), which experienced loss in business in the previous year, are obliged to reduce the total salary fund by 10% in the first year and an additional 5% in the following calendar year⁸⁸.

This way, the Law does find the company's management responsible for business loss, but employees in general (including the lowest paid employees). In practice, out of 19 state-owned enterprises that experienced loss in 2018⁸⁹, only two had a reduction in the salary fund within the legal limit (Zeta Energy and Montepranzo). Port of Bar presents a particularly important example, as an enterprise operating at the greatest loss amounting to €22.1 million in 2018, whereas the year after the salary fund increased by over 10%, instead of decreasing. Other noteworthy enterprises operating at loss also increase their salary fund: Technopolis by 25%, Regional Water Provider by 20%, BELEM by 18%.

● - TABLE 4.3: WHAT HAPPENED WITH THE SALARY FUND OF ENTERPRISES WHICH OPERATED AT A LOSS IN 2018

	Net loss in 2018	Salary fund in 2018	Salary fund in 2019	% of difference 2018/2019
Innovation and Entrepreneurship Centre Tehnopolis LLC	-820,00 €	245.521,00 €	307.615,00 €	25,29%
Regional Water Provider of the Montenegrin Coastal Zone LLC Budva	-528.316,00 €	1.385.362,00 €	1.662.947,00 €	20,04%
Power Exchange LLC Podgorica	-159.200,00 €	163.018,00 €	193.722,00 €	18,83%
Port of Bar JSC Bar	-22.105.876,00 €	4.801.149,00 €	5.348.371,00 €	11,40%
Black Metallurgy Institute JSC Nikšić	-224.816,00 €	764.970,00 €	824.832,00 €	7,83%
Montecargo JSC Podgorica	-2.512.411,00 €	3.502.073,00 €	3.601.405,00 €	2,84%
LLC Regional Diving Centre LLC Herceg Novi	-150.362,00 €	284.690,00 €	283.388,00 €	-0,46%
THE Miločer LLC Budva	-2.626.136,00 €	71.502,00 €	70.804,00 €	-0,98%
Vodacom LLC Tivat	-35.932,00 €	363.424,00 €	357.788,00 €	-1,55%
Crnogorska plovidba JSC Kotor	-1.935.882,00 €	286.583,00 €	281.106,00 €	-1,91%
Businessmontenegro JSC Podgorica	-144.273,00 €	173.895,00 €	170.568,00 €	-1,91%
Barska plovidba JSC Bar	-2.677.143,00 €	2.198.996,00 €	2.142.009,00 €	-2,59%
Railway Transport of Montenegro JSC Podgorica	-1.836.701,00 €	4.382.323,00 €	4.246.512,00 €	-3,10%
Railway Infrastructure of Montenegro JSC Podgorica	-846.726,00 €	7.122.967,00 €	6.796.486,00 €	-4,58%
Maintenance of Railway Vehicles JSC Podgorica	-647.481,00 €	1.814.200,00 €	1.708.123,00 €	-5,85%
PDI LLC Ulcinj	-108.585,00 €	327.502,00 €	302.108,00 €	-7,75%
Tourist Centre Durmitor LLC Žabljak	-315.669,00 €	309.506,00 €	283.096,00 €	-8,53%
Zeta Energy LLC Danilovgrad	-379.744,00 €	608.061,00 €	479.059,00 €	-21,22%
Montepranzo - Bokaprodukt JSC Tivat	-100.706,00 €	46.782,00 €	35.910,00 €	-23,24%

88 Art 10 of the Law on Salaries of Public Sector Employees, Official Gazette of Montenegro, 016/16 of 8 March 2016, 083/16 of 31 December 2016, 021/17 of 31 March 2017, 042/17 of 30 June 2017, 012/18 of 23 February 2018, 039/18 of 15 June 2018, 042/18 of 29 June 2018, 034/19 of 21 June 2019

89 Without taking into account the Ski Resorts of Montenegro which were the process of establishment, or Ulcinjska rivijera, which was partly privatised from 2017 to 2018



All state-owned enterprises that did not reduce the salary fund after incurring a loss in business, committed a misdemeanour for which the law prescribes a fine for a legal entity ranging from €2.000 to €20.000.⁹⁰ Even when sanctions are due, the company's management is not considered to be responsible, but rather the entire company as a legal entity. This enables the company to avoid the obligation to reduce salaries, that can amount to hundreds of thousands, by paying a maximum of €20.000. For example, PE National Parks, whose total salary fund in 2019 amounted to 2.3 million, would pay a maximum of €20000 for violating the law, instead of complying with the legal obligation and reducing the same fund by initially €230000 in the first year, or €350000 in the second year.

On the other hand, given that the position of the budget inspector⁹¹ in charge of inspection control of the implementation of this law has been vacant since its adoption, violations have gone unnoticed. In 2016, the then budget inspector resigned, and a new one was not appointed by the time of drafting of this report, so all possible violations related to the Law on Salaries of Public Sector Employees that occurred in the previous five years went unpunished⁹², including those related to state-owned enterprises not complying with the Law.

By monitoring the implementation, in 2016 the Government determined that a large number of enterprises in which the state is majority owner did not respect the Law⁹³. Namely, the enterprises did not adopt acts that would harmonise the provisions of special laws, other regulations, collective agreements and other acts regulating salaries, staff payment and other employee benefits with the Law on Salaries of Public Sector Employees. Therefore, the conditions were met for the Government to adopt an act temporarily regulating salaries in state-owned enterprises⁹⁴, but such an act was never adopted and no new official analyses of the implementation of the Law have ever been conducted.

According to the Law, the ratio for both employees' and managers' salaries are determined with the Government's approval. In oth-

⁹⁰ Article 43, Law on Salaries of Public Sector Employees, Official Gazette of Montenegro, 016/16 of 8 March 2016, 083/16 of 31 December 2016, 021/17 of 31 March 2017, 042/17 of 30 June 2017, 012/18 of 23 February 2018, 039/18 of 15 June 2018, 042 / 18 of 29 June 2018, 034/19 of 21 June 2019

⁹¹ The Budget Inspection was established by the Law on Budget and Fiscal Responsibility in 2014, and later the Law on Salaries of Public Sector Employees (2016) and the Law on Financing of Local Self-Government (2019) were added to its competence.

⁹² More information on problems in the work of the budget inspection in the announcements of the Institute Alternative, "Urgently ensure the work of the budget inspection", 15 June 2017, <https://institut-alternativa.org/saopstenje-hitno-obezbijediti-rad-budzetske-inspekcije/> and "Strong budget inspection in three steps", 25 December, 2020, <https://institut-alternativa.org/jaka-budzetska-inspekcija-u-tri-koraka/>

⁹³ Information on problems in the implementation of the Law on Public Employees in the Public Sector, July 2016, Government of Montenegro, available at: <https://www.gov.me/dokumenta/bd1fb533-c021-4395-JSCfc-e298310dd357>

⁹⁴ Article 45, Law on Salaries of Public Sector Employees, Official Gazette of Montenegro, 016/16 of 8 March 2016, 083/16 of 31 December 2016, 021/17 of 31 March 2017, 042/17 of 30 June 2017, 012/18 of 23 February 2018, 039/18 of 15 June 2018, 042/18 of 29 June 2018, 034/19 of 21 June 2019



er words, the Government tried to oversee the amount of salaries by imposing the obligation to obtain Government's approval when adopting collective agreements. However, since the adoption of the Law, the Government has been involved in the process of drafting a collective agreement with only seven enterprises (Railway Infrastructure, PE Morsko dobro, Crnogorska plovidba, RTCG, Broadcasting Centre, Airports of Montenegro, Monteput).⁹⁵

IMPLEMENTATION EXEMPTIONS

According to the Law on Salaries of Public Sector Employees, the employees of a company that “makes profit in business and settles all obligations in due time” thus deserve to be exempt from the provisions of this Law.⁹⁶

Such wording leaves room for different interpretations: it is not specified what is meant by “settlement of obligations in due time” and at what point is this determined (on an annual, quarterly basis or otherwise). Also, the norm does not define what falls under “all obligations” of an enterprise (obligations towards employees, suppliers, partners, banks, the state), as well as who would and in what way determine the state of obligations for each individual enterprise, i.e. what evidence of settlement of obligations in due time should be submitted, within what period and to whom.

Although almost impossible to be proven, the exemption norm applies to all provisions of the law, not just staff payment restrictions. This means that a state-owned enterprise that does not operate at loss and “settles its obligations in due time” thus deserves to be exempt from the obligation to limit salaries of the board of directors and CEO, from being part of the central salary registry, and from needing the Government's approval for the collective agreement and determining salary ratios. However, this also means that it additionally loses the right to provide employees with monetary rewards in accordance with this Law.

The law also lists enterprises that were supposed to be exempt, regardless of their business result. According to the Law, its norms are not applied to the Investment and Development Fund, i.e. “company founded by the state and engaged in financial and credit activities with the aim of sustaining the economic development of Montenegro”. Additionally, the intention was to abolish the implementation of the provisions to enterprises where “the recapitalisation agreement with a foreign legal entity regulates the issue of salaries”, i.e. the Electric Power Enterprise of Montenegro.⁹⁷

95 Railway Infrastructure: <https://www.gov.me/dokumenta/abc7a530-45fe-49cf-a2d7-83ec8486c84c>, PE Morsko dobro: <https://www.gov.me/dokumenta/8957384c-9c70-447f-9dac-23a7fda6609f>, Crnogorska plovidba: <https://www.gov.me/dokumenta/bc1723b9-239d-415c-9b69-9703ac0be580>, RTCG: <https://www.gov.me/dokumenta/fc0b933d-47c6-4c61-b7d5-c5b313956f19>, Broadcasting Centre: <https://www.gov.me/dokumenta/14b0cb69-28da-4b40-af1b-00720d32b124>, Airports of Montenegro: <https://www.gov.me/dokumenta/44c44573-1553-4f38-b969-6687835b248c>, Monteput: <https://www.gov.me/dokumenta/c4a53a69-3962-4844-905f-521246d4d6db>

96 Article 41, Exception, Law on Salaries of Public Sector Employees, Official Gazette of Montenegro, 016/16 of 8 March 2016, 083/16 of 31.12.2016, 021/17 of 31 March 2017, 042/17 of 30 June 2017, 012/18 of 23 February 2018, 039/18 of 15 June 2018, 042/18 of 29 June 2018, 034/19 of 21 June 2019

97 Article 41, ibid



REGISTRY

The central registry of staff payment are kept by the Ministry of Finance and Social Welfare and according to the Law on Salaries of Public Sector Employees it includes personal data of employees, data on employer and position or function and length of service, as well as net salary, special earnings, bonuses, variables and other income⁹⁸. This obligation does not apply only to the state administration, but to all employees in the public sector, in the way they are defined by the Law on Salaries of Public Sector Employees (rather than by the Law on Civil Servants and State Employees, which would significantly narrow the base). This means that the Ministry is obliged to keep record of employees in state-owned enterprises, i.e. that enterprises are obliged to submit the necessary data to the Ministry on a monthly basis. However, since the beginning of the Law implementation, the staff payment registry has not been properly comprehended: neither state-owned enterprises report to the Ministry, nor the Ministry requests this information. Decision makers have to send individual requests to state-owned enterprises should they wish to retrieve information. The latest example illustrating this issue is an MP's question⁹⁹ addressed to Ministry of Finance in December 2019. The Ministry provided incomplete information, as data on salaries collected via individual requests to state-owned enterprises was not provided by all enterprises.

98 Article 37, *ibid*

99 Response of the Ministry of Finance to PM Srdjan Milic's (SNP) question of 24 December 2019, obtained via FOI request



5.

FISCAL RISKS CAUSED BY STATE-OWNED ENTERPRISES

In the latest PEFA report, the World Bank pointed out the problem of supervision of public enterprises from the aspect of fiscal risk assessment. This dimension was assessed with D, emphasising that no system or practice for monitoring and managing fiscal risks arising from the work of state-owned enterprises¹⁰⁰ has been established. The top 20 largest debtors for personal income tax include 11 state-owned enterprises, which owe 48.5 million euro on this basis¹⁰¹.

More than half a billion euro in loans from state-owned enterprises are currently guaranteed by the state and can fall on the state budget at any time, while guarantee procedures have not been tightened or improved. The SAI's findings from 2013 on shortcomings in the system of issuing guarantees have been forgotten. These are used as basis by the prosecution, which is currently conducting proceedings due to suspicions that the state was damaged in guarantee procedures for loans to state-owned enterprises which were allegedly illegal.

State-owned enterprises do not respect the legal obligation to obtain Government's approval for taking a loan, and the state does not have a record of total debts and loans of state-owned enterprises, which are not part of the report on public debt. On the other hand, the state-owned enterprises' shares are used as a means of execution after final judgments against the state, to the extent that may jeopardize the majority state ownership in them.

At the same time, state-owned enterprises allocate significant funds each year for donations, sponsorships, and assistance. The money they most often collect due to their monopoly position on the market is typically allocated without established criteria and regulations, with a lack of transparency and beyond all established public policies for social protection support, sports, even in cases when they make loss or receive state aid.

¹⁰⁰ World bank, Public Expenditure and Financial Accountability Assessment – Public Financial Management Performance Report, 2020, available at: <https://www.pefa.org/sites/default/files/2020-02/ME-Dec19-PFMPPR-Public%20with%20PEFA%20Check-MNE.pdf>

¹⁰¹ Tax debtor black list, available at: https://upravaprihoda.gov.me/biblioteka/ostali_dokumenti

STATE GUARANTEES FOR STATE-OWNED ENTERPRISES

At the end of 2020, the total contracted amount of loans guaranteed by the state was €605.32 million¹⁰². Currently active guarantees are almost exclusively¹⁰³ related to loans taken by state-owned enterprises, i.e. support to enterprises for the implementation of capital projects and restructuring. The draft Law on Budget for 2021 envisages that new guarantees in the amount of €39 million will be issued during the year for loan arrangements of Railway Transport, Railway Infrastructure and Regional Water Provider.¹⁰⁴

In 2013, the SAI published an audit report on state guarantees issued in 2010 and 2011, in which it examined the procedure for issuing guarantees for five enterprises that were majority state-owned at that time, and which were initiated due to the inability of these enterprises to fulfil loan obligations.¹⁰⁵ The SAI concluded that the state guarantees were issued without a detailed analysis of the financial position and economic viability, without a proper assessment of the possible consequences that their activation would have on the state budget, without firm counter-guarantees. In the meantime, the procedure has not been improved either in terms of better defining the procedural aspects regarding the guarantee issuance procedure, or in terms of protecting the state interest and assessing the fiscal risk resulting from activating guarantees or securing the state in that case. Progress has been made on state aid control in terms of alignment in the field of competition protection and the acquis in Chapter 8, through amendments to the Law on State Aid Control and strengthening the competence of the Agency for Protection of Competition, while the problem of issuing guarantees without proper due diligence remains unresolved.



LOANS - RECORDS AND RELATIONSHIP BETWEEN ENTERPRISES AND THE GOVERNMENT

Once the enterprises benefit from the state guarantees, they are required by law to obtain the permission of the Ministry of Finance before contracting any new loan, so that the state can have a complete picture of fiscal risks and prevent the possibilities of activating the issued guarantee¹⁰⁶. In addition to the beneficiaries of guarantees, all other companies in which the state is majority owner have the obligation to ask for the Government's approval before long-

¹⁰² Report on Public Debt of Montenegro 31 December 2020, Ministry of Finance and Social Welfare, March 2021

¹⁰³ The only exception is 40.5 million euro of state warranty for remediation plans of local self-governments and 50 million euro of the credit line for Deposit Protection Fund

¹⁰⁴ Article 13, Proposal of the Law on Budget for 2021, March 2021

¹⁰⁵ Audit Report on State Guaranties issued in 2010 and 2011, State Audit Institution, April 2013

¹⁰⁶ Article 55, Law on Budget and Fiscal Responsibility, Official Gazette of Montenegro, 020/14 of 25 April 2014, 056/14 of 24 December 2014, 070/17 of 27 October 2017, 004/18 of 26 January 2018, 055/18 of 1 August 2018.

term loan which is given at the proposal of the Ministry of Finance¹⁰⁷. According to IA data and the response to the freedom of information request received from the Ministry of Finance and Social Welfare, no company that is a beneficiary of the guarantee has complied with this obligation from the Law on Budget and Fiscal Responsibility and sought Government's approval for new loans¹⁰⁸.

From 2014 until today, only three enterprises have asked for Government's approval to take a loan, without seeking for a guarantee from the Government. These are Montecargo (2018 and 2020), Regional Water Provider (2021) and the Investment and Development Fund.¹⁰⁹ Apart from Montecargo, these are also enterprises that have this obligation in accordance with the law by which they were established (Investment and Development Fund)¹¹⁰ or in accordance with the memorandum of association (Regional Water Provider).¹¹¹ When seeking approval for taking a loan, enterprises also submitted information on their operations and projections of revenues and expenditures in the coming period, which served as a basis for positive opinions of line ministries and the approval of the Government.

Apart from data on issued guarantees, regular reports on public and state debt prepared by the Ministry of Finance and Social Welfare (in accordance with the obligation from the Law on Budget and Fiscal Responsibility)¹¹² do not give an overview of existing debts, short-term or long-term loans of "public enterprises". The item related to the amount of debt for "Legal Entities and Companies" in the reports on state debt for the last available period is €39.1 million.¹¹³ However, this item mostly includes public institutions, and only a few enterprises: RTCG, ŽICG and Railway Transport of Montenegro¹¹⁴, which are the only ones that report to the Ministry on the state of debt on a quarterly basis. In other words, the reports on public debt are not complete, as they do not contain data on the debt of the other 48 state-owned enterprises at the central level.

ENTERPRISE SHARES AS A MEANS OF EXECUTION

In 2019, the Government obliged the Ministry of Finance to find a permanent solution for prevention of the use of shares of enterprises where the state has shares as a means of fulfilling the obli-

107 Article 57, Law on Budget and Fiscal Responsibility, Official Gazette of Montenegro, 020/14 of 25 April 2014, 056/14 of 24 December 2014, 070/17 of 27 October 2017, 004/18 of 26 January 2018, 055/18 of 1 August 2018.

108 Documents obtained by Institute Alternative via FOI request, Ministry of Finance and Social Welfare, 26 July 2021, 01-6-118/3

109 Document obtained by Institute Alternative via FOI request, Ministry of Finance and Social Welfare, 26 July 2021, 01-6-118/3

110 Article 5 of the Law on Investment and Development Fund of Montenegro, Official Gazette of Montenegro, 88/09, 40/10 and 80/17

111 Article 9, Decision of Establishment of Limited Liability Company Regional Water Provider of the Montenegrin Coastal Zone, Official Gazette of Montenegro, 079/17 of 29 November 2017

112 Article 59, Law on Budget and Fiscal Responsibility, Official Gazette of Montenegro, 020/14 of 25 April 2014, 056/14 of 24 December 2014, 070/17 of 27 October 2017, 004/18 of 26 January 2018, 055/18 of 01 August 2018.

113 Report on State Debt on 31 March 2021, Ministry of Finance and Social Welfare

114 Interview with the representative of Ministry of Finance and Social Welfare, Directorate for Debt, Analysis of Debt and Foreign Affairs, 17 June 2021





gations that state administration bodies have towards creditors under final decisions. The Government then requested to be informed about which persons and institutions led to this situation, but nothing was done in that field by the time of publishing this report.¹¹⁵

Namely, in enforcement procedures where the State is a debtor, an example arises of the use of shares as enforcement subject by individual creditors through bailiffs, in companies where the state also holds shares. This issue occurs due to lost disputes of some state administration bodies that did not cover their costs in a timely manner. Creditors in these cases hire public bailiffs and the Law on Enforcement and Security can be implemented, which allows for shares to be used as means of enforcement. Enforcement is carried out based on proposal for enforcement and this can be enforcement of shares by registration and acquiring a lien, seizing, assessing, selling and settlement with the enforcement creditor.¹¹⁶ For example, this method of execution currently blocks 24,862 of EPCG shares owned by the state.

DONATIONS, SPONSORSHIPS, AIDS

State-owned enterprises, including those that have been operating at a loss for years, spend significant amounts annually on donations, sponsorships and one-time assistance, without clearly defined criteria and procedures for allocating money for these purposes, without publishing documentation on these expenditures and determining the amount and to whom it will be allocated. According to incomplete data collected by state-owned enterprises during this survey, €1.13 million was spent in 2018 on donations, sponsorships and assistance, €1.7 million in 2019, while in 2020 only EPCG paid almost €1.2 million for these purposes.

The Government has no control over the spending of money in terms of donations, sponsorships and financial aid from state-owned enterprises, nor is it informed about where the money goes. Spending the money which they most often collect because of their monopolistic position in the market, enterprises essentially appear as policy makers in certain local communities or areas, deciding on the distribution of funds outside the national systems established for the development of health, sports, culture, arts and social protection. The benefits that enterprises provide to citizens are not linked to the information system of social care (social card), and there is no record of them when deciding on granting aid to the same persons by state institutions.

State-owned enterprises themselves determine how much money they can allocate for donations, sponsorships and financial aid, how they will regulate the decision-making on the allocation of these funds and the manner of receiving and processing applications and requests. The only enterprise that has set a limit for this budget item is the Public Enterprise for Coastal Zone Management by the Decision on

¹¹⁵ Proposal for repeal of the Conclusions of the Government of Montenegro, number: 07-460, dated 12 February 2019 and Information on Information on performed foreclosure procedures in which the state-owned companies' shares were the means of execution, Government of Montenegro, 18 February 2021

¹¹⁶ Articles 27 and 137, Law on Execution and Security, Official Gazette of Montenegro, 36/2011, 28/2014, 20/2015, 22/2017, 76/2017 - Decision US and 25/2019.

WHO OWNS OUR PUBLIC ENTERPRISES IN MONTENEGRO?

A review of aspects of transparency and accountability of state-owned enterprises

Criteria for Determining Funds for Sponsorships and Assistance, so that the amount of funds that can be allocated for sponsorships and assistance cannot exceed 5% of the total planned revenue.¹¹⁷ Of all state-owned enterprises, 27 provided data on this type of spending through responses to FOI requests. Of these enterprises, only nine have submitted or published on their website a rulebook on the allocation of donations, sponsorships and financial aid, while other enterprises do not have a rulebook or have a special section in the statute¹¹⁸ that regulates this issue. The rulebook often contains a provision that sponsorships, donations and aid to natural persons and legal entities¹¹⁹ are granted in accordance with the business principles of a socially responsible enterprise. The Electricity Transmission System of Montenegro also adopts the Corporate social responsibility report (CSR), which states that CEDIS has adopted CSR as the gold standard.¹²⁰

● - TABLE 5.1: TOTAL AMOUNTS FOR DONATIONS, SPONSORSHIPS AND FINANCIAL AID RECEIVED THROUGH FOI APPLICATIONS

ENTERPRISE	AMOUNT IN 2018	AMOUNT IN 2019
PE National Parks of Montenegro	6,909.00	8,100.00
LLC Regional Water Provider of the Montenegrin Coastal Zone	44,425.00	120,205.00
PE for Coastal Zone Management of Montenegro	110,534.86	107,072.60
LLC Monteput	52,459.62	37,530.00
JSC Montenegro Airlines	26,900.00	17,879.70
JSC Black Metallurgy Institute	1,530.00	850.00
JSC Barska plovdba	32,133.00	10,858.00
JSC Marina	900.00	1,400.00
JSC Crnogorska plovdba	10,080.00	6,100.00
JSC Postal Service of Montenegro	10,862.00	11,339.00
JSC Castello Montenegro	200.00	100.00
LLC Centre for Ecotoxicological Research	6,800.00	9,116.00
LLC Montenegro Bonus	15,234.49	45,309.00
JSC Railway Infrastructure of Montenegro	4,750.00	5,462.00
JSC Railway Transport of Montenegro	6,725.00	5,300.00
JSC Montecargo	18,592.30	12,230.35
JSC Maintenance of Railway Vehicles	400.00	300.00
LLC Broadcasting Centre	20,200.00	22,773.20
JSC Businessmontenegro	1,000.00	
LLC Tehnopolis	180.00	550.00
LLC Project - Consulting	200.00	
Health Institution Pharmacies of Montenegro Montefarm	17,730.00	34,120.00
JSC Sveti Stefan Hotels		50,000.00
LLC Electricity Transmission System of Montenegro	146,150.00	183,424.00
LLC Vodacom	400.00	300.00
LLC Zeta Energy	1,150.00	3,300.00
LLC Montenegrin Power Exchange	1,050.00	1,550.00

117 Article 2, paragraph 1 of the Decision on Criteria for Determining Funds for Sponsorships and Assistance of PE for Coastal Zone Management, No. 0103-1776 / 3, adopted on 30 September 2002.

118 The Black Metallurgy Institute regulated this issue with Article 46 of the Statute (No. 890/20 of 29 June 2020), by which the Board of Directors decides on the permission of financial aid within the planned funds if it exceeds the amount of €2,500.00, while the CEO's employment contract (number 1589/20 of 27 November 2017) decides for the amount up to €2,500.00.

119 Article 1 of the Rulebook for Awarding Sponsorships, Donations, Assistance and Stipends of the Electricity Transmission System of Montenegro (number 10-01-11984/1 of 9 March 2017), available at: <https://bit.ly/3122ync> (accessed on 22 March 2021).

120 The ISO 26000 standard, which is considered to be a guideline and not a requirement and is not intended for certification, is available at: <https://www.iso.org/iso-26000-social-responsibility.html>



To date, there have been no attempts by the Government to regulate the policy of sponsorships, donations and financial aid by state-owned enterprises, or to link these expenditures to existing national support systems for sport, social protection, education or health. To the contrary, the Government's conclusion encouraged more generous spending in this position - according to the Government's conclusion,¹²¹ the excess of revenues over expenditures (net profit) of a state-owned enterprise in the amount of 70% must be paid into the state budget, while the amount of 70% can be reduced for those companies that support the programs of national sports federations and the Montenegrin Olympic Committee, top and categorised athletes, sports activities of persons with disabilities and other socially responsible activities.¹²²

Funds for donations, sponsorships and financial aid can also be granted by a decision on the distribution of profits, as shown by the case of Monteput. Based on the decision on profit distribution for 2018, BC Budućnost was paid €400,000.00, and the Montenegrin Olympic Committee €50,000.00,¹²³ while in 2019 BC Budućnost was paid €350,000.00, BC Sutjeska €50,000.00 and MZ Crmnica for toll payment through the Sozina tunnel €30,000.00.¹²⁴ Also, based on the decisions on the profit distribution of Monteput for 2018 and 2019, the remaining 30% of the amount of net profit distributed an additional amount of 5% (€69,338.67 and €62,087.00) to support sports, educational, cultural and humanitarian organisations and other needs, in accordance with the requirements and according to priorities.

● THE CASE OF THE ELECTRIC POWER ENTERPRISE

In the previous three years, Electric Power Enterprise of Montenegro provided the most funds for sponsorships, donations and financial aid. During the mandate of its previous management (until March 2021), the enterprise did not respond to freedom of information request, but its financial statements show that it allocated €596,408.00 in 2018, and as much as €1,048,721.00 in 2019.¹²⁵ According to the documentation received by the Institute Alternative through freedom of information requests from the Ministry of Capital Investments, in 2020 EPCG distributed almost €1.2 million in sponsorships and donations. According to the Rulebook on the Allocation of Donations and Sponsorships, EPCG supports requirements in areas such as sports, health, science, education, culture and art, humanitarian projects, publishing, environmental protection etc. Donations and sponsorships in EPCG are decided in three places: board of directors is entitled to allocate donations and sponsorships over €1000, while the chairperson of the board of directors and the CEO can decide on assistance of up to €1000 euros. Thus, the Board of Directors of EPCG in 2020 distributed €1.13 million, the President of the Board of Directors

121 Item 2 sub-item e) Conclusion of the Government of Montenegro, 06-1136/3 of 27 May 2013.

122 Supplement to item 2, sub-item e) of the Conclusion of the Government of Montenegro, 06-1136/3 of 27 May 2013, adopted at the session of the Government of Montenegro on 16 May 2016

123 Decision on the distribution of profits of Monteput LLC Podgorica for 2018, 07-2524 adopted at the session of the Government of Montenegro on 13 June 2019.

124 Decision on the distribution of profits of Monteput LLC Podgorica for 2019, 07-3499 adopted at the session of the Government of Montenegro on 16 July 2020.

125 Electric Power Enterprise of Montenegro, Financial Statements for 2019 in accordance with the accounting regulations of Montenegro and the Independent Auditor's Report, available at: <https://bit.ly/3c911Uk> (accessed on March 22, 2021).



€37,600, and the CEO about €20,650. This is a significant support to sports federations and clubs, festivals, educational, health and other institutions, but also to NGOs and individuals. In addition to money, used enterprise vehicles are also donated.

It is especially problematic that the documentation on these expenses was hidden from the public - during 2020 we initiated three proceedings against EPCG before the Agency for Personal Data Protection and Free Access to Information because the company failed to respond to our requests, which, among other things, included data on donations, sponsorships and financial aid. EPCG did not submit the Rulebook on the Allocation of Donations and Sponsorships to the Institute.

● **GENEROSITY IN DEBT**

Allocation of donations, sponsorships and financial aid by enterprises that operate at loss, i.e. enterprises that cannot operate without the help of the state, is particularly worrying. Examples of such enterprises are Montenegro Airlines, Barska plovdba and Crnogorska plovdba. Montenegro Airlines is in bankruptcy due to accumulated losses¹²⁶ and financing problems that have lasted for many years, and in 2018 and 2019 it paid 26,900.00 and €17,879.70 respectively, for donations, sponsorships and financial aid. In 2019, Barska plovdba awarded €10,858.00 for donations, sponsorships and financial aid, and in the same year received €3,000,000.00 of aid from the Ministry of Transport and Maritime Affairs for servicing due annuities on the basis of loans guaranteed by the Government of Montenegro. In addition, Crnogorska plovdba received €4,913,358.00 from the Ministry of Transport and Maritime Affairs in 2018 and €4,830,093.69 in 2019, and the enterprise allocated €10,080.00 in 2018 for donations, sponsorships and financial aid, or €6,100.00 in 2019.

¹²⁶ On 3 September 2020 the Agency for Protection of Competition initiated the investigation procedure and suspended the allocation of funds to Montenegro Airlines, which it received on the basis of the Law on Investment and Consolidation and Development of Montenegro Airlines JSC. The decision is available at: <https://bit.ly/3cXBtab> (accessed on 22 March 2021).



6.

AVAILABILITY OF INFORMATION AND TRANSPARENCY

Our research shows that the most transparent enterprises are those that still function as public enterprises” (Morsko dobro, National Parks, RTCG), that half of the enterprises (25 of them) meet only one or two basic transparency criteria, while as many as 5 do not meet any of them. In terms of free access to information, most state-owned enterprises are not up-to-date in replying: some do not admit being liable at all, while others resort to either keeping the administration silent or declaring even the most basic information about their work a trade secret. A significant number of state-owned enterprises do not even have their own website, while others do not use it to publish information that is required by law. More than half of the enterprises do not publish their performance report. As a rule, the minutes from the meetings of the board of directors and the adopted decisions are not published proactively, and in most cases the insight is not allowed even through the freedom of information request. Only 15 enterprises publish data on the number of employees, and only 10 data on public officials and their salaries.

TRANSPARENCY INDEX

Following the example of the PETRA 2019 Public Enterprise Transparency Index¹²⁷ and the OECD Guidelines¹²⁸, we have formed our own transparency index for state-owned enterprises.¹²⁹ The index consists of ten criteria, which evaluate the level of transparency of these enterprises' work. By summing points for each answer, the transparency score is measured on a scale of 0-10, according to the lowest score of zero representing an extremely non-transparent enterprise, which does not publish any data on its work. The index focuses on the companies themselves and the information they publish, while the information on enterprises provided by state institutions, such as the Revenue and Customs Administration, are not taken in consideration.

● - TABLE 6.1: TRANSPARENCY INDEX RESULTS

CRITERIA	YES	NO
1. Does the enterprise have its own website?	41	9
2. Is the annual performance report available on the enterprise's website?	21	29
3. Are the minutes from the meetings of the enterprise's management bodies available on the enterprise's website?	1	49
4. Are the decisions of the management and governing bodies of the enterprise available on the enterprise's website?	2	48
5. Is information on the number of employees in the enterprise available on the enterprise's website?	15	35
6. Is an (updated) act on internal systematisation and organisation of the enterprise available on the enterprise's website?	7	43
7. Does the enterprise respond to FOI request?	37	13
8. Da li je preduzeće objavilo spisak javnih funkcionera i liste obračuna njihovih zarada i drugih primanja i naknada u vezi sa vršenjem javne funkcije?	10	40
9. Da li preduzeće objavljuje podatke o sponzorstvima, donacijama i novčanim pomoćima pravnim i fizičkim licima?	1	49
10. Da li preduzeće ima pravilnik kojim definiše primjenu instituta poslovne tajne?	3	47

127 PETRA 2019 - Public Enterprises Transparency Index 2019, prepared by Transparency Serbia and Transparency International Czech Republic, more information at <https://www.transparentnost.org.rs/index.php/sr/projekti/183-indeks-transparentnosti-preduzeca-in-state-ownership>

128 OECD (2015), OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 Edition, OECD Publishing, Paris, <https://doi.org/10.1787/9789264244160-en>

129 Updated results of the Index are available at our website "Who Owns our Public Enterprises": <https://javnapreduzeca.mojnovac.me/uporedna-analiza/indeks-transparentnosti>



As many as nine state-owned enterprises cannot provide even basic information to the citizens about their work via Internet because they do not have their own website. By not having their own website, enterprises violate the obligations under the Law on Free Access to Information, which obliges them to proactively publish a significant amount of information,¹³⁰ as well as the Law on Financing Political Entities and Election Campaigns, which also prescribes the obligation to publish documentation (travel orders, decisions, contracts, orders) during the election period.

On the other hand, out of 41 enterprises that do have a website, five of them¹³¹ do not meet any other criteria provided by the transparency index, and in some enterprises the website does not contain any information that indicates that it is a state-owned enterprise, nor does it contain documentation whose publication is mandatory.¹³²

The publication of the annual performance report is a legal obligation.¹³³ The results show that only 21 enterprises published the annual performance report,¹³⁴ while 29 enterprises failed to do so.

*Minutes from the meetings of the enterprise's management bodies*¹³⁵ are usually not published - the results show that only one company (RTCG) regularly publishes what was considered and what was discussed at the meetings. Minutes were also requested through freedom of information requests. Access to information was allowed by 21 enterprises, and other enterprises denied access, mainly referring to the institute of trade secret.¹³⁶

The results show that *the decisions of the management and governing bodies of the enterprise* are not published. Only two enterprises (Morsko dobro and RTCG) regularly publish these decisions. Also, a freedom of information request was submitted, and 27 enterprises responded positively in providing decisions.

Data on the number of employees are rarely published, only 15 enterprises provide information on the number of employees on their website. The situation is similar with the publication of the act on internal organisation and systematisation. The results show that only seven enterprises are currently proactively publishing this information, while another 24 enterprises submitted this information only after a freedom of information request was submitted.

¹³⁰ Law on Free Access to Information, Official Gazette of Montenegro, 044/12 of 9 August 2012, 030/17 of 9 May 2017.

¹³¹ Enterprises that have only a website and do not publish any information contained in the Transparency Index are: JSC Airports of Montenegro, THE Ulcinjska rivijera JSC, Hotel Group Budvanska rivijera JSC, JSC Coal Mine and LLC Environmental Protection Fund.

¹³² An example is THE Ulcinjska rivijera JSC, whose website does not contain any information that would indicate that it is a state-owned company, <https://ulcinjska-rivijera.com/>

¹³³ Article 12, paragraph 1, item 4 of the Law on Free Access to Information (Official Gazette of Montenegro, 44/12 and 30/17)

¹³⁴ The names of these reports vary and the following names can be found: report on the implementation of the annual management program, report on the work of the public company, annual report, annual management report, business report, management report or report for a particular activity performed by a company such as RTCG, which adopts a report on the realized program and production plan.

¹³⁵ Management bodies have two names for the different forms of enterprises' organisation: management committee (for public enterprises) and the board of directors (for joint stock enterprises or limited liability enterprises).

¹³⁶ Article 14, paragraph 1, item 6 of the Law on Free Access to Information (Official Gazette of Montenegro, 44/12 and 30/17)



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Only EPCG publishes data on sponsorships, donations and financial aid to legal entities and natural persons¹³⁷. It does not do it via publishing decisions and lists of aid, but through promotional news that certain funds have been sent to someone. By comparing the documentation that we subsequently received through the freedom of information request from EPCG¹³⁸ it shows that the EPCG website does not consist of information on assistance provided to legal entities and natural persons. Data on sponsorships, donations and financial aid were also requested via freedom of information request, and the documentation was submitted by 29 enterprises.

Only three enterprises have published *their rulebook defining the application of the institute of trade secret*. When sending requests for free access to information, it can be concluded that the regulations of some public enterprises are not in line with the Law on Free Access to Information. One example is that a CEO's employment contract was prescribed by rulebook as a trade secret, while the Law on Free Access to Information stipulates that access to data relating to public officials in connection with the performance of public office, as well as income and assets, cannot be restricted.¹³⁹

● - TABLE 6.2: ASSESSMENT OF TRANSPARENCY BY ENTERPRISES

ASSESSMENT BASED ON THE FULFILMENT OF TEN TRANSPARENCY CRITERIA	ENTERPRISE
7	PE for Coastal Zone Management
6	PE National Parks; LLC Monteput; AD CGES; JSC Railway Infrastructure of Montenegro; JSC Railway Transport of Montenegro; PE RT of Montenegro
5	LLC Regional Water Provider of the Montenegrin Coastal Zone; JSC Montecargo; LLC Broadcasting Centre; JSC IDF
4	JSC EPCG; JSC Montenegro Airlines; LLC Tehnopolis; LLC CEDIS; LLC Vodacom
3	JSC 13. jul Plantaže; JSC Barska plovidba; JSC Postal Service of Montenegro; LLC CETI; LLC Montenegro Bonus; Health Institution Pharmacies of Montenegro Montefarm
2	JSC Port of Bar; Institute Dr Simo Milošević JSC; JSC ICM; JSC Marina; JSC Crnogorska plovidba; LLC COTEE; JSC OŽVS; LLC PROCON; JSC Sveti Stefan Hotels; LLC Ski Resorts of Montenegro; LLC RCUD; LLC NTP CG; LLC Montenegrin Power Exchange ; LLC Tourist Centre Durmitor
1	JSC Airports of Montenegro; JSC Ulcinjska rivijera; JSC Budvanska rivijera; JSC Castello Montenegro; JSC Coal Mine; JSC Businessmontenegro; JSC Montenegrotourist; LLC Zeta Energy; LLC Environmental Protection Fund
0	JSC Montepranzo-Bokaprodukt; LLC Miločer; LLC PDI; LLC Spatial Protection of Montenegro; JSC Market

¹³⁷ EPCG webpage dedicated to this topic: <https://www.epcg.com/media-centar/sponzorstva-i-donacije>

¹³⁸ Documentation available at the Institute Alternative webpage, Who owns our public enterprises in Montenegro?:

https://www.dropbox.com/sh/h5pqkuu7efmjzkg/AAC7K_7W0dKIOXVVMwKbA9V6a?dl=0

¹³⁹ Article 14, Law on Free Access to Information (Official Gazette of Montenegro 44/12 and 30/17)



FREE ACCESS TO INFORMATION

All enterprises that responded to the freedom of information request¹⁴⁰ and provided at least one of the requested information – 37 in total – received a positive assessment. The implementation of the Law on Free Access to Information is difficult for most state-owned enterprises. As part of this research, Institute Alternative sent 222 requests to state-owned enterprises and received 158 responses, of which only a small number were concrete responses to the request. A significant number of responses were refusals of access based on restrictions under the Law on Free Access to Information,¹⁴¹ trade secret or non-recognition of obligation to respond under the Law on Free Access to Information.¹⁴² Access to the minutes and decisions of the company's management bodies was most often denied. We were forced to send 53 complaints to the Agency for Personal Data Protection and Free Access to Information at the same time, but the enterprises did not react even after the Agency acknowledged the legitimacy of complaints. Enterprises do not practice publishing a list of public officials and staff payment information and other incomes and fees related to performing a public function – only ten enterprises fulfil this obligation. Within these ten enterprises, when citizens request information they are referred to the portal of the Agency for the Prevention of Corruption and reports on income and assets of public officials.

140 136 requests in total

141 Article 14 of the Law on Free Access to Information (Official Gazette of Montenegro, 44/12 and 30/17)

142 JSC Budvanska rivijera and JSC Coal Mine claimed that they were not obliged to apply the Law on Free Access to Information, despite the annulment of such decisions by the Agency for Personal Data Protection and Free Access to Information



WHAT IS TO BE DONE

RECOMMENDATIONS FOR
IMPROVEMENT

WHAT IS TO BE DONE - RECOMMENDATIONS FOR IMPROVEMENT

1

OVERSIGHT

In order for the state to know what is happening in its enterprises and to have the authority to prevent or solve problems in their work, it is necessary to take the following steps:

An inter-ministerial government body in charge of monitoring the work of state-owned enterprises should be established. It is necessary to centralise the responsibility for proposing ownership policy, proposing the appointment of management bodies, supervising state-owned enterprises, analytical activities relating to monitoring the work of enterprises and implementing the Government's conclusions at the central level body, composed of representatives of several departments and with a permanent technical secretariat in charge of professional and expert positions.

It is necessary to have a special legal framework for the work of state-owned enterprises, by adopting a special legal act or by amending the Law on Companies, which would prescribe in more details the rights of founders and obligations of enterprises in terms of accountability and transparency.

Special laws are needed, regulating the work of certain enterprises, prescribing more detailed obligations of the enterprise towards the founder, as well as procedures for management and governing bodies appointment including the implementation of public vacancy procedures, Government's competencies in determining the work plan, cost of services and management of funds, enterprises' reporting to the Government and the Parliament, their transparency and participation in the adoption of planning documents of enterprises, which should be used in the development of a new legal framework for the work of state-owned companies, so that they apply to all state-owned enterprises.

It is necessary to prescribe the content of the decision on the establishment of state-owned enterprises, which would include the

same level of authority, obligations and rights of the founders, as well as unify the decisions on the establishment of existing state-owned enterprises.

It is necessary to amend the Law on Budget and Fiscal Responsibility (Article 72) in order to extend the competence for monitoring and analysis of financial plans and reports to all state-owned enterprises.

It is necessary to prescribe and define in detail the situations that can be characterised as “operational issues” of the enterprise, based on collected data on business results, audit reports, compliance with the Government’s conclusions, to which the Government would have the right to use emergency response strategy (dismissal of management and leadership structures, restriction of assets management, suspension of enforcement of enterprise’s acts) in order to sustain optimal work performance. The responsibility for clarifying the implementation of these measures to the Parliament of Montenegro and reporting on the results stemming from them must be an integral part of the extraordinary competencies of the founders.

It is necessary to consolidate and enlarge the state-owned block of shares in state-owned enterprises, by transferring shares owned by different entities (primarily the Pension and Disability Insurance Fund and the Health Insurance Fund) to the Government, in order to centralise and simplify lines of responsibility for establishing ownership right in enterprise management.

It is necessary to stop the unconstitutional practice where enterprises are founded Government’s decision, unless the establishment of an enterprise is explicitly provided by law.

The mandatory content of the Report on Impact Assessment of regulations must be filed, provided that the regulation foresees the establishment of a new company, by imposing the obligation to explain the reasons behind the transfer of public competence to this type of company (LLC or JSC), a detailed business plan and assessment of the amount and use of the capital contribution of the Government, fiscal risks and the planned number of employees.

2.

FINANCIAL OVERSIGHT

In order to increase the effectiveness of commercial audit of state-owned enterprises, the following steps need to be taken:

The Law on Audit needs to be amended so that all state-owned enterprises (majority state-owned companies) are included in the list of “public interest entities” regardless of their size, thus making the audit of annual financial statements mandatory.

It is necessary to increase the discipline of submitting reports on (commercial) audit to the Revenue and Customs Administration by state-owned enterprises by applying inspection control and punitive provisions.



Boards of directors and audit committees must ensure that the same audit companies are not engaged from year to year, especially in the case of companies that have been punished by the competent inspection for serious violations of the Law on Audit. Registry on audit companies engaged must be kept by the Ministry of Finance, with recommendations to the boards of directors and audit committees in cases of negative trends in the successive engagement of the same audit companies.

In order for enterprises to benefit as much as possible from the new instrument, audit committees, it is necessary to:

Amend the Law on Audit so that the establishment of an audit committee be mandatory for all majority state-owned companies.

Amend the Law on Audit so that the opinion of the Ministry of Finance on the proposal to appoint members of the audit committee is obligatory. The Ministry should keep a registry on membership in these bodies, to ensure that the legal requirements for membership structure are met, and that the board members have a representative the state as the owner and that the same members have not been appointed to the boards of several enterprises.

Amend the Law on Audit to incorporate the obligation of regular quarterly reporting to the Government as founder and owner of enterprises by audit committees on the quality of financial reporting, effectiveness of internal controls and internal audit, implementation of internal audit, state audit or external auditor recommendations and other relevant issues.

It is necessary to regulate the remuneration limits for members of audit committees by the Law on Audit.

Consideration of the quality of the work of audit committees should be envisaged as a regular annual obligation of the ministry in charge of finance and budget, with reference to the results of previous analyses.

In order for internal audit in state-owned enterprises to come to life and its results to become more visible, it is necessary to implement the following:

It is necessary to amend the Law on Management and Internal Control in the public sector, so that all state-owned enterprises (including those organised as joint stock enterprises) be obliged to report to the Ministry of Finance through annual reports on internal audit, financial management, and fraud and irregularities.

Through boards of directors, the Government must request timely submission of annual reports on internal audit and financial management and control from all state-owned enterprises that are obliged under the existing legal framework, but do not comply.

The Decree on Organisation and Manner of Work of State Administration is necessary to prescribe clear lines of supervision over companies by individual departments of the Government, in order to en-

able audits in smaller enterprises and those that have not yet formed their own internal audit unit.

In accordance with the definition of the public sector from the parent law, Ministry of Finance and Social Welfare should prepare a comprehensive Consolidated Report on Management and Internal Control in the Public Sector, which will include information on state-owned enterprises.

In order to strengthen the influence of the **work of the State Audit Institution** in the field of state-owned enterprises, it is necessary to implement the following:

It is necessary to strengthen the SAI's capacity in sector V, which is responsible for (among other things) audits of state-owned enterprises, especially in terms of thematic or performance audits, which would increase the number of state-owned enterprises covered by audits annually.

Members of the Parliament of Montenegro should pay special attention to audit reports on state-owned enterprises and check the level of implementation of recommendations by organising control hearings and put pressure on audit subjects to correct irregularities in their operations.

It is necessary for the boards of directors of all state-owned enterprises to monitor the implementation of recommendations of state auditors, through audit committees and internal audit i.e. to check the operations of their own enterprises based on audit reports on other state-owned enterprises in shared business elements.

In order to revive a budget inspection mechanism, the following recommendations need to be implemented:

It is necessary to strengthen the budget inspection of the Ministry of Finance in order to regularly supervise the operations of all enterprises in terms of compliance with the provisions of the Law on Salaries of Public Sector Employees. It is necessary to fill the existing vacancies and increase the number of systematised positions, change the organisation so as to encourage specialisation in certain laws within the competence of the inspection and sectors (such as state-owned enterprises).

It is necessary to prescribe public work of the budget inspection along with the obligation to regularly inform the Government about actions taken and measures imposed, especially with regard to the work of state-owned enterprises.

In order to prevent unequal treatment of state-owned enterprises in the field of public procurement and to avoid general exemptions from the application of the Law on Public Procurement, it is necessary to:

It is essential to review the criteria according to which certain state-owned enterprises are exempt from implementing the Law on Public Procurement.



It is necessary to consider the possibility of using joint procurement, i.e. centralised procurement, for individual procurement items of enterprises or procuring authorities of the same activity in a particular sector.

3 MANAGEMENT AND LEADERSHIP

In order to professionalise the management bodies of state-owned enterprises, the following steps are needed:

It is necessary to prescribe the obligation that when appointing members of management bodies, the general condition is a certain level of knowledge and experience in the company's field and or management, i.e. a specific number of years of work experience in management.

When appointing members of management bodies, it is necessary to prescribe that certain level of knowledge and experience in the company's field and or management, i.e. a specific number of years of work experience in management is an obligatory condition.

It is necessary to prescribe that a certain number of members in the structure of the board of directors are experts with reputation in the company's field, representatives of workers and representatives of civil society, i.e. non-governmental, scientific and professional organisations that perform activities from the company's field.

It is necessary to amend the regulations to define the mandatory structure and process of appointing management bodies (boards of directors) for all state-owned enterprises.

In order to enable the selection of the best candidates for the positions of CEOs in state-owned enterprises, it is necessary to implement the following recommendations:

The election of a CEO in all state-owned enterprises must be done with the obligation to publicly advertise the position.

Candidates for CEO in all state-owned enterprises should be obliged to submit along with the application a plan and program for the development of the company based on which their application could be evaluated and their performance measured.

It is necessary to adopt a special regulation determining general conditions that a CEO in each state-owned enterprise must meet in terms of management experience, general work experience, level of education, as well as foreign language knowledge. At the same time, it is necessary to oblige state-owned enterprises to prescribe in their articles of association special conditions that a CEO must meet in terms of, among other things, length of service in the enterprise, special knowledge and certificates from the company's field.

PAYMENT POLICY AND HUMAN RESOURCE MANAGEMENT

4

In order to define the staff payment policy in state-owned enterprises and to supervise the management of human resources in this part of the public sector, the following steps must be taken:

It is necessary for state-owned enterprises to be included in the national strategic document for public administration reform, primarily as part of measures in the field of human resources management and optimisation.

It is necessary to define mechanisms that would prevent “transfer” of staff from state and local government to state enterprises, after their employment termination by mutual consent with severance pay, by linking the employment process network in state enterprises with the central personnel base at the level of the entire public administration.

It is necessary for the Ministry of Finance to keep registry of employees in state-owned enterprises and their salaries, while the Ministry in charge of public administration should keep a database with other data on employees in state-owned enterprises, as a supplement to the central personnel registry.

It is necessary to amend the Law on Salaries of Public Sector Employees in the part related to the salaries of employees in state-owned enterprises in the following way:

Enable the implementation of the Law to all enterprises regardless of the status in terms of business results (Article 41 of the Law on Salaries of Public Sector Employees), stating clear conditions to be met in order to abolish the implementation of certain provisions related to salary limits; define the competent authority to determine this situation, with the introduction of conditions related to non-payment of obligations to employees and tax liabilities based on personal income as decisive indicators that the enterprise has been operating orderly.

Prescribe punitive provisions for violating the Law with regard to determining the salary limits of members of the management and governing bodies of state-owned enterprises.

It is necessary to prescribe fines for violating the Law on Salaries of Public Sector Employees and for responsible persons in enterprises, rather than only for legal entities in question.

Define that the potential obligation to reduce or limit the salary fund in the event that the enterprise achieves a negative business result is focused on the management and governing bodies, instead of all employees as is the case now.

The law should define severance pay limits for directors whose term of office mandate ended prematurely, provide for the obligation to obtain approval or notify the Government on the adoption and any possible changes to this amount, as well as conditions and restrictions under which recipients of these severance pay can be re-employed in the public sector.



The law should define the payment of bonuses to CEOs, so that it is prohibited if the enterprise operated at a loss in the previous year, i.e. if the existing minus was not significantly reduced in the last year.

It is necessary for the state, by conclusion and through the board of directors, to initiate the revision and amendments of collective agreements in all state-owned enterprises and their harmonisation with the Law on Salaries of Public Sector Employees, with the obligatory obtaining of the Government's approval to the agreed text.

5 FISCAL RISKS

Regarding the problems in the field of state guarantees and loans of state-owned enterprises:

It is necessary to implement the recommendations of the SAI's audit report on state guarantees from 2013, which refer to the protection of the public interest in the process of providing guarantees, through changes in the legal and institutional framework.

The Ministry of Finance must strengthen the supervision of state-owned enterprises that are beneficiaries of state guarantees in terms of their subsequent loans, by establishing registry of such enterprises and monitoring their financial indicators.

The report on public debt should also include long-term loans of all state-owned enterprises, which must inform the Ministry of Finance on a quarterly basis about the state of debt. The Directorate for loan management, loan analysis and foreign relations must have a list of all state-owned enterprises and establish a system of regular quarterly reporting on the state of debt by all state-owned enterprises, checking the accuracy of information through comparison with audit reports and cooperation with the budget inspection. The Ministry of Finance must inform the Government of the situation in this area and propose conclusions that will oblige enterprises and boards of directors to comply with their legal obligations or be dissolved.

Regarding the problem of using company shares as a means of execution:

It is necessary to prevent the practice of settling executive decisions against the state by taking shares in state-owned companies as a means of execution, through timely payment of costs according to final judgments in which the state has lost.

In the area of donations, sponsorships and financial aid granted by state-owned enterprises:

It is necessary to regulate the allocation of donations, sponsorships and financial aid by all state-owned enterprises by a legal act, so that governments permission is required, instead of leaving the decision-making at the level of boards of directors and CEOs is eliminated. Those state-owned enterprises that are beneficiaries of state aid or incur losses must be prevented from making payments in the name of donations, sponsorships and financial aid.

State-owned enterprises should be obliged to pay the part that is not necessary for investing in the capacities or development projects of the company in the state budget, in order to invest any excess income in already existing systems of social protection, support for sports, culture, etc.

6 AVAILABILITY OF INFORMATION AND TRANSPARENCY

The seriousness of the situation regarding the availability of information and transparency of state-owned enterprises requires the involvement of competent institutions in order to improve the situation. In the first place, it is necessary to conduct the following actions:

The Agency for Personal Data Protection and Free Access to Information should perform more intensive inspection control when it comes to proactive publishing of information, in accordance with Article 12 of the Law on Free Access to Information, but also sanction enterprises that do not recognise the status of entities subject to the duty of due diligence under this Law. Due to its importance and poor starting point, the Agency should dedicate a special chapter to this area in its annual report, appoint companies that violate the law or are the subject of complaints by applicants.

The Parliament of Montenegro pays special attention to the consideration of the Agency for Personal Data Protection and Free Access to Information in the work of state-owned Enterprises and adopts conclusions with the report, in order to monitor the implementation of measures aimed at improving the situation in the field.

The Government of Montenegro, through its representatives in the management bodies of state-owned enterprises, sets the policy of openness and proactive disclosure of information as one of the priorities in their work.

Specific recommendations in the field of the trade secret institute by state-owned enterprises and necessary amendments to the Law on Free Access to Information are listed in the 2019 publication, "Trade Secrets of Public Enterprises: Paradoxes of Practice in Montenegro"¹⁴³

¹⁴³ Institute Alternative, Trade Secrets of Public Enterprises: Paradoxes of Practice in Montenegro, 2019, available at: <https://institut-alternativa.org/poslovne-tajne-javnih-preduzeca-parJSCoksi-prakse-u-crnoj-gori/>

ANNEX 1

**LIST OF STATE-OWNED
COMPANIES IN
MONTENEGRO**

DODATAK BR. 1 - LISTA PREDUZEĆA SA OPISIMA I KLJUČNIM PODACIMA ZA 2020. GODINU

1. “PUBLIC ENTERPRISE FOR NATIONAL PARKS OF MONTENEGRO“ – PODGORICA

PIB: 02039460

Web site: <http://nparkovi.me/>

Public Enterprise for National Parks of Montenegro was established in 1992. This enterprise consists of Biogradska gora, Durmitor, Lovćen, Skadar Lake and Prokletije. The activity of the enterprise is the provision and use of national parks for development, science, tourism, culture and recreation, the provision of goods and facilities of national parks for tourism, catering, hunting and fishing, artificial fish farming and fish production, sanitary deforestation, picking forest products and collecting seeds, etc.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
245	-990.814	6

2. “REGIONAL WATER SYSTEM OF MONTENEGRIN ADRIATIC“ LLC BUDVA

PIB: 02090198

Web site: <https://regionalnivadovod.me/>

LLC “Regional water system of Montenegrin Adriatic“ Budva was founded on February 12, 2008 as the public enterprise and was transformed into LLC in June 2020. The enterprise is 100% owned by the Government of Montenegro. Its main activity is the regional water supply of the Montenegrin coast and other areas, ie capture, treatment, transport and delivery of drinking water from the source of Bolje sestre through the RVS system to the water supply of municipalities Budva, Tivat, Kotor, Herceg Novi, Bar and Ulcinj, ie public water supply entities in those municipalities.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
73	-198.847	5



3. “PUBLIC ENTERPRISE FOR COASTAL ZONE MANAGEMENT OF MONTENEGRO” – BUDVA

PIB: 02116146

Web site: <http://www.morskodobro.com/>

Public enterprise for coastal zone management of Montenegro – Budva was established in accordance with the Maritime Property Law on June 02, 1992, with the goal to provide protection and improvement of the use of coastal zone, management of coastal zone, concluding contracts on the use of coastal zone and construction and maintenance of infrastructure facilities for the needs of the coastal zone.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
66	95.637	7

4. “ELEKTROPRIVREDA CRNE GORE” JSC NIKŠIĆ

PIB: 02002230

Web site: <https://www.epcg.com/>

JSC “Elektroprivreda Crne Gore” Nikšić is an electric power company, established by the decision on the transformation of JEP Elektroprivreda Crne Gore on October 16, 1998. Its main activity is production and supply of electricity. The Government of Montenegro is the owner of 88,65% shares, and the rest is privately owned. The company also deals with the construction and maintenance of electric power facilities, purchase and sale of electricity, design, supervision, etc. The power system is based on the capacities of the production plants of HPP Perućica, HPP Piva and TPP Pljevlja.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
961	16.179.930	4

5. JOIN STOCK COMPANY FOR SERVICE ACTIVITIES IN AIR TRAFFIC “AIRPORTS OF MONTENEGRO” – PODGORICA

PIB: 02305623

Web site: <https://montenegroairports.com/>

JSC “Airports of Montenegro” Podgorica is the operator of civil airports in Podgorica and Tivat. This company is 100% owned by the Government of Montenegro. The main activity of the company is service activities in air transport. The company is engaged in activities related to transport of passengers, animals or goods by air, control of airports and air traffic, the work of the ground service, fire protection and defense at the airport. Moreover, it is register to perform following activities: aircraft maintenance, commercial aviation services, travel agencies, providing services by opening a duty free shop and exchange office and providing catering and trade services in the company’s facilities.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
-	-	1

6. “MONTE PUT” LLC PODGORICA

PIB: 02462494

Web site: <http://monteput.me/>

LLC “Monteput“ Podgorica was established on December 8, 2005, in the capacity of business successor of the Directorate for Construction of Highways Podgorica. The company organises the maintenance of Sozina tunnel and access roads (construction, electrical, IT and mechanical maintenance), traffic management and monitoring, toll collection, fees for the lease of road land and the placement of signs on the road land. Moreover, it also performs activities related to the development and construction of highways and road facilities in Montenegro. The company is 100% owned by the Government of Montenegro.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
147	32.834	6

7. “JULY 13 – PLANTATIONS“ JSC PODGORICA

PIB: 02016281

Web site: <https://www.plantaze.com/>

JSC “July 13 – Plantations“ Podgorica is the biggest producer of grapes and wine in Montenegro. The ownership structure of the company consists of the Investment and Development Fund with 22.22% ownership, Pension and Disability Insurance Fund with 21.49%, Employment Agency of Montenegro with 8,52% and the Government of Montenegro with 3,66%, and the rest is privately owned. The main activity of the company is grape growing, but also production, processing and trade of agricultural products, production of wines and strong drinks, fruit planting material, catering and trade. For its activities, the Plantations owns Čemovsko field, which is one of the biggest in Europe. The company also owns two restaurants, July 13 and Lake, as well as several retail outlets.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
-	-	3

8. INSTITUTE OF PHYSICAL MEDICINE, REHABILITATION AND RHEUMATOLOGY “DR SIMO MILOŠEVIĆ“ JSC IGALO

PIB: 02008386

Web site: <http://www.igalospa.com>

Institute of physical medicine, rehabilitation and rheumatology “Dr Simo Milošević“ JSC Igalo was established as a spa-climatic health resort in 1949 and it was transformed into joint stock company in 1996. Institute deals with complete medical rehabilitation, conducts medical classes and provides health services. The ownership structure of the company consists of the Investment and Development Fund with 23,64% of shares, the Government of Montenegro with 19,19%, Health Fund with 10,23% and Employment Agency of Montenegro with 3,41%, and the rest is privately owned.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
679	-6.925.272	2

9.

“PORT OF BAR“ JSC BAR

PIB: 02002558

Web site: <https://www.lukabar.me/index.php/me/>

JSC “Port of Bar“ Bar is a seaport for transshipment of all types of cargo, provision of passenger services, protection and anchoring of ships. The state owns 54.05% of shares, and the rest is privately owned. The Port of Bar is the founder and operator of the Free Zone of the Port of Bar and it is a company that enjoys economic extraterritoriality. Their users enjoy the benefits provided by the Law on Free Zones and other regulations, such as duty-free imports, customs duties and VAT, storage of goods in a duty-free regime indefinitely, low income tax rate, simplified procedures, etc. According to data from April 2019, the Port of Bar, as the operator of the Free Zone, had 65 active contracts for performing activities in the Free Zone, which mainly relate to transshipment, storage and sale of goods.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
390	1.108.154	2

10.

H.T.E. “ULCINJSKA RIVIJERA“ JSC ULCINJ

PIB: 02006146

Web site: <http://www.ulcinjska-rivijera.com/>

Hotel-tourist enterprise “Ulcinjaska rivijera“ JSC Ulcinj is a company registered to provide services in the field of hotel and catering activities, tourism, trade, foreign business and others. The ownership structure consists of Pension and Disability Insurance Fund with 25,29% of shares, Compensation Fund with 12,01%, the Government of Montenegro with 10,14%, Employment Agency of Montenegro with 8,43% and Investment and Development Fund of Montenegro with 7,64%, and the rest is privately owned. Since 2017, the company has been operating with the only one functional unit, the tourist resort Ada Bojana. Within the tourist settlement, Ulcinjska rivijera owns the Ada Bojana autocamp, and the company also owns the Neptun autocamp on Great beach. On September 26, 2017, this enterprise signed a long-term lease agreement for 30 years with the consortium of LLC Karisma Hotels Adriatic Montenegro for the Olympic and Bellevue hotels on the Great beach.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
67	-975.696	1

11. COMPANY FOR TRANSPORT OF PASSENGERS AND GOODS IN AIR TRAFFIC “MONTENEGRO AIRLINES“ JSC PODGORICA

PIB: 02737175

Web site: <https://montenegroairlines.com/>

The Government of Montenegro has 99,91% of shares in JSC Montenegro Airlines, and the rest is privately owned. The main activity of the company is air transport of passengers. Montenegro Airlines owns four office spaces, has also built a hangar at the airport in Podgorica for aircraft maintenance, on land leased for an indefinite period of time under a contract concluded with JSC Airports of Montenegro and a fleet of four operational aircraft. Due to poor business operations, the company often received state aid. Among the most significant are the Restructuring Plan for 2012, when the company received 35,6 million euros and the Law on Investment in Consolidation and Development of the Company from 2019, in which provided 155.1 million euros in aid. In December 2020, the Government has announced that it has no legal basis on which it can continue financial aid to this company. In April 2021, Montenegro Airlines was declared bankrupt by the Revenue and Customs Administration due to a tax debt of 11.9 million euros.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
-	-	4

12. HOTEL GROUP “BUDVANSKA RIVIJERA“ JSC BUDVA

PIB: 02005328

Web site: <http://www.hgbudvanskarivijera.com>

Hotel group “Budvanska rivijera“ JSC Budva is a company that operates on touristic market of Montenegro. The ownership structure consists of the Government of Montenegro with 41,63% of shares, Pension and Disability Insurance Fund with 12,82% and Employment Agency of Montenegro with 4,27%, and the rest is privately owned. Budvanska rivijera manages five hotels: the Palace and Castellastva in Petrovac, Slovenska Plaza Resort, hotel Alexandar and hotel Mogren in Budva. In the middle of 2019, the company was restructured in the way that a new company was established, JSC Sveti Stefan hotels and Miločer, with a land complex.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
412	-9.154.029	1

13.

“MONTENEGRIN ELECTRONIC TRANSMISSION SYSTEM“ JSC PODGORICA

PIB: 02751372

Web site: <https://www.cges.me/>

JSC “Montenegrin Electronic Transmission System“ is a company which performs an activity of public interest – transfer of electricity. The Government of Montenegro owns 55% of shares, and the rest is privately owned. Following the requirements imposed by the liberalisation of the electricity market, as well as EU regulations regarding the separation of market and monopoly activities, and bearing in mind the need to improve economic efficiency, the Shareholders’ Assembly of the EPCG formed a new joint stock company in April 2009. The company is in charge of the operational management of the electronic transmission system, and competence of the company is also the maintenance, development and operation of elements of the electronic transmission system, which consists of transmission lines and substations. The company is registered both for the provision of optical fiber rental services and for the provision of electronic communications infrastructure lease services.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
302	12.459.748	6

14.

“BLACK METALLURGY INSTITUTE“ JSC NIKŠIĆ

PIB: 02040760

Web site: <http://icmcg.me/>

JSC “Black Metallurgy Institute“ Nikšić was made by transformation and division of property of the enterprise Željezara Nikšić on September 30, 1992. This company is scientific research institution which deals with research and development in the field of technical and technological sciences, laboratory and field testing and comprehensive characterisation of metallic and non-metallic materials, process equipment and commercial production of steel castings, cast iron castings, steel products, steel and non-ferrous metals and their alloys. The ownership structure consists of the State of Montenegro with 19,11% of shares, Pension and Disability Insurance Fund with 19,03%, Employment Agency of Montenegro with 6,34%, Compensation Fund with 5,30% and the Government of Montenegro with 1,31%, and the rest is privately owned.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
68	-375.094	2

15. “MONTEPRANZO – BOKAPRODUKT“ JOINT STOCK COMPANY FOR AGRICULTURE, TRADE AND SERVICES – TIVAT

PIB: 02269066

Web site: /

JSC “Montepranzo-Bokaprodukt“ Tivat is a company engaged in mixed agricultural production, such as planting and raising orchards, vineyards and vegetable greenhouses. The ownership structure consists of Investment Development Fund of Montenegro with 51,40% of shares, Pension and Disability Insurance Fund with 17,74% and Employment Agency of Montenegro with 5,90%, and the rest is privately owned. Since 2005, the company has been accumulating losses on the basis of operating expenses and without the help of the state, it does not have enough working capital to continue production.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
5	-13.598	0

16. “BARSKA PLOVIDBA” JSC BAR

PIB: 02324784

Web site: <https://www.montenegrolines.net/>

JSC “Barska plovidba“ Bar is a shipping company that performs activities of maritime transport and coastal freight transport, passenger terminal services and other services. The ownership structure consists of the State of Montenegro with 18,63% of shares, Investment Development Fund of Montenegro with 16,15%, Pension and Disability Insurance Fund with 12,83% and Employment Agency of Montenegro with 4,27%, and the rest is privately owned. Barska plovidba generates most of its incomes from the lease of two cargo ships (“Bar“ and “Budva“), which were purchased in 2012 with a \$46.4 million loan from China’s Exim Bank with a state guarantee. For many years, the company’s incomes were from transportation of passengers and goods on lines between Montenegro and Italy. By selling the passenger ship Sveti Stefan II and the impossibility of finding a used ship on the market that would take over Bar-Bari line, Barska plovidba in 2017, as a transitional solution, signed an agreement for ship Dubrovnik of the company Jadrolinija from Rijeka. Since 2015, due to a significant drop in fees for renting boats on the international fare market, its incomes were declining.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
45	660.763	3



17.

“MARINA” JSC BAR

PIB: 02333155

Web site: <https://www.marina-bar.me>

JSC “Marina” Bar is a nautical port that represents a tourist and nautical center. The ownership structure consists of the State of Montenegro with 19,47% of shares, Investment Development Fund of Montenegro with 16,99%, Pension and Disability Insurance Fund with 13,40% and Employment Agency of Montenegro with 4,46%, and rest is privately owned. The main activity of the company is entertainment and recreational activities, and it is intended for sailors and lovers of sports and recreational nautical tourism. The marina has 900 berths at sea and 250 on land. The categories of vessels for which moorings are arranged are yachts, sailboats, speedboats, ie all categories of vessels up to 35 meters in length. According to the level of nautical infrastructure, type, scope and quality of services they provide, it belongs to the categories of large service marinas in Montenegro and is one of the largest nautical tourism facilities.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
32	159.323	2

18.

“CRNOGORSKA PLOVIDBA” JSC KOTOR

PIB: 02399849

Web site: <http://crnogorskaplavidba.com/>

JSC “Crnogorska plovidba” Kotor is a shipping company that performs activities of maritime traffic and coastal freight transport. The ownership structure consists of the Government of Montenegro with 99,98% of shares, and the rest is owned by the Employment Agency of Montenegro. Montenegro has four cargo ships, two of which are owned by Crnogorska plovidba. On October 26, 2010, Crnogorska plovidba signed a contract for the purchase of two cargo ships (“Kotor” and “May 21”), and a loan of \$ 55.7 million was provided by the Chinese Exim Bank with a state guarantee. Since 2015, due to a significant decline in fees for renting ships on the international fare market, its incomes have been declining.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
9	-89.997	2

19. “POŠTA CRNE GORE” JSC PODGORICA

PIB: 02867940

Web site: <http://www.postacg.me/>

JSC “Post of Montenegro” Podgorica has been working as an independent business entity since April 1999, when a single company, Public postal traffic of Montenegro was divided into Post of Montenegro LLC and Telekom JSC. Post of Montenegro was restructured into a joint stock company on November 17, 2011. The company is 100% owned by the Government of Montenegro. This company is a national postal operator and a full member of the World postal network, with 140 units of the postal network.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
-	-	3

20. “CASTELLO MONTENEGRO” JSC PLJEVLJA

PIB: 02010127

Web site: /

JSC “Castello Montenegro“ Pljevlja is a company engaged in production of work clothes and hygienic and technical protective equipment. However, due to the closure of production of the light clothing factory and socks factory for men and children, its activities were expanded in the area of providing truck terminal services and renting business premises. The ownership structure consists of Ministry of Finance with 86,73% of shares, EPCG with 1,68% and the Republic Fund of Joint Reserves with 1,32%, and the rest is privately owned.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
9	-83.167	1

21. “MONTENEGRIN ELECTRICITY MARKET OPERATOR“ LLC PODGORICA

PIB: 02849097

Web site: <http://www.cotee.me/>

LLC „Montenegrin electricity market operator“ Podgorica is a company for organising and managing the electricity market and activities related to the purchase and sale of electricity produced in the facilities of privileged producers from renewable energy sources and highly efficient cogeneration. The company has been founded on December 16, 2010, and started working on July 29, 2011. The company is the holder of a license issued by the Energy Regulatory Agency, and in accordance with it, each participant in the electricity market of Montenegro is obliged to conclude a participation agreement with the Market Operator. The company is 100% owned by the Government of Montenegro.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
18	43.049	2

22.

“CENTRE FOR ECOTOXICOLOGICAL RESEARCH“ LLC PODGORICA

PIB: 02908433

Web site: <http://mne.ceti.me>

LLC “Centre for ecotoxicological research“ Podgorica has been founded on December 20, 1996 as a public institution, and was restructured in 2012 into a limited liability company. The company performs activities of public interest, namely ecotoxicological testing of all segments of the environment: air, water, sea, soil, flora and fauna, climate change, ionizing and non-ionizing radiation, noise and vibration, as well as the development of special toxicological studies, analysis and programs for the needs of state bodies, ie scientific research institutions, economy and citizens. The company is also a reference institution for the food control and other products and diagnosis of toxicants. The company is 100% owned by the Government of Montenegro.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
78	176.866	3

23.

COMPANY FOR PRODUCTION, TRADE OF GOODS AND SERVICES “MONTENEGRO BONUS“ LLC CETINJE

PIB: 02384337

Web site: <http://www.montenegrobonus.me/>

LLC “Montenegro Bonus“ Cetinje has been founded on July 30, 2003. The company is registred for production and trade of goods and services in a wide range of activities, and it is primarily engaged in the trade of good and services in the field of gas and petroleum products. The company is the holder of a license for the purchase and sale of electricity and the state operator of the natural gas transmission system. The company is 100% owned by the Government of Montenegro.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
27	-430395	3

24.

“COAL MINE“ JSC PLJEVLJA

PIB: 02009501

Web site: <http://www.rupv.me/>

JSC “Coal Mine“ Pljevlja was established by the transformation of PE Coal Mine Pljevlja into a joint stock company on December 28, 1998. The company is 100% owned by Elektroprivreda Crne Gore. The biggest buyer of coal is TPP Pljevlja. In addition to the main income from coal sales, a smaller portion is generated from the sale of transportation, design, maintenance and rental of equipment.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
691	13.101.766	1

25.

“RAILWAY INFRASTRUCTURE OF MONTENEGRO“ JSC PODGORICA

PIB: 02723816

Web site: <http://www.zicg.me/>

JSC “Railway Infrastructure of Montenegro“ Podgorica has been founded on July 02, 2008 and was created by segmentation from JSC Railways of Montenegro. The ownership structure consists of the State of Montenegro with 72,44% of shares, Pension and Disability Insurance Fund with 2,91% and Employment Agency of Montenegro with 1,16%, and the rest is privately owned. As an infrastructure manager, a public good in general use and ownership of Montenegro, the company builds and invests in railway infrastructure, takes care of its modernisation and maintenance, provides access and allocates infrastructure capacity to all interested railways that meet legal requirements, determines fees for the use of infrastructure capacities, prepares and publishes the timetable and organises and regulates railway traffic.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
755	-646.758	6

26.

“RAILWAY TRANSPORT OF MONTENEGRO“ JSC PODGORICA

PIB: 02723620

Web site: <https://www.zcg-prevoz.me>

JSC “Railway Transport of Montenegro“ Podgorica has been founded on July 02, 2008 and was created by segmentation from JSC Railways of Montenegro. The ownership structure consists of the State of Montenegro with 90,79% of shares, Pension and Disability Insurance Fund with 0,97% and Employment Agency of Montenegro with 0,38%, and the rest is privately owned. Activities are railway transport, transport of passengers and goods, transshipment of goods, warehouses, maintenance of cars and railway equipment, activities of travel agencies and tour operators, activities of other intermediaries in traffic, production and repair of rail vehicles, etc.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
375	661.564	6

27.

MONTECARGO“ JSC PODGORICA

PIB: 02758628

Web site: <http://www.montecargo.me/>

JSC “Montecargo“ Podgorica has been founded on June 08, 2009 and was created by segmentation from JSC Railways of Montenegro. The ownership structure consists of the State of Montenegro with 85,44% of shares, Pension and Disability Insurance Fund with 1,54% and Employment Agency of Montenegro with 0,61%, and the rest is privately owned. The company is only freight operator on railways in Montenegro, and its main activity is transport of goods in international and domestic rail transport.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
295	-1.833.084	5



28. “MAINTENANCE OF RAILWAY VEHICLES“ JSC PODGORICA

PIB: 02816296

Web site: <http://www.ozvs.me/>

JSC “Maintenance of Railway Vehicles“ Podgorica has been founded on October 22, 2010 and was created by segmentation from JSC Railways of Montenegro. The ownership structure consists of the State of Montenegro with 85,44% of shares, Pension and Disability Insurance Fund with 1,54% and Employment Agency of Montenegro with 0,61% and the rest is privately owned. The company is engaged in the maintenance of railway rolling stock in passenger and freight traffic (passenger and freight cars, locomotives and other railway rolling stock) and generates incomes by providing current, regular and uscheduled maintenance of rolling stock of JSC Railway transport of Montenegro and JSC Montecargo.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
175	-652.797	2

29. “RADIO-DIFUZIONI CENTAR“ DOO PODGORICA

PIB: 02394294

Web site: <http://www.rdc.co.me>

LLC “Radio-difuzni centar“ was established in 2005 when the segmentation of PE Public postal traffic of Montenegro was performed, and in 2009 it was transformed into a limited liability company. The company provides services in the field of radio communications and telecommunications, transmission and broadcasting of radio and television programs, transmission of images, sound and data, collocation and other modern multimedia services. Moreover, it rents out locations, services and all necessary consultations for the design and maintenance of technical devices and equipment, both to the public service (Radio Television of Montenegro) and to all other commercial televisions and radio stations. The company is 100% owned by the Government of Montenegro.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
107	21.085	5

30. COMPANY FOR FOREIGN AND DOMESTIC TRADE, REPRESENTATION, MEDIATION, ENGINEERING AND SERVICES “BUSINESSMONTENEGRO“ JSC PODGORICA

PIB: 02117045

Web site: /

JSC “Businessmontenegro“ Podgorica was established on July 15, 1992. The ownership structure consist of Health Institution Pharmacies of Montenegro “Montefarm“ with 95% and the Government of Montenegro with 5% of shares. The main activity of the company is foreign and domestic trade in medical devices, medical equipment and forwarding services. The company is in charge of storage and distribution of medical devices, keeping material and financial records for the needs of customers, payments to suppliers in the country and abroad, with full information of competent institutions on the intended use of funds, etc. Through the company, as part of the health system, the products of suppliers from abroad are entered in the Register of Medical Devices at the Agency for Medicines and Medical Devices.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
9	-86.413	1



31. INNOVATION AND ENTREPRENEURSHIP CENTER (IEC) “TEHNOPOLIS“ LLC NIKŠIĆ

PIB: 03009645

Web site: <https://www.tehnopolis.me/>

LLC Innovation and Entrepreneurship center „Tehnopolis“ Nikšić was established in 2016, as part of the planned capital project of the Science and Technology Park, a networked structure based in Podgorica and a maximum of three decentralised units (impulse centers) in Nikšić, Bar and Pljevlja. Tehnopolis is a business incubator and its goal is to improve the development of entrepreneurship in Montenegro as a basis for the development of new businesses based on innovative ideas and the use of modern technology. In the business incubator, tenants, to whom Tehnopolis provides technical and administrative support, consulting services, subsidised lease of office space and networking opportunities, can be disturbed through available support models – pre-incubation, incubation, virtual incubation and commercial conditions. At the end of 2018, Tehnopolis had 28, and at the end of 2019 it had 26 tenants. It is intended to support the development of micro, small and middle enterprises in the Municipality of Nikšić, but also to support the establishment of new and development of existing businesses. The company is 100% owned by the Government of Montenegro.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
22	7.237	4

32. “PROJECT - CONSULTING” LLC PODGORICA

PIB: 02730430

Web site: <http://www.procon.me/>

LLC “Project – Consulting“ Podgorica was established in 2008, as a National Project Implementation Unit in the Field of Communal Services and Environment. The company was founded for the purpose of implementing the Financial Agreement – Project for water supply and wastewater treatment in Montenegro, concluded between the Government of Montenegro and the European Investment Bank on September 30, 2008, worth 57 million euros. The project consists of priority investment plans for the collection and treatment of wastewater that are currently discharged to a large extent, without treatment into Montenegrin surface waters (including the coastal area), as well as water supply schemes throughout Montenegro. The company is 100% owned by the Government of Montenegro.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
14	114.913	2

35. MONTENEGRIN FUND FOR SOLIDARITY HOUSING DEVELOPMENT LLC PODGORICA

PIB: 03344312

Web site: <https://airmontenegro.com>

Montenegrin Fund for Solidarity Housing Development was established in 1996 by the name Fund for Financing Housing Development. Ownership structure of the Company comprises, with equal shares of 46.1%, of the Government and Federation of Trade Union of Montenegro and 6.98% shares by Brewery “Trebjesa” Syndical Organisation. The Fund is an institution which, in cooperation with local self-government-municipalities, under affordable conditions builds houses for Montenegrin citizens employed in institutions, organisations and companies in every municipality of Montenegro who financially participate in Fund voluntary basis.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
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34. “PUBLIC ENTERPRISE RADIO TELEVISION OF MONTENEGRO” - PODGORICA

PIB: 02020220

Web site: <http://www.rtcg.me/>

PE Radio Television of Montenegro – Podgorica is a national media public service. The main activity is the provision of public audiovisual services, ie the production of radio, audiovisual and multimedia content, music production, etc.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
728	2.466.623	6

35. “INVESTMENT AND DEVELOPMENT FUND OF MONTENEGRO” – JSC PODGORICA

PIB: 02217937

Web site: <https://www.irfcg.me/me/>

JSC “Investment and Development Fund of Montenegro” Podgorica was established by the Law on Investment and Development Fund of Montenegro on December 31, 2009, with the purpose of encouraging and facilitation economic development of Montenegro through: completing privatisation process by sale of capital generated in the process of ownership transformation, supporting micro, small and middle companies and entrepreneurs, supporting infrastructure project, water supply projects, waste waters treatment and environmental protection, as well as financing project of local, regional and state-level importance. The company is 100% owned by the Government of Montenegro.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
82	-19.098.395	5



36.

“SVETI STEFAN HOTELS” JSC BUDVA

PIB: 03275108

Web site: <https://www.svetistefanhoteliad.me/>

JSC “Sveti Stefan hotels“ Budva was established on June 26, 2019 and it started with work on August 05, 2019. The company was created by segmentation of the Hotel groups Budvanska rivijera. The company consists of Sveti Stefan hotels and Miločer with the associated land, which are given in the long-term lease of Adriatic properties. The ownership structure consists of the Government of Montenegro with 41,63% of shares, Pension and Disability Insurance Fund with 12,82% and the Employment Agency of Montenegro with 4,27%, and the rest is privately owned.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
3	507.062	2

37.

“MONTENEGROTURIST” JSC BUDVA

PIB: 02005379

Web site: /

JSC “Montenegrotourist“ Budva is a company registered to perform activities of travel agencies and tour operators. The company was established in 1968, and in 70s and 80s of the last century, it united the entire tourist economy of Montenegro. During 1989, the company was disbanded and segmentation of the company created companies such as Budvanska and Ulcinjska rivijera. Currently, the company generates incomes by leasing office spaces, and the ones it rents are used by the local government of the Municipality of Budva. The ownership structure consists of Budvanska rivijera with 35,90% of shares, Pension and Disability Insurance Fund with 22,25% and the Employment Agency of Montenegro with 7,41%, and the rest is privately owned. The company is also leading a decade-long dispute over the building of Montenegrotourist with the privatised company Montenegroexpres (a company created by segmenting Montenegrotourist), which became the property of companies, funds and banks controlled by the Atlas Group.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
1	-34.982	1

38.

“MONTENEGRIN ELECTRICITY DISTRIBUTION SYSTEM“ LLC PDOGORICA

PIB: 03099873

Web site: <http://www.cedis.me/>

LLC “Montenegrin Electricity Distribution System“ Podgorica is a company that performs the activity of electricity distribution within the unique electric power system of Montenegro. The distribution system is a part of the electric power system, which serves for the transmission of electricity from the transmission network of power plants connected to the distribution network to the end customers. The company was formed by segmentation from EPCG and started operating on June 30, 2016. The company is 100% owned by Elektroprivreda Crne Gore (EPCG).

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
1360	1.499.054	4



39. JOINT SERVICE AND COORDINATION COMPANY FOR WATER SUPPLY AND DRAINAGE OF WASTEWATER FOR THE MONTENEGRIN COAST AND MUNICIPALITY OF CETINJE “VODACOM“ LLC TIVAT

PIB: 02426331

Web site: <http://www.vodacom.co.me/>

LLC “Vodacom“ Tivat is a joint service and coordination company for water supply and drainage of wastewater for the Montenegrin coast and municipality of Cetinje. It was established in 2005 in order to improve the water supply and sewerage infrastructure on the Montenegrin coast. Vodacom is founded by the Government of Montenegro and municipalities Bar, Kotor, Tivat, Budva and Herceg Novi as an agency for the implementation of the project “Improvement of water supply and wastewater disposal on the Montenegrin coast“. The Municipality of Ulcinj has joined to Vodacom in 2012. The capital of the company is divided into seven equal parts and each member of the Company has 14.29% of shares of the total capital. During the implementation of projects, Vodacom is a link that cooperates and coordinates between the Government, ministries, municipalities, water companies, consultants, designers, contractors, donors and creditors.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
16	5.622	4

40. “SKI RESORTS OF MONTENEGRO“ LLC MOJKOVAC

PIB: 03168816

Web site: <https://skijalista.me/>

LLC “Ski Resorts of Montenegro“ Mojkovac was established on November 02, 2017 for ski resort management Kolašin 1600, Cmiljača, Žarski, Torine, Jelovica, the mountain center Komovi and Eco adventure park Komovi. The company is 100% owned by the Government of Montenegro. The company was formed for the initiation and management of localities where significant funds have been invested in infrastructure facilities (roads, substations, cable cars and ski fields), as well as for overseeing the implementation of planned investment activities in northern Montenegro (Bjelasica, Komovi, Durmitor and Hajla).

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
30	279.686	2

41. ZETA ENERGY LLC DANILOVGRAD

PIB: 02794624

Web site: /

Zeta Energy is a company for modernisation and development of small and medium power plants, which began operating on 25 June 2010. The Company operates in electricity production from renewable energy sources. The Company owns small hydroelectric power plants “Glava Zete“, whose reconstruction is in progress, and “Slap Zete“, whose reconstruction was completed in April 2020. Electrical Power Company of Montenegro has 51% of ownership share, while the rest is owned by the private company NTE Montenegro AS.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
20	-599.425	1



42. REGIONAL DIVING CENTER FOR UNDERWATER DEMINING AND DIVERS TRAINING LLC HERCEG NOVI

PIB: 02361388

Web site: <https://www.rcud.me/index.php/mn>

Regional Diving Center for Underwater Demining and Divers Training is a company that cares for safety at sea and inland waters, protection of underwater goods and saving lives and material goods in waters. The Company was established in 2002 as a public institution and in February 2015 was restructured into a limited liability company. The Company is 100% owned by the Government of Montenegro.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
13	3.273	2

43. ENVIRONMENTAL PROTECTION FUND“ LLC PODGORICA

PIB: 03304094

Web site: <https://www.eko-fond.me/>

LLC “Environmental Protection Fund“ Podgorica (Eco-Fund) was established by the Government of Montenegro and it has 100% of equity capital. The company started working on March 03, 2020. The activity of the company is financing the preparation, implementation and development of programs, projects and similar activities in the field of conservation, sustainable use, protection and improvement of the environment, energy efficiency and the use of renewable energy sources.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
5	609.355	1

44. “PIO” DOO ULCINJ

PIB: 02456010

Web site: /

“PIO” is a company that provide services for vacation and recovery of the members of pension fund under more favourable conditions than the market. The company started operating on 3 March 2006. The Company owns Hotel PIO-Ulcinj and Hotel Gorske oči-Žabljak. The Company is 100% owned by the Pension and Disability Insurance Fund. Managing Board of Pension and Disability Insurance Fund decides on financial support on operations of the Company in order to compensate for market differences of the prices on vacation and recovery of pensioners and the preferential price they pay.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
28	6.965	0

45.

H.T.P. "MILOČER" DOO BUDVA

PIB: 02224917

Web site: /

Miločer DOO is an owner of Hotel Kraljičina plaža. The Company is 100% owned by the Government of Montenegro. On 31 January 2007, the Company leased land with facilities, Hotel Kraljičina plaža, two villas (Villa 500 and Villa 600 Miločer) and restaurant Kraljičina stolica to Adriatic Properties DOO for 30 years. With the contract annex in 2012, leasing period was extended to 42 years and non-payment of the lease was accepted by the leaseholder starting from 2011, when the Company had difficulties to operate. By forgiving a debt to the leaser, the Company had liabilities to the Compensation Fund, by selling Hotel Panorama in Bečići for 171,850 euros, debt to the Tax Administration of 192,266 euros and Municipality of Budva of 230,000 euros. The Company overcame complex financial situation by borrowing 750,000 euros from Universal Capital Bank thanks to the cooperation of the lessee Adriatic Properties DOO, with whom a loan agreement was concluded to provide missing funds for current liquidity. On December 2020, the Universal Capital Bank mortgage of 867,000 euros was registered on the Company's property. There is also a record of restitution in favour of the representatives of the Karađorđević dynasty, and an administrative procedure was initiated before the Commission for the Restitution of Confiscated Property Rights and Compensation – Bar.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
2	76.612	0

46.

SCIENCE AND TECHNOLOGY PARK OF MONTENEGRO

PIB: 03280896

Web site: <https://www.ntpark.me/>

Science and Technology Park was established in January 2019 by a contract agreement between the Government and University of Montenegro. The Government own 57% shares of the Company, while the rest is owned by University of Montenegro. With the adoption of the Strategic plan for the establishment of the first science and technology park in Montenegro in 2012, it is envisaged that the science and technology park is constituted as a network structure that will have its headquarters and a maximum of three decentralised units (impulse centers) in Nikšić, Bar and Pljevlja. After the impulse center in Nikšić, Innovation and Entrepreneurship Center, was established in 2016, the Government agreed to establish central unit of the science and technology park in Podgorica on the campus of the University of Montenegro, through conversion of existing University of Montenegro facility that is under construction, which was intended to be used by three faculties. After the construction of the facility, it is envisaged that it will be home for 30-50 innovative and advanced technology companies. Science and Technology Park was established with the aim of providing support and strengthening the potential of economic growth and development of Montenegro, through the establishment and growth of companies in high-tech activities. The Company officially began to operate in September 2019.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
3	2.764	2



47.

“ZAŠTITA PROSTORA CRNE GORE” DOO DANILOVGRAD

PIB: 03319911

Web site: /

Zaštita prostora Crne Gore was established on 28 May 2020 and started operating on 5 August 2020. The Company is established for the implementation of the execution of administrative decision on demolition and returning the land site and facilities in original state and perform activities for inspection of urban planning and construction. Besides that, the Company can perform work on protection of land especially in case of natural disasters, emergency situation on landslides, unstable terrain, floods, rock slides and earthquakes. The Company is 100% owned by the Government.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
10	-486	0

48.

MONTENEGRIN POWER EXCHANGE LTD PODGORICA

PIB: 03150313

Web site: <http://belen-spot.me/>

Montenegrin Power Exchange was established on 21 June 2017 and started working on 7 August 2020. The Company is founded with the intention of establishing a wholesale organised market for electricity in the form of the electronic commerce platform. Montenegrin Power Exchange, as a central contractual side, between seller and buyer of electricity assume risks of buying and selling electricity within the achieved purchase and sale transactions formed on the market a day in advance. Exchange market assumes that energy entities that have surplus or shortage of electricity can sell electricity not only in Montenegro, but also across the region. Ownership structure of the Company comprises of Montenegrin Electricity Market Operator with 33,34 shares, Electrical Power Company of Montenegro (EPCG) with 33,33% shares and Montenegrin Electrodistribution System LTD with 33,33% shares

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
8	-164.863	2

49.

DURMITOR TOURIST CENTER LLC ŽABLJAK

PIB: 02959798

Web site: <http://tcdurmitor.me/>

Durmitor Tourist Center is the owner of the sports and tourist complex Savin kuk on Durmitor, which is one of the two biggest ski resorts in Montenegro and is located in the zone of the National Park Durmitor. Savin kuk have cable cars and ski lifts for skiing, adventure park and three restaurants. The Company is currently in the process of restructuring in order to merge capital with Ski Resorts of Montenegro LLC. Hundred percent shares of the Company is owned by Investment and Development Fund of Montenegro.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
19	-336.172	2



50. JOINT STOCK COMPANY FOR GOODS AND SERVICES EXPORT AND IMPORT "MARKET" PODGORICA

PIB: 02371162

Web site: /

JSC Market is registered in the Central Register of Business Entities on 4 February 2003 for non-specialised wholesale trade. Ownership structure of the Company is comprised of Investment and Development Fund of Montenegro with 40,07% shares, Pension and Disability Insurance Fund of Montenegro with 20,02% and Employment Agency of Montenegro with 5,89%, while the rest is privately owned.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
-	-	0

51. "TOMONTENEGRO" LLC PODGORICA

PIB: 03344312

Web site: <https://airmontenegro.com>

ToMontenegro LLC is a national airline established by the Government by the decision on 14 January 2021 as a owner of 100% shares. The Company started working on 8 February 2021. The amount of Company's capital is 30 million euros.

52. SPORTS CENTER "ADA" DOO PLJEVLJA

PIB: 02423090

Website: /

Sports Center "Ada" was established on 2 February 2004. The Company is majority owned by the Government and ownership structure consists of Ministry of Finance with 57,88% shares and Public Works Administration with 25,96% shares. The Company operates with sports facilities, operating with both open and closed facilities, and organisation of sports events by also managing them for professional and amateur athletes.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
10	-137.416	0

53. UNIVERSITY SPORTS AND CULTURAL CENTER LLC PODGORICA

PIB: 03344312

Web site: <https://airmontenegro.com>

University sports and cultural center was established on 4 December 2015 by the University of Montenegro, with the consent of the Government. The Company operates sports facilities and provide services for organisation of sports, cultural, artistic and entertainment events.

Broj zaposlenih (2020)	Neto rezultat za 2020. godinu	Indeks transparentnosti (0-10)
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54.

INNOVATION FUND OF MONTENEGRO LLC PODGORICA

PIB: 02371162

Web site: /

Innovation Fund of Montenegro LLC was established on 11 June 2021 by the Government as a owner of 100% of shares. The Fund performs activity on the implementation of innovative policy by securing and directing financial funds from national, international and other sources for development of innovative entrepreneurship and encouraging co-operation between scientific and economic sector.

55.

EPCG-SOLAR-GRADNJA DOO NIKŠIĆ

PIB: 02423090

Website: /

EPCG-Solar-gradnja DOO was established on 20 September 2021. Founder of the Company is EPCG AD Nikšić as a owner of 100% shares. Primary activity of the Company is construction of electrical installations. The Company is established for work on the installation of photovoltaic systems on the roofs of individual residential buildings and facilities of companies.

56.

MONTENEGRO WORKS LLC PODGORICA

PIB: 03344312

Web site: <https://airmontenegro.com>

Montenegro Works LLC was established as a sole member company by the decision of the Government of Montenegro on 4 August 2021. The Company is formed for scrutiny, monitoring and analysing of the financial situation of state owned enterprises, and as a support towards efficient management of the enterprises through implementation of the reforms.

**WHO OWNS OUR
PUBLIC ENTERPRISES
IN MONTENEGRO?**

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A review of aspects of
transparency and accountability
of state-owned enterprises



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