

December 2019.

ROAD TO DEBT SLAVERY

Third report on the construction of the Bar - Boljare Highway



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Content

	Abstract	5
	Introduction	6
1	EXIM Bank loan	7
2	Financing of construction, supervision and expropriation	10
3	Additional and subsequent works	14
4	Subcontractors	21
5	Subsidies	26
6	Employment	36
7	Inspections	42
8	Environmental impact	44
9	Access to information on highway construction	46
10	OTHER MAJOR PROJECTS	52



Abstract

Montenegro took a loan from Exim Bank of around US \$ 940 million, i.e. €688 million for the construction of the highway. In 28 semiannual installments, we will pay out over \$ 1 billion and eighty million, of which around \$ 944 million for principal, and almost \$ 140 million for interest.

From the start of construction of the first section of the highway until the end of June 2019, approximately € 484 million of approved loan was withdrawn. Part of the construction costs are financed from the state budget, thus the contractor, Chinese company CRBC, was paid almost € 570 million by the end of August this year.

Costs of the loan during the grace period have amounted to over € 30 million so far. So far, around € 25 million has been paid for interest, and around € 6 million has been allocated for commitment fee.

The cost of supervising works on the highway of at least € 30 million has been agreed, but it is unknown how much has been spent so far. By mid-2019, about € 15 million has been paid from the budget of Montenegro for expropriation for the construction of the highway.

More than € 100 million will be allocated for additional and subsequent works on the first phase of the highway section that were not foreseen in the Contract, which include electrification and water supply of the highway, as well as works on connecting roads and loops Smokovac, Veruša and Mateševo.

CRBC contracted works with subcontractors worth nearly €400 million, i.e. nearly half of the total value of the section. Montenegrin company Bemax contracted works worth almost € 237 million, more than all other subcontractors together.

Total state subsidies from the start of highway construction to mid-2019 amount to over € 160 million, not including the value of construction stone, of which there is no information at all. This amount does not include taxes and contributions on earnings paid in China.

During this year, according to official figures, 1.7 thousand Chinese workers and around 900 domestic workers, mostly hired by subcontractors, have been working on the construction of the highway. The number of employees from Montenegro on this project is probably even smaller, since it is unknown how many workers from the neighbouring countries were hired by subcontractors.

The construction of the highway led to devastation of the Tara River, which is under international protection. In spite of this, all competent inspections imposed fines on contractors totaling around €30 thousand.

Many data on highway construction have been declared trade, tax or customs secrets. Even the information that was available at the beginning of this project is now hidden from the public.



Introduction

In 2014, the Government of Montenegro signed a contract with Chinese company China Road and Bridge Corporation (CRBC) to design and build the first out of three planned sections of the Bar-Boljare highway. The contracted price for the construction of the 41 km long Smokovac-Mateševo section is € 809 million. [1]

The construction of this section of the highway is financed by a loan from the Chinese EXIM Bank, which was contracted in the amount of little less than \$ 944 million [2] through a special programme of the Chinese Government, dedicated to the countries of Central and Eastern Europe. [3] The conclusion of the contract was preceded by negotiations that were closed to the public.

This project was approved by the Parliament of Montenegro, which adopted a special Law on the Bar-Boljare Highway and envisaged a series of subsidies during its implementation. [4]

Works on the first section started in May 2015 and the deadline for completion was four years. This deadline has been extended by one year, thus, completion of the works is expected in September 2020, in the eve of the Parliamentary elections. In the meantime, it turns out that there are a number of unforeseen and additional works which are necessary in order to put that section into operation.

Tara River, which is under international protection, has been devastated during the construction of the highway. The European Parliament, the European Commission, UNESCO and numerous international and local organizations have indicated that the problem of Tara River devastation must be addressed.

However, there has been no progress, and less and less information on the construction of this significant infrastructure facility is available to the public. Representatives of the executive authority and other institutions responsible for highway control and supervision persistently ignore all calls from civil society for public dialogue.

This document provides an overview of publicly available data on highway construction financing, government subsidies given to the contractor and subcontractors, as well as additional and subsequent works contracted so far.

Special chapter contains information on Montenegrin companies engaged in the highway, as well as the effects that the project has on employment. Available information on the work of various inspections in charge of control and supervision are presented, as well as environmental impact data.

Issues with access to information have been documented through case studies and court practice review.

The last part of the document provides information on other major projects that have a significant environmental impact, such as planned construction of the second block of Thermal Power Plant in Pljevlja, as well as construction in the area of Ulcinj Salina, Buljarica, Skadar Lake and protected area of Kotor.

[1] On behalf of the Government of Montenegro, the Ministry of Transport signed an Contract on the Design and construction of the first section of the highway from Smokovac to Mateševo with CRBC as a contractor in the amount of €809,577,356.14.

[2] Preferential Loan Agreement for the Project of construction of Bar-Boljare highway, Smokovac-Mateševo section, was concluded on October 30, 2014 between the Government, represented by the Ministry of Finance, and Export Import Bank of China, in the amount of \$ 943,991,500.

[3] "China's Twelve Measures for Promoting Friendly Cooperation with Central and Eastern European Countries", which envisages the financing of various infrastructure projects in these countries, in the total amount of \$10 billion, provided the main contractors are Chinese companies.

[4] The state renounced revenues from the collection of customs duties, VAT on building materials, equipment and facilities used for the construction of a section of the highway, taxes and contributions on the earnings of foreign citizens, compensation for the exploitation of stone, while excise taxes on motor fuel were also reduced. More in Chapter 5 Subsidies



EXIM Bank loan

LOAN REPAYMENT SCHEDULE

On October 30, 2014, the Ministry of Finance, on behalf of the Government of Montenegro, and the Chinese Exim Bank signed a preferential loan agreement for the project of construction of the Bar - Boljare highway, Smokovac - Mateševo section.

The agreement agreed on a loan from Exim Bank worth around \$ 940 million, i.e. € 688 million, with a repayment period of 20 years. The agreed interest rate is 2%, commitment fee is 0.25%, the loan was obtained with a grace period [5] of 72 months, followed by a repayment period of 168 months [6] in 28 installments.

According to the amortization schedule [7], Montenegro starts repaying the loan from 21 July, 2021, and ends it on 21 January, 2035 (Photo 1).

Montenegro will pay \$ 33.7 million installment every six months plus interest.

In 28 semiannual installments, we will pay over \$ 1 billion and eighty million [8], of which around \$ 944 million for principal, and almost \$ 140 million [9] for interest.

We will pay almost \$ 140 million for interest.

Repayment Schedule			
Bar-Boljare Highway Section Smokovac-Matesevo Construction Project			
Number of Installments	Date Due	Amount In US Dollars	
		Principle	Interest
1	2021/7/21	33,713,982.14	9,492,358.97
2	2022/1/21	33,713,982.14	9,305,059.07
3	2022/7/21	33,713,982.14	8,814,333.33
4	2023/1/21	33,713,982.14	8,615,795.44
5	2023/7/21	33,713,982.14	8,136,307.69
6	2024/1/21	33,713,982.14	7,926,531.80
7	2024/7/21	33,713,982.14	7,499,488.03
8	2025/1/21	33,713,982.14	7,237,268.17
9	2025/7/21	33,713,982.14	6,780,256.41
10	2026/1/21	33,713,982.14	6,548,004.53
11	2026/7/21	33,713,982.14	6,102,230.77
12	2027/1/21	33,713,982.14	5,858,740.90
13	2027/7/21	33,713,982.14	5,424,205.13
14	2028/1/21	33,713,982.14	5,169,477.26
15	2028/7/21	33,713,982.14	4,772,401.47
16	2029/1/21	33,713,982.14	4,480,213.63
17	2029/7/21	33,713,982.14	4,068,153.85
18	2030/1/21	33,713,982.14	3,790,949.99
19	2030/7/21	33,713,982.14	3,390,128.20
20	2031/1/21	33,713,982.14	3,101,686.36
21	2031/7/21	33,713,982.14	2,712,102.56
22	2032/1/21	33,713,982.14	2,412,422.72
23	2032/7/21	33,713,982.14	2,045,314.92
24	2033/1/21	33,713,982.14	1,723,159.09
25	2033/7/21	33,713,982.14	1,356,051.28
26	2034/1/21	33,713,982.14	1,033,895.45
27	2034/7/21	33,713,982.14	678,025.64
28	2035/1/21	33,713,982.21	344,631.82

Photo 1: Loan repayment schedule with Chinese Exim Bank in US dollars
Source: Ministry of Finance

[5] During the grace period, interest and commission on commitment fee 0.25% are paid.

[6] Articles 2.2 and 2.3 of the Preferential Loan Agreement for the Bar - Boljare Highway Construction Project, Smokovac - Mateševo Section, concluded on 26.02.2014.

[7] On the basis of the Law on Free Access to Information, MANS requested from the Ministry of Finance a copy of the loan amortization schedule with the Chinese EXIM bank, request number 19/129027, dated 19.09.2019.

[8] Costs during the grace period are not included.

[9] This amount does not include conversion costs, as well as CBCG's fees, which together will have a multi-million value.



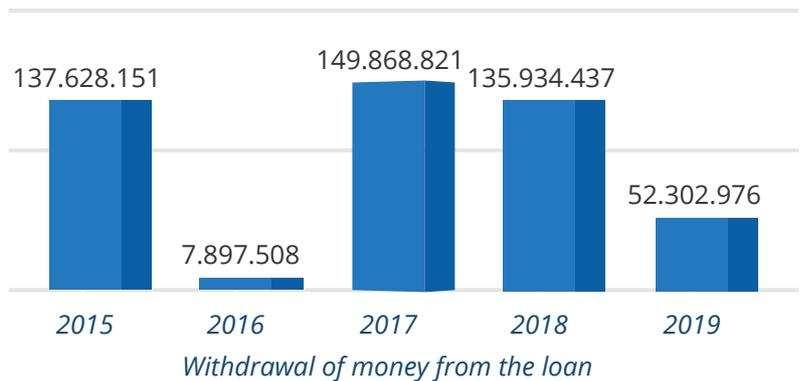
EXIM Bank loan

LOAN WITHDRAWAL RATE

By the end of June 2019, Montenegro withdrew approximately €484 million of the approved loan from EXIM Bank, i.e. around 663 million US dollars [10] for the purpose of construction of the highway (Graph 1 and Photo 2). The Ministry of Finance withdraws money from this loan at a rate determined by the contractor. CRBC sends a request to the Ministry of Finance, which then sends a request for withdrawal of funds from EXIM Bank.

Most of the money was withdrawn in 2017, just under € 150 million. In 2015, nearly €140 million was withdrawn from the loan and paid to CRBC in two advance payments. This money was also used in the following period, so in 2016 only around € 8 million was withdrawn.

Rate of withdrawal of the loan disbursements



THE EXPORT-IMPORT BANK OF CHINA
TABLE OF DISBURSEMENTS
(Concerning the Preferential Buyer Credit Loan Agreement
No. (2014) 31TOTAL NO. (325))

Graph 1: Withdrawal of money from the loan with Chinese EXIM Bank by years.
Source: Exim Bank and the Ministry of Finance.

(Amounts expressed in US\$)

Date of Disbursement	Amount Disbursed	Outstanding Balance	Remarks
2015-4-29	94,399,148.46	94,399,148.46	
2015-6-25	94,399,148.46	188,798,296.92	
2016-11-10	2,101,380.73	190,899,677.65	
2016-12-16	3,134,882.20	194,034,559.85	
2016-12-27	5,597,537.87	199,632,097.72	
2017-3-17	6,611,235.31	206,243,333.03	
2017-4-21	5,935,632.15	212,178,965.18	
2017-6-20	21,350,012.35	233,528,977.53	
2017-8-3	18,575,856.88	252,104,834.41	
2017-8-18	16,640,988.73	268,745,823.14	
2017-9-22	16,464,151.49	285,209,974.63	
2017-10-19	26,694,528.23	311,904,502.86	
2017-11-22	36,890,212.42	348,794,715.28	
2017-12-27	32,276,840.19	381,071,555.47	
2017-12-28	24,150,591.08	405,222,146.55	
2018-3-13	6,400,859.77	411,623,006.32	
2018-4-4	20,346,635.95	431,969,642.27	
2018-4-20	13,302,831.55	445,272,473.82	
2018-5-23	9,283,817.34	454,556,291.16	
2018-6-20	19,678,717.95	474,235,009.11	
2018-7-24	16,808,542.22	491,043,551.33	
2018-8-24	17,713,805.15	508,757,356.48	
2018-9-28	18,929,783.86	527,687,140.34	
2018-10-31	20,466,665.09	548,153,805.43	
2018-11-23	18,406,517.69	566,560,323.12	
2018-12-25	25,136,684.00	591,697,007.12	
2019-1-8	32,954,537.20	624,651,544.32	
2019-3-7	12,613,486.09	637,265,030.41	
2019-3-28	4,395,924.94	641,660,955.35	
2019-4-23	6,738,564.68	648,399,520.03	
2019-5-24	7,191,979.58	655,591,499.61	
2019-6-28	7,854,729.51	663,446,229.12	
Total:	663,446,229.12		

Photo 2: Withdrawn loan disbursements in dollars, by the end of June 2019.
Source: Ministry of Finance and EXIM Bank.

[10] The money is paid in the agreed exchange rate EUR/USD 1.3718.



EXIM Bank loan

COSTS DURING THE GRACE PERIOD

The costs of the loan during the grace period has amounted to around € 33 million so far. So far, around € 25 million has been paid for the cost of interest on the loan, while slightly less than € 6 million has been allocated for commitment fee (Table 1 and Graph 2).

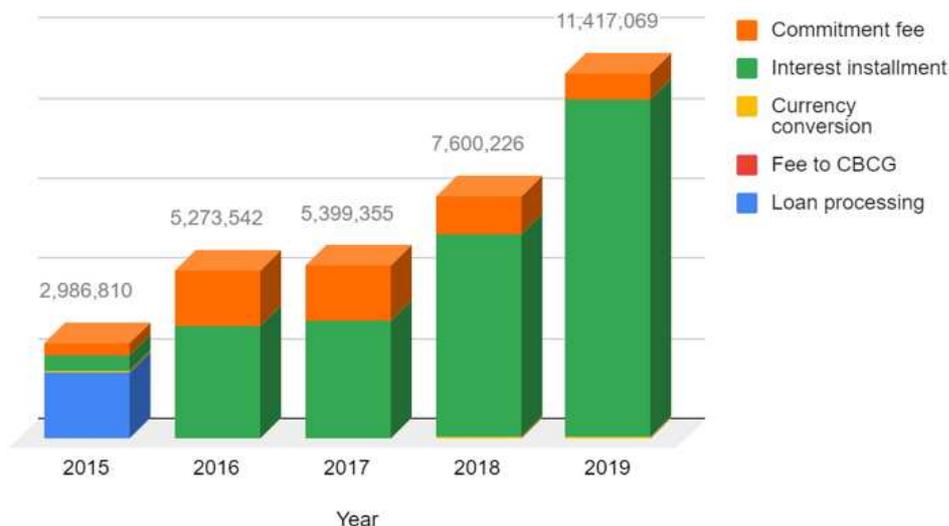
In 2015, just over € 2 million was paid for loan processing, and a total of €160 thousand was allocated for the currency conversion from Euro to Dollar. A total of € 65 thousand has been allocated to compensate for the fee to the Central Bank (CBCG), which makes payments to Exim Bank.

Year	Loan processing	Fee to CBCG	Currency conversion	Interest installment	Commitment fee
2015	2,088,515.98	5,923.96	10,400.05	527,488.50	354,481.96
2016		10,473.77	26,184.42	3,491,255.82	1,745,627.94
2017		10,723.64	26,809.11	3,663,357.97	1,698,464.44
2018		15,094.79	37,736.97	6,335,231.26	1,212,163.20
2019		22,675.41	56,688.52	10,549,042.55	788,662.38
Total	2,088,515.98	64,891.57	157,819.07	24,566,376.10	5,799,399.92

Table 1: Overview of loan costs in Euros according to the type of expenditure. Source: Ministry of Finance

Interest expenses rose sharply in 2019, and by the end of July, over ten million Euros had been paid, while for the entire 2018 these costs were significantly lower, amounting to around six million.

Loan costs



Graph 2: Loan costs during the grace period (until July 17, 2019), in Euros. Source: Ministry of Finance

Through the Law on Free Access to Information, MANS is trying to obtain information from which financial institutions and under what conditions money is converted from Euros into Dollars for the purpose of paying interest installments and commitment fee. We requested this information from CBCG and the Ministry of Finance. CBCG refused to provide the information, stating it was a banking i.e. trade secret [11], while the Ministry of Finance has not responded to the request from 8 August 2019. [12]

[11] MANS' request number 19/128331, request date 12/06/2019

[12] MANS' request number 19/128763, request date 08/08/2019



Financing of construction, supervision and expropriation

From the start of construction of the first section of the highway to the end of August 2019, nearly €570 million were paid to CRBC, but the figures of the Ministry of Finance are not reliable.

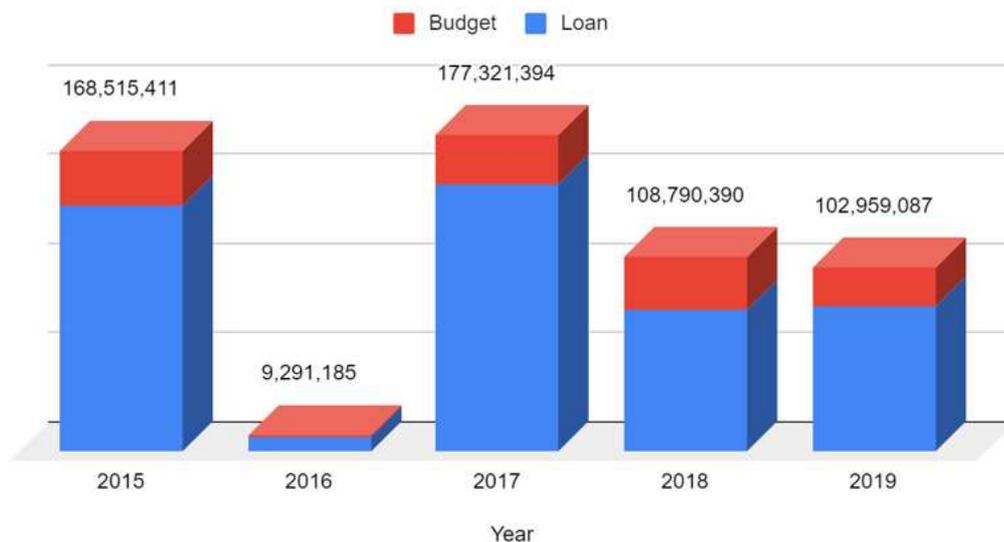
The cost of supervising works on the highway of at least € 30 million has been agreed, but it is unknown how much has been spent so far.

By mid-2019, around €15 million have been paid for expropriation for the purpose of highway construction from the budget of Montenegro.

PAYMENTS TO CRBC

From the start of construction of the first section of the highway to the end of August 2019, around €567 million [13] was paid to CRBC, of which € 456 million from the loan and around € 111 million from budget revenues (Graph 3). Namely, the construction of the highway is financed with 85% of funds from the loan and 15% from the budget of Montenegro.

Payments to CRBC



Graph 3: Payments to CRBC in Euros, by years, ending with August 2019. Source: Ministry of Finance

According to the data provided by the Ministry of Finance, in 2015, around €169 million was paid to CRBC, while in 2016, only around nine million Euros.

In 2017, the largest amount of money was disbursed, around 177 million, around 109 million in 2018, and ending with August 2019, around 103 million.

[13] MANS requested information from the Ministry of Finance on payments to CRBC under the Law on Free Access to Information. Request numbers: 18 /118030-118033 (from 02/19/2018), 18/118391-118392 (from 12/03/2018), 18/119756 (from 19/04/2018), 18/121480 (from 24/04/2018), 18/123263-123264 (from 09/07/2018), 18/124049 (from 13/08/2018), 18/124299-124300 (from 20/08/2018), 18/124803 (from 19/10/2018), 18/124788-124789 (06/11/2018), 18/125286-125287 (19/11/2018), 18/125726-125727 (18/01/2019), 19/125878-125879 (30/01/2019), 19/127745 (from 31/05/2019), 19/127437-127438 (from 24/04/2019). We also used reports from SAP, which we also received from the Ministry of Finance. Request numbers: 19/126234 (reply date 14/03/2019), 19/128990, 19/128991, 19/128992 (from 09/19/2019).



Financing of construction, supervision and expropriation

Ministry of Finance's unreliable data

Ministry of Finance figures on payments to CRBC are not reliable. The institution, for example, claims that no payments were made to the company in January this year, although financial records show that around €24 million was paid to CRBC that month.

In January 2019, Chinese company CRBC was paid just over € 24 million (Photo 3), which was revealed by an insight into SAP [14], although the Ministry of Finance replied to our request [15] that there had been no payment to that company (Photo 4).

5100000234	44110000000	4411001000	Putevi	China road and bridge corporation	24.022.843,86	09.01.2019	KREDIT
Naziv kor.budžeta Upr za saobraćaj-Auto put Bar-Boljare					24.022.843,86		

Photo 3: Payment to CRBC - January 2019. Source: SAP, Ministry of Finance

Mreža za afirmaciju nevladinog sektora – MANS iz Podgorice, podnio je zahtjev Ministarstvu finansija kojim traži pristup informacijama dostavljanjem kopije:

-svih izvoda o isplatama koje su u toku januara 2019. godine izvršene po osnovu Ugovora o projektovanju i izgradnji autoputa Bar-Boljare, dionica Smokovac-Uvač-Mateševo, koji je zaključen sa firmom China Road and Bridge Corporation,
-svih isplata koje je Ministarstvo finansija izvršilo prema „Ingerop MN“ Podgorica u toku januara 2019. godine.

Razmatrajući predmetni zahtjev odnosno informaciju koja se istim traži, te detaljnim uvidom u arhivska dokumenta, ovaj organ je utvrdio da ne posjeduje traženu dokumentaciju jer u navedenom periodu nije bilo plaćanja prema pomenutim firmama.

Odredbom člana 30 Zakona o slobodnom pristupu informacijama („Službeni list Crne Gore“, broj 44/12, 30/17), propisano je da organ vlasti o zahtjevu za pristup informaciji ili ponovnu upotrebu informacija, osim u slučaju iz čl. 22 ovog zakona, odlučuje rješenjem, kojim dozvoljava pristup traženoj informaciji odnosno ponovnu upotrebu informacija ili njenom dijelu ili zahtjev odbija.

Na osnovu izloženog odlučeno je kao u dispozitivu ovog rješenja.

Pravna pouka: Protiv ovog rješenja dopuštena je žalba Agenciji za zaštitu ličnih podataka i slobodan pristup informacijama u roku od 15 dana od dana prijema rješenja. Žalba se predaje ovom organu ili šaljem putem pošte.

Dostavljeno:

- Podnosiocu zahtjeva
- U spise predmeta
- a/a

MINISTAR
Darko Radunović

Photo 4: Response stating that there were no payments to CRBC in January 2019. Source: Ministry of Finance

[14] SAP is software that records all budget expenditures

[15] On the basis of the Law on Free Access to Information, MANS requested from the Ministry of Finance information on payments to CRBC. Response of the Ministry of Finance: "Considering the request i.e. information requested, after detailed insight into the archival documents, this authority found that it did not have the requested documentation because there had been no payments to the mentioned companies during the stated period. MANS' request number is 19/126219-126220 and the response date is 19/02/2019.



Financing of construction, supervision and expropriation

PAYMENTS FOR SUPERVISION OF WORKS

Payments to the foreign consultant

Supervision of the implementation of highway works is carried out by the French - Italian consortium with which the Ministry of Transport and Maritime Affairs signed a contract worth over €20 million. Only the payments to the daughter company in Montenegro set up by that consortium of around six million Euros are known, while the payments to the parent company are hidden.

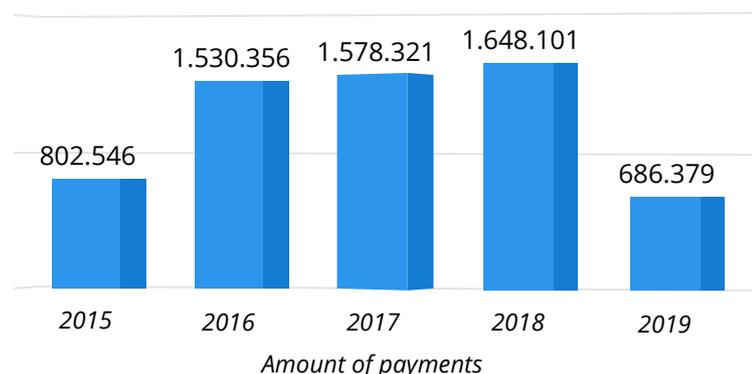
On September 11, 2014, the Ministry of Transport and Maritime Affairs signed a contract for consulting services with the French - Italian consortium "Ingerop Conseil & Ingenierie - Geodata Engineering S.p.A.". This contract foresees providing of consulting services to supervise the design of project documentation and performing of works on the construction of the Bar - Boljare highway, sections Smokova - Uvač - Mateševo, based on the design contract. The contract stipulates a service price of € 22.6 million (gross amount), of which the net amount is approximately € 19 million and VAT is € 3.6 million.

For the needs of the project, the consortium set up a company in Montenegro called Ingerop MN, to which around €6.1 million (excluding VAT) will be paid during the project, while the remaining €12.8 million (excluding VAT) will be paid to the company "Ingerop Conseil Et Ingenierie" based in France. [16]

MANS has repeatedly tried to obtain information on budget payment towards Ingerop Conseil Et Ingenierie, but to no avail. Requests for access to information were sent to the Ministry of Finance and the Ministry of Transport and Maritime Affairs, but we received a response only from the Ministry of Finance, saying that they do not have information on these payments. The Ministry of Transport and Maritime Affairs has not responded to our requests. [17]

According to the records provided to us by the Ministry of Finance [18], by the end of the first half of 2019, the consultant in Montenegro was paid around € 5.98 million (Graph 4). In 2015, Ingerop MN was paid around €800 thousand, in 2016 and 2017 around €1.5 million each year, and in 2018 around €1.6 million. In the first half of 2019, an amount of € 419 thousand was paid.

Payments to Ingerop MN



Graph 4: Payments to Ingerop MN, by years, ending with August 2019

[16] Contract for Consulting Services between the Ministry of Transport and Maritime Affairs and Ingerop Conseil & Ingenierie - Geodata Engineering S.p.A. concluded 11.09.2014

[17] MANS' Request Numbers: 18/118049-118051 (29.01.2018), 18/118392 (09/02/2018), 19/128987-128988 (29.07.2019), 19/128997-128998 (of 29/07/2019)

[18] On the basis of the Law on Free Access to Information, MANS requested from the Ministry of Finance information on payments to Ingerop MN. Request numbers: 18/120869-120872 (05/04/2018), 18/121494 (24.04.2018), 18/123263-123264 (09.07.2018), 18/124054 (13.08.2018), 18/124299-124300 (20.08.2018), 18/124747-124748 (19.10.2018), 18/124788-124789 (19.10.2018), 18/125286-125287 (19.11.2018), 19/125878-125879 (14.02.2019), 19/127758 (31.05.2019), 19/127437-127438 (24.04.2019), 19/128992 (19.09.2019)



Financing of construction, supervision and expropriation

Payments to Monteput and state commissions

The control of implementation of the construction of the first section of the highway is carried out by Monteput and two state commissions, but it is not known how much has been spent so far on this basis.

Monteput set up a special unit of the Bar - Boljare [19] highway for the construction of the highway, for which around €3.8 million [20] was allocated from 2014 to the end of 2018.

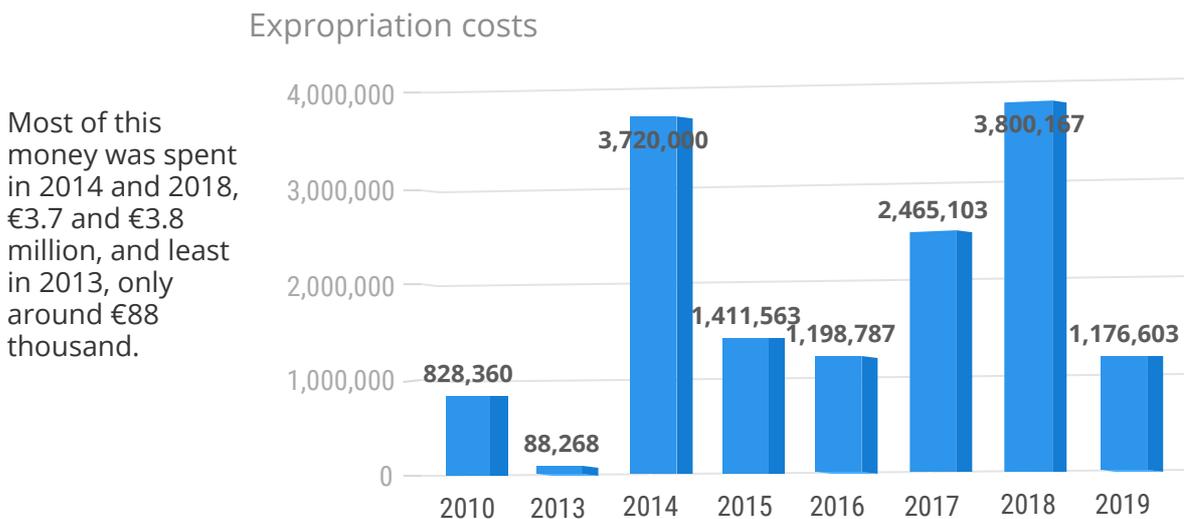
Commission for technical review of works on the construction of the Bar - Boljare Highway, priority section Smokovac - Uvač - Mateševo was established in 2015, and funds for its operation are provided from a budget in the amount of €2.8 million. [21] Similar case is with the Commission for audit of technical documentation, for which funds are allocated from the Capital Budget of the Ministry of Transport and Maritime Affairs in the amount of €2.8 million. [22]

MANS does not have more detailed information on payments to these Commissions, their chairmen, secretaries and members, although it has repeatedly requested this information. [23]

EXPROPRIATION COSTS

By mid-2019, around € 15 million was paid from the budget of Montenegro for expropriation for the construction of the highway (Graph 5).

Although the construction of the highway was contracted in 2014, land expropriation began much earlier. According to information owned by MANS [24], expropriation payments for the Bar - Boljare highway began as early as 2010. [25]



Most of this money was spent in 2014 and 2018, €3.7 and €3.8 million, and least in 2013, only around €88 thousand.

Graph 5: Expropriation cost in Euros, source: SAP - Ministry of Finance

[19] Decision on Establishing a Business Unit for Managing the Bar - Boljare Highway Construction Project (Official Gazette of Montenegro no. 35/14).

[20] Expenditures of the Bar - Boljare Highway Business Unit are stated in the work plans and operating reports of Monteput adopted at sessions of the Government of Montenegro.

[21] Decision on Appointment of the State Commission for technical review of works on the construction of the Bar - Boljare Highway, priority section Smokovac - Uvač - Mateševo, Article 10, which reads: The funds for the work of the Commission shall be provided in the budget of Montenegro. The total amount of funds required for the work of the Commission is 0.35% of the contracted price of works for the design and construction of the priority section of the Bar - Boljare highway, Smokovac - Uvač - Mateševo which, based on the agreed price of € 809.577.356,14, amounts to € 2.833.520,74. The amount of compensation for each member of the Commission shall be determined in proportion to the participation of the area concerned in the overall technical review, as well as on the basis of the actual scope of engagement in the review of the works, at the proposal of the Chairman of the Commission.

[22] Decision on Appointment of the State Commission for audit of technical documentation, Article 8, which reads: The funds for the work of the Commission shall be provided from the Capital Budget of the Ministry of Transport and Maritime Affairs. Total amount of funds required for the work of the Commission is 0.35% of the contracted price of works for the design and construction of the priority section of the Bar-Boljare highway, Smokovac-Uvač-Mateševo which, based on the agreed price of € 809.577.356,14, amounts to € 2.833.520,74.

[23] On the basis of the Law on Free Access to Information, MANS requested information on payments to state commissions responsible for auditing technical documentation and technical review of works from the Ministry of Transport and Maritime Affairs, the Ministry of Sustainable Development and Tourism, the Ministry of Finance and the Public Works Administration. Request numbers: 19/125030-125033 (08/03/2019), 18/125060-125063, 18/125075-125078, 18/125111-125114, 18/125123, 18/125125, 18/125127, 18/125129 (01/11/2018), 19/125781 (06/03/2019), 18/125797, 18/125798 (28/12/2018), 19/128087, 19/128092 (03/06/2019), 19/128457 (21.06.2019), 19/128981, 19/128982 (26.07.2019), 19/129397 (13.09.2019).

[24] Information on Expropriation Cost was taken from SAP, budget of the Ministry of Transport and Maritime Affairs, Bar - Boljare Highway Programme

[25] This can be explained by the originally planned start of work on the Bar - Boljare highway, since the ribbon was cut back in 2009.



Additional and subsequent works

More than € 100 million will be allocated for additional and subsequent works on the first phase of the highway section, which were not foreseen in the Contract, which include electrification and water supply of the highway, as well as works on connecting roads and loop Smokovac, Veruša and Mateševo.

The contract for the construction of the first section of the highway planned for works of around €810 million euros and it is foreseen that this amount can be increased by 10% on the basis of **unpredictable and subsequent works**. [26] The Government and CRBC have agreed that the construction of the first phase of the Smokovac loop, as well as works on the highway water supply system and the first electrification phase, worth **around €50 million, represent subsequent works, which are within the projected 10% increase of the contracted amount.**

However, additional € 50 million has so far been allocated for performing of works that were not foreseen at all by the Contract on the Design and Construction of the Highway. [27] Of this, nearly €11 million euros were paid to CRBC to temporarily supply the highway with electricity, while more than 38 million was given to domestic companies for highway electrification. It is unknown how much it will cost to build 6.4 kilometer long connecting roads to Veruša and Mateševo loops, which were also not provided for in the Contract.

Table 2 provides an overview of additional and subsequent works with values and contractors. [28]

Description of works	Type of works	Contractor and the status of works	Value (in Euros)
Temporary power supply for the purpose of highway construction	Additional	CRBC completed works	10.999.900
I phase of the Smokovac loop	Subsequent	CRBC works in progress	30.456.569
Water supply system	Subsequent	CRBC works in progress	14.203.431
Installation of cable ducts on the open route and the Moračica Bridge (for permanent power supply)	Subsequent	CRBC works in progress	4.830.000
Electrification of the highway	Additional	Novi Volvox and Electro Team works in progress	38.232.454 (+ interest)
Regional roads at Veruša and Mateševo	Additional	unknown	unknown
Total:			98.722.354

Table 2: Works that are paid additionally (in Euros). Sources: Annexes 2, 3, 4 and 5 of the Contract on the design and Monteput.

[26] Sub-clause 13.9 stating that the value of the estimated amounts of unpredictable and subsequent works may not exceed 10% of the maximum guaranteed price referred to in Article 4, paragraph 1, of the Framework Agreement.

[27] By these works we imply all works that are or will be performed, and their payment is independent of the maximum guaranteed price of € 809,577,356.14.

[28] The values of the works were taken from Annexes 2,3,4 and 5 of the Contract on the design and construction of the Bar - Boljare highway, Smokovac - Uvač - Mateševo section, while the amount for the electrification of the highway was taken from the public procurement portal, where Monteput published the tender.



Additional and subsequent works

ADDITIONAL AND SUBSEQUENT WORKS CARRIED OUT BY CRBC

The Government of Montenegro agreed with the Chinese company CRBC additional and subsequent works worth over € 60 million.

These works are specified in the Annexes to the Contract on the design and construction of the highway. Annex 1 is not available to the public [29], while the remaining four annexes are described in more detail below.

Annex 2: Additional works - temporary power supply

In May 2015, the Government signed Annex 2 of the Contract on the design and construction of the highway with CRBC, which provided that the Chinese company would carry out **additional temporary power works for the construction of the highway worth approximately € 11 million** (Photo 5).

Prilog 2 Ugovora o projektovanju i izgradnji autoputa Bar-Boljare
Dionica: Smokovac-Uvač-Mateševo
Privremeno napajanje električnom energijom

potpisan dana 01.05.2015. godine

između

Crna Gora
MINISTARSTVO SAOBRAĆAJA I POMORSTVA

Broj 01-1771/11
Podgorica, 01.05. 2015. god.

INVESTITORA
Vlade Crne Gore koju predstavlja Ministarstvo saobraćaja i pomorstva

IZVOĐAČA RADOVA
China Road and Bridge Corporation

Član 2 - Vrijednost posla

Vrijednost posla iz Priloga 2 iznosi EUR 10.999.900,00 (slovima: deset miliona devet stotina devedeset devedeset hiljada i devet stotina eura) bez PDV-a.

100% of the value of this Annex 2 shall be additional payment to investors which is independent and shall not be included in the maximum guaranteed price of EUR 809,577,356.14 (eight hundred and nine million five hundred seventy seven thousand three hundred fifty six Euros and fourteen cents) from the Main Contract signed on February 26, 2014.

Photo 5: Article 2 of the Annex 2 to the Contract on the design. Source: Ministry of Transport and Maritime Affairs

It is indisputable that the works were not foreseen in the contract, because the Annex states that this amount represents "additional payment to investors which is independent and will not be included in the maximum guaranteed price of € 809,577,356.14...".

[29] On the basis of the Law on Free Access to Information, MANS filed requests 19/129640 and 19/129641 (17.10.2019). The first Annex to the Agreement was not provided to us by either the Ministry of Transport or Monteput, and it is not available on the Government's website, unlike other Annexes which were published in the framework of materials from Government sessions.



Additional and subsequent works

Annex 3: Subsequent works - first phase of the Smokovac loop

Annex 3 of the Agreement is related to the construction of the **first phase of the Smokovac loop** [30] and the value of the foreseen works is approximately € 30 million. According to this Annex, these works represent subsequent works and enter into the design as a 10% increase for unpredictable and subsequent works (Photo 6).

Namely, Annex 3 states that the contracted amount "is considered to be part of the Indicative amount defined in sub-clause 19.9. of the Contract, which is 10% of the contracted price from the basic contract on design and construction. "



Predlog Priloga 3

Ugovora o projektovanju i izgradnji dionice Smokovac-Mateševo autoputa Bar-Boljare br. 01-827/1 od 26.02.2014. PETLJA SMOKOVAC, I FAZA

Detaljnim prostornim planom autoputa Bar – Boljare (2008.) definisana je etapna realizacija projekta autoputa Bar-Boljare, i to:

- I faza: Smokovac-Mateševo,
- II faza: Mateševo-Andrijevic i Smokovac-Tološi-Farmac (obilaznica oko Podgorice),
- III faza: Andrijevic – Boljare,
- IV faza: Podgorica – Đurmani.

Dionica Smokovac - Mateševo definisana je kao I etapa realizacije projekta autoputa Bar-Boljare. U Idejnom projektu za ovu dionicu koji je rađen na osnovu Detaljnog prostornog plana autoputa Bar-Boljare i Idejnog rješenja ove dionice, definisan je početak dionice Smokovac-Mateševo od stacionaže 0+000km iza petlje Smokovac, tako da petlja Smokovac, koja predstavlja kompleksnu vezu dva autoputa, Bar Boljare i Jadransko Jonskog autoputa koji još nije u potpunosti definisan i magistralnog puta M2, nije bila sastavni dio Idejnog projekta.

I faza petlje Smokovac ne predviđa izgradnju čitave petlje Smokovac već samo izgradnju priključka na ugovorenu prioritetnu dionicu Smokovac - Mateševo autoputa Bar-Boljare. Pristup dionici autoputa koja se realizuje od magistralnog puta M2, biće saobraćajnica dužine oko 1,5 km, kao I faza ukupnog projektnog rješenja petlje Smokovac, koja će ostati konačno rješenje i u kasnijim fazama realizacije autoputa Bar-Boljare kroz naredne dionice, i za ovu dužinu od 1,5 km se uvećava dužina dionice Smokovac-Mateševo.

U skladu sa procedurom utvrđenom u Ugovoru o projektovanju i izgradnji autoputa Bar-Boljare, dionica Smokovac-Mateševo, po zahtjevu Inženjera kompanija China Rod and Bridge Corporation (CRBC) je dostavila 17.03.2019. godine korigovani Predlog - ponudu za izvođenje radva na I fazi petlje Smokovac.

Inženjer (Nadzorni organ) je, nakon pregleda, u ugovornoj proceduri odobrio navedeni Predlog - ponudu Izvođača. Upravljač projektom - "Monteput" d.o.o. Podgorica, Poslovna jedinica za upravljanje projektom izgradnje autoputa Bar-Boljare je dao predlog Ministarstvu saobraćaja i pomorstva od 25.04.2019. godine, za prihvatanje Predloga - ponude Izvođača i zaključivanje Priloga 3 - Naknadni radovi na petlji Smokovac - I faza.

Value of the subsequent works from the Proposal of the Annex 3 is € 30,456,569.00, which is considered to be part of the Indicative amount defined in sub-clause 13.9 of the Contract, which is 10% of the contracted price from the basic Contract on design and construction. The deadline for the completion of the Contract on design and construction is extended by the Proposal of the Annex 3 until September 30, 2020.

Photo 6: Annex 3 to the Design Agreement. Source: Secretariat-General of the Government of Montenegro [31]

[30] It is a construction of a connection to the contracted section Smokovac - Mateševo and the rest of the loop will be built when works on the section Smokovac - Farmaci begin.

[31] Adopted at the 119th Session of the Government of Montenegro, 24.04.2019

http://www.gsv.gov.me/ResourceManager/FileDownload.aspx?rid=358182&rType=2&file=33_10_119_25_04_2019.pdf



Additional and subsequent works

At the end of 2017, the Prime Minister Markovic announced that CRBC is obliged to build Smokovac loop, and that it will go before the international commission and international arbitration unless agreed:

"What is undeniable is that the design of the Smokovac loop project has been contracted, and there are different interpretations as to whether it is their obligation under the contract to build the Smokovac loop as well. This is where CRBC disagrees with us. They think that it is not, we think it is." [32]

The end result of these negotiations is that the first phase of the Smokovac loop represents subsequent works, worth additional €30 million, which are within possible 10% increase foreseen in the Contract.

Annex 4: Subsequent works - system for water supply of the highway

Annex 4 foresees the construction of the water supply system worth over € 14 million, which is also considered subsequent works (Photo 7).

The Prime Minister Marković stated that the motive for the construction of this system was to provide conditions for water supply of the local population and future development needs, and it was not an omission in planning. [33]



Predlog Priloga 4

Ugovora o projektovanju i izgradnji dionice Smokovac-Mateševo autoputa Bar-Boljare br. 01-827/1 od 26.02.2014. SISTEM ZA VODOSNABDIJEVANJE

U skladu sa procedurom utvrđenom u Ugovoru o projektovanju i izgradnji autoputa Bar-Boljare (dionica Smokovac-Mateševo), na zahtjev Inženjera (Nadzornog organa), kompanija China Road and Bridge Corporation (CRBC) je dostavila Predlog - ponudu dopisom br. RB-BBH/1034/CD od 01. aprila 2019. godine, kao i dodatnu dokumentaciju i pojašnjenja koja su navedena u dopisu br. RB-BBH/1339/CD od 21. aprila 2019. godine, za radove na izgradnji sistema za vodosnabdijevanje autoputa Bar-Boljare (dionica Smokovac-Mateševo), što sve predstavlja Predlog - ponudu za Prilog 4 - Naknadni radovi.

Inženjer (Nadzorni organ) je, nakon pregleda, u ugovornoj proceduri odobrio navedeni Predlog - ponudu Izvođača i savjetovao Strane da nastave proceduru sa potpisivanjem Priloga 4 za Glavni Ugovor, pri čemu:

1. Value of the subsequent works on the water supply project from the proposal of Annex 4 is € 14.203.431,00 (excluding VAT), which is considered as part of the Indicative amount defined in sub-clause 13.9 of the Contract, which is 10% of the contracted price from the basic Contract on Design and Construction.

Photo 7: Annex 4 to the Contract on Design. Source: Secretariat-General of the Government of Montenegro [34]

[32] Prime Minister Markovic's interview at Radio Montenegro, 03.10.2017 <https://www.youtube.com/watch?v=3tMp87D3eKw> the statement is at 50:45.

[33] Response to a question by MP Ervin Ibrahimović, date 20.03.2019, <http://zakoni.skupstina.me/zakoni/web/dokumenta/sjednice-skupstine/186/2670-..pdf> strana 6,

[34] Adopted at the 120th Session of the Government of Montenegro, 09.05.2019, <http://www.gov.me/ResourceManager/FileDownload.aspx?rId=358874&rType=2>



Additional and subsequent works

Annex 5: Subsequent works - first phase of permanent electricity supply

Works on the permanent electricity supply are carried out in two phases [35], the first being carried out by CRBC, in accordance with Annex 5 of the Contract worth €4.8 million. This document defines the subsequent works to be considered as part of the indicative amount from the Contract, which is 10% of the contracted price (Photo 8).



PREDLOG PRILOGA 5

Ugovora o projektovanju i izgradnji dionice Smokovac-Mateševo autoputa Bar-Boljare br. 01-827/1 od 26.02.2014.

**TRAJNO NAPAJANJE ELEKTRIČNOM ENERGIJOM
POSTAVLJANJE KABLOVSKE KANALIZACIJE NA OTVORENOJ TRASI I MOSTU
MORAČICA**

U skladu sa procedurom utvrđenom u Ugovoru o projektovanju i izgradnji autoputa Bar-Boljare (dionica Smokovac-Mateševo), na zahtjev Inženjera (Nadzornog organa), kompanija China Road and Bridge Corporation (CRBC) je dostavila Predlog - ponudu dopisom br. RB-BBH/881/CD od 21. marta 2019. godine, kao i dodatnu dokumentaciju i pojašnjenja koja su navedena u dopisu br. RB-BBH/1727/CD od 20. maja 2019. godine, za radove na izgradnji trajnog napajanja električnom energijom (postavljanje kablovske kanalizacije na otvorenoj trasi i mostu Moračica) autoputa Bar-Boljare (dionica Smokovac-Mateševo), što sve predstavlja Predlog - ponudu za Prilog 5 - Naknadni radovi.

Inženjer (Nadzorni organ) je, nakon pregleda, u ugovornoj proceduri odobrio navedeni Predlog - ponudu Izvođača i savjetovao Strane da nastave proceduru sa potpisivanjem Priloga 5 za Glavni Ugovor, pri čemu:

The value of Subsequent works for permanent electricity supply (installation of cable ducts on the open route and Moračica Bridge) from the proposal of Annex 5 amounts to €4.830.000,00 (excluding VAT), which is considered as part of the Indicative amount defined in sub-clause 13.9 of the Contract, which is 10% of the contract price from the basic Contract on Design and Construction.

2. Gantogram Programa radova Izvođača, Inženjer ocjenjuje kao opravdan i potkrijepljen u cjelosti od strane Izvođača. Inženjer je potvrdio da vremenski uticaj predmetnih Radova nema direktne implikacije na novi Rok za završetak ukupnih radova, pa vrijeme za završetak radova ostaje nepromijenjeno do 30. septembra 2020. godine.

Photo 8: Annex 5 to the Contract on Design. Source: Secretariat-General of the Government of Montenegro [36]

[35] First, it is necessary to install protective sewerage (cable pipes), and the second phase involves the construction of a transmission line, i.e. the electrification of the highway itself.

[36] Adopted at the 122nd Session of the Government of Montenegro, 23.05.2019. http://www.gov.me/ResourceManager/FileDownload.aspx?rid=361433&rType=2&file=57_1_122_23_05_2019.pdf



Additional and subsequent works

ADDITIONAL WORKS CARRIED OUT BY MONTENEGRIN COMPANIES

The Government of Montenegro decided to carry out additional works on the highway electricity supply system at the cost of the state, worth almost €40 million. Montenegrin companies that were the only ones to apply for the repeated tender were hired for these works. The money for funding was provided from a government loan, the details of which were declared trade secret.

The Government put in charge the company "Monteput LLC Podgorica" for the second phase of construction of the system of permanent power supply of the Bar-Boljare highway and in its work plan for 2019, it envisaged a charge in the amount of € 31.6 million. [37]

However, there was a change of plan later, because VAT was not included in this amount, and since Monteput was not defined as a contractor or subcontractor on the highway, it could not be exempted from VAT [38], thus, the amount was €38.2 million. [39]

On June 17, 2019, Monteput announced a tender for which "Novi Volvox LLC Podgorica" and "Electro team LLC Budva" applied. These bids were evaluated as incorrect, so the tender was repeated on 23 August 2019. The same companies also applied for this tender and there were no other bidders, so they were selected for contractors. **Their total bid was around € 20,000 lower than Monteput's charge for this purpose.**

To finance these works, Monteput provided funds from a loan from the state-owned Investment and Development Fund (IRF), which it took at the end of May 2019. [40]

Information on the interest rate, maturity and other terms of that loan is not available to the public, as Monteput declared the Agreement concluded with IRF a trade secret (Photo 9).

In a decision rejecting our request for information, Monteput did not explain why the information on the mutual business operations of two state-owned companies, Monteput and IRF, was declared trade secret, or who could suffer any damage from the disclosure of that information.

[37] Work Plan for 2019 and Report for 2018, adopted at the 109th Session of the Government of Montenegro on 14.02.2019.

[38] Article 16 of the Law on Bar Boljare Highway (Official Gazette of Montenegro 52/14) Value added tax shall be paid at the rate of 0% for the sale of products and services intended for the construction of the highway realized by the contractor, or this realization is realized at the expense of the contractor for highway construction.

[39] Vijesti: Struja za auto put koštaće još sedam miliona,

<https://www.vijesti.me/vijesti/ekonomija/struja-za-auto-put-kostace-jos-sedam-miliona>, 09.05.2019, accessed 06.12.2019.

[40] MINA-Business: "Na tender dostavljene dvije ponude", Septembar 17, 2019, <https://www.mina.news/minabusiness/na-tender-dostavljene-dvije-ponude/>, accessed: 02.12.2019



Additional and subsequent works

Monteput d.o.o.

Broj. 3609
Podgorica, 12.06.2019

Monteput d.o.o. Podgorica, na osnovu člana 30 Zakona o slobodnom pristupu informacijama ("Službeni list CG" broj 44/12 i 30/17), rješavajući po zahtjevu za pristup informacijama Mreže za afirmaciju nevladinog sektora od 04.06.2019. godine, donosi

RJEŠENJE

1. **ODBIJA SE** zahtjev za slobodan pristup informacijama, podnijet Monteputu dana 04.06.2019. godine, elektronskim putem, na osnovu kojeg je zahtijevana kopija ugovora o kreditu sa Investiciono-razvojnim fondom, za izgradnju Sistema trajnog napajanja električnom energijom autoputa Bar-Boljare, dionica Smokovac-Mateševo, primjenom člana 29 stav 1 tačka 3 Zakona o slobodnom pristupu informacijama, obzirom da je traženi dokument označen stepenom tajnosti i predstavlja poslovnu tajnu u smislu važećih propisa.
2. Troškova postupka nije bilo.

Obrazloženje

Mreža za afirmaciju nevladinog sektora MANS podnijela je dana 04.06.2019. godine zahtjev za slobodan pristup informacijama, kojim je zahtijevano dostavljanje kopije ugovora o kreditu sa Investiciono-razvojnim fondom, za izgradnju sistema trajnog napajanja električnom energijom autoputa Bar-Boljare, dionica Smokovac-Mateševo.

Considering the request, the Company concluded that it was not possible to allow access to the requested document, since it was a trade secret under the Article 14, paragraph 1, item 6 of the Law on Free Access to Information, that it was marked with a degree of secrecy, and that Monteput LLC, as a contracting party, is obliged to protect confidentiality of the information of the said document.

Odredbama člana 29 stav 1 tačka 3 Zakona o slobodnom pristupu informacijama definisano je pravo organa vlasti da odbije zahtjev za slobodan pristup informacijama, ukoliko postoji razlog za ograničavanje pristupa informaciji, prepoznat u članu 14 istog Zakona.

Troškova postupka nije bilo.

Na osnovu navedenog, odlučeno je kao u dispozitivu rješenja.

Pravna pouka: Protiv ovog rješenja dopuštena je žalba Agenciji za zaštitu ličnih podataka i slobodan pristup informacijama, u roku od 15 dana od dana prijema ovog rješenja, a preko ovog organa.

Ovlašćeno lice za vođenje postupka

Aida Ćekić

Izvršni direktor

Jonuz Mujević

Photo 9: Response of Monteput regarding loan with IRF

Finally, the value of additional work will be increased by the cost of construction of connecting roads at Veruša and Mateševo, whose costs have been unofficially estimated at around five million Euros. [41]

[41] Daily Dan reported that, according to construction experts, the construction of these roads should cost around €5 million. Dan: Zaboravili i priključne puteve za petlje na Veruši i Mateševo, 25.09.2019 <https://www.dan.co.me/?nivo=3&rubrika=Vijest%20dana&datum=2018-09-25&clanak=664334>
Accessed: 25.10.2019.

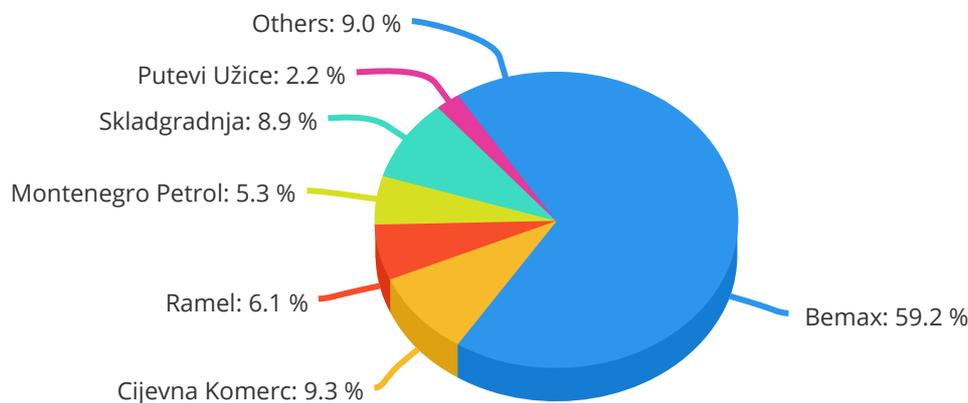


Subcontractors

When the Chinese and the Government of Montenegro signed a contract for the design and construction of the Bar - Boljare highway, Smokovac Mateševo section, CRBC committed to leave at least a third of the work to subcontractors. [42] As the original value of this section was estimated at around €810 million, the subcontractors were supposed to get at least around €240 million.

However, according to data obtained through free access to information, **the subcontractors have contracted with the contractor works of approximately € 400 million, or nearly half of the total value of this section** [43] (Graph 6).

Value of contracted works of the subcontractors



Graph 6: Value of contracted works of the subcontractors, Smokovac Mateševo section Source: Monteput

Bemax received most money, close to € 237 million, i.e. more than all other subcontractors together. It is followed by “Cijevna Komerc”, which was awarded works worth around € 37 million. They are followed by “Skladgradnja” with approximately € 36 million and “Ramel” with approximately €25 million, while Montenegro Petrol contracted over € 20 million, and “Putevi a.d. Užice” less than €9 million.

[42] Contract on design and construction of the Bar - Boljare highway, section Smokovac - Mateševo, sub clause 4.4

[43] We got all the amounts stated on the contracted works of subcontractors from the contract abstracts that CRBC had contracted with the subcontractors. On the basis of the Law on Free Access to Information, MANS received copies of these abstracts from the state-owned company Monteput. Request numbers: 18/123299-123303 (19.06.2018), 18/117998-118007 (26.01.2018), 18/117947-117952 (29.01.2018), 17/116457-116461, 17/116452 -116456, 17/116412-116416, 17/116489-116493, 17/116467-116471, 17/116422-116426 (21.12.2017), 17/116592-116601, 17/116532-116541 (15.01.2018), 17/116567-116576 (25.12.2017), 18/124055-124059 (07.08.2018), 18/118379-118383 (26.02.2018), 18/120141, 18/120162- 120163 (26.03.2018), 18/121436-121440 (19.04.2018), 18/122084-122086 (18.05.2018), 18/125302-125306 (19.11.2018), 18 / 124755-124759, 18/124742-124746 (19.10.2018), 18/125760-125764 (10.01.2019), 19/125830-125834 (30.01.2019), 19/126274-126278 (18.02.2019), 19/127501-127505 (04/04/2019), 19/128908 (07/08/2019).



Subcontractors

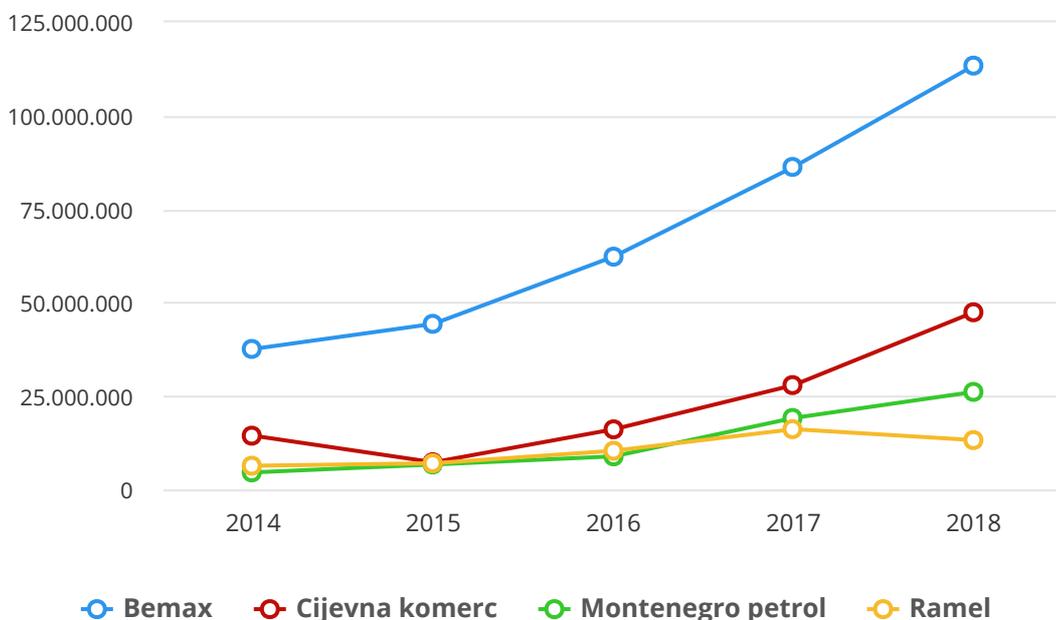
INCOME OF THE LARGEST SUBCONTRACTORS

According to financial statements of the largest subcontractors, rise in their operating income has been more than impressive during the construction of the highway (graph 7).

Last year, "Montenegro Petrol" had five times higher income than in 2014, "Bemax" and "Cijevna komerc" tripled their income, while "Ramel" doubled its income. [44]

However, it is not possible to determine how much of their income comes from the highway and how much from other jobs. CRBC does not have this type of data in its reports and subcontractors are not required to make balances based on specific projects.

Operating income of subcontractors



Graph 7: Operating income (in Euros) of the largest subcontractors from 2014 to 2018.
Source: Annual Audit and Financial Statement of the Bemax company, Tax Administration

Only the audit reports of subcontractors "Montenegro petrol" and "Ramel" contain more detailed information. [45] From 2016 to the end of 2018, "Ramel" received just under € 9 million from this project. In 2017 and 2018, Montenegro petrol generated a total revenue of around € 22 million. For Bemax as the largest subcontractor this type of data cannot be found, while other subcontractors do not have audit reports.

[44] "Skladgradnja" is a company that contracted highway works worth almost € 36 million, but has reported just over half a million Euros in operating income during this time. There are no reports from this company for 2018 on the Taxis portal, and at MANS's request to the Tax Administration to provide us with the company's financial statements for 2018, we received a response that "Skladgradnja" did not submit financial statements. If we take into account the research of MANS published in the daily "Dan", we can question the further work of this company on the section Smokovac - Mateševo.
Dan: Optuženima za malverzacije Vlada dala posao od 42 miliona eura, date: 27.11.2018 (<https://www.dan.co.me/?nivo=3&rubrika=Vijest%20dana&clanak=672881&datum=2018-11-27>), Accessed: 01.10.2019
[45] According to the Law on Free Access to Information, MANS requested from the Tax Administration the audit of the two companies. The request's numbers are 19/128110 (07/17/2019) and 19/128128 (04/06/2019).



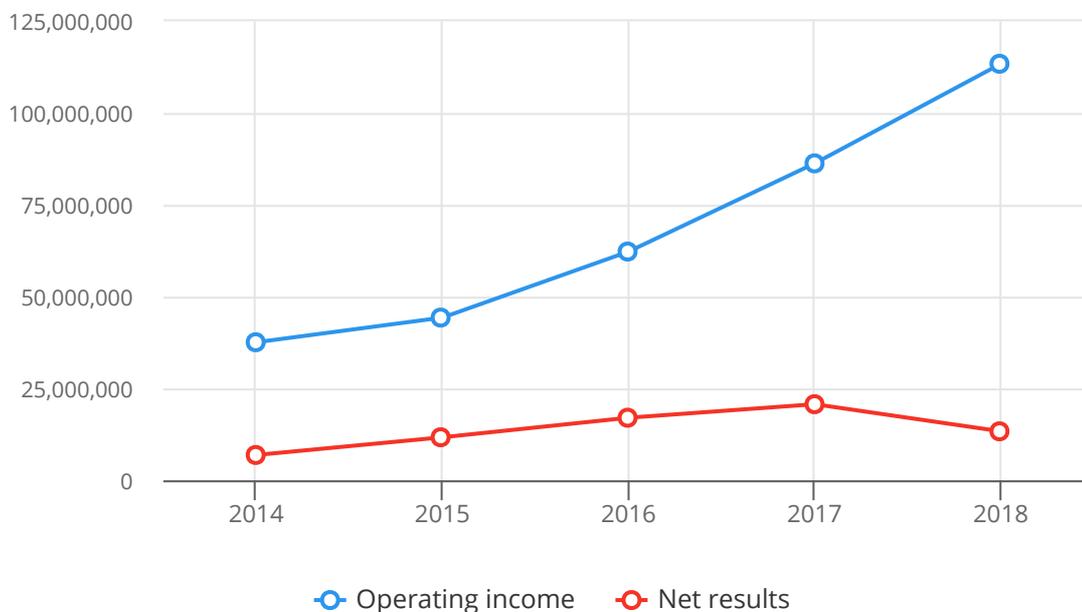
Subcontractors

CASE STUDY: "BEMAX"

In four years, "Bemax" has tripled its operating income and reported almost double the profit. In 2014, it generated operating income of around 38 million, and in 2018 it generated as much as €113 million. [46] The net result increased only 93%, from around 7 million in 2014, to more than 13 million in 2018. In Graph 8 we also showed the difference in the trend between operating income and net results.

The growth dynamics of this operating income coincided with the dynamics of highway works. Namely, in 2014 the contract between the Government and CRBC was signed, but it was not until 2015 that construction began, so in that year the subcontractors signed the first contracts with the contractor. Most contracts and annexes between contractors and subcontractors were signed in 2015, 2016 and 2017.

Operating income and Net results



Graph 8: Trend in operating income and net profit (in Euros) of the largest subcontractor on the highway from 2014 to 2018. Source: Annual Audit and Financial Statements of Bemax LLC, Tax Administration (Taxis portal)

Last year, Bemax's income grew, but net profit was lower than in 2017 (Table 3), as there was a significant increase in expenses. In other words, operating income jumped by around €27 million and operating expenses increased by almost € 34 million. As a result, **in 2018 Bemax paid a third less income tax than in 2017.** [47]

Year	2014	2015	2016	2017	2018
Income tax	689,111	1,171,828	1,737,905	2,297,831	1,666,124

Table 3: Income tax per years, in Euros. Source: Annual Audit Reports and Financial Statements of Bemax LLC, Tax Administration

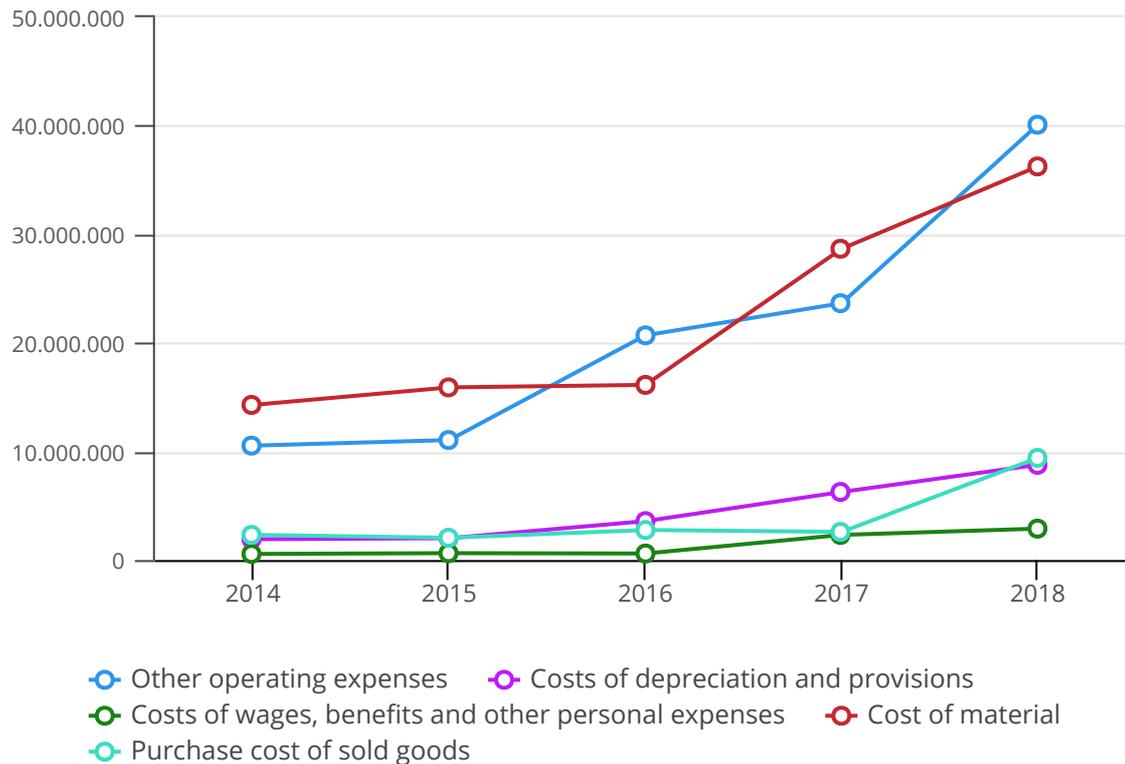
[46] We have obtained information on operating income from the financial statements of the subcontractors listed on <https://eprijava.tax.gov.me/TaxisPortal>

[47] Income tax in Montenegro during this period did not change, and amounted to 9%.



Subcontractors

Operating expenses – Bemax LLC



Graph 9: Overview of individual operating expenses.
Source: Financial statements of Bemax LLC, Tax Administration website

The most significant growth was seen in the category of other operating expenses, from around 24 million in 2017, to 40 million in 2018. Of this, as much as € 21 million is the cost of construction site services, i.e. the subcontractors that Bemax is hiring for ongoing projects, and the costs in this category have increased by € 10 million compared to 2017 (Graph 9).

Rental costs have increased over four million Euros, to about 13 million. According to the audit report, these costs primarily include the lease of construction equipment, machinery and vehicles. The management report on the work of this company states that the necessary equipment for construction works is rented from "Genex.me" LLC. [48]

Thus, during 2018, Bemax transferred € 34 million to other companies that performed works on its behalf or rented machines to it.

The growth of cost of materials, which in 2018 amounted to around € 36 million, which is more than € 7 million more than in 2017, is easily noticeable. The most dominant costs are of basic material, which were around € 27 million in 2018, which is an increase of over € 5 million compared to the previous year. Within the cost of materials, the share of fuel and oil costs is also noticeable, since over € 8 million was allocated for this purpose in 2018, i.e. around € 2 million more than in 2017.

Data from the financial statements show that there was a significant increase in the cost of goods sold. This item in 2018 was around €9.4 million and was €6.8 million higher than in the previous year when it was €2.6 million. However, at the same time, revenues from the sale of products and goods increased by € 9.5 million (Photo 10).

[48] Bemax Management Report for 2018, page 4.



Subcontractors

5. PRIHODI OD PRODAJE

	Iznosi u EUR	
	Godina koja se završava 31. decembra	
	2018.	2017.
Prihodi od prodaje proizvoda i robe		
- prodaja stanova	13.550.871	4.219.287
- prodaja betona	2.708.274	2.752.489
- prodaja materijala	323.705	30.876
	<u>16.582.850</u>	<u>7.002.652</u>

Photo 10: Revenues from the sale of products and services of the Bemax company in 2018 and 2017.
Source: Audit report of Bemax LLC for 2018 (Tax Administration)

That is, in 2018, Bemax increased its sale of apartments, i.e. business that has nothing to do with the highway, for over €9 million euros and has a dominant share in total sale revenues. This leads to the conclusion that the apartments also had the largest share in the cost of goods sold, i.e. that part of the increase in costs does not relate to the construction of the highway.

The increase in business activity also led to an increase in the fixed assets of Bemax LLC. Therefore, an increase in depreciation is also expected. The total amount for depreciation and provisioning costs in 2018 was approximately € 8.8 million, and is around € 2.5 million higher than in 2017. Of all the costs of depreciation and provisioning, provisions for the restoration of natural resources have the least share, since for this purpose, a provision of around € 6.5 thousand was made in 2018, while in 2017 around € 4.4 thousand was spent.

In the audit report of this company for 2018, we found that in 2018 Bemax had a cost of earnings, remuneration and other personal expenses [49] of slightly less than € 2.9 million, while on this basis in 2017, those costs amounted to €2.3 million.

In 2018, Bemax managed to generate around 113 million of operating income with a total cost of employees of around € 2.9 million. Although Bemax was the subcontractor for most of the highway works obtained by domestic companies that year, it had around 270 employees, 189 of its employees and an additional 80 hired through the agency. Costs for additional employees are unknown.

Prior to the start of construction of the highway (2014), Bemax had an average of 115 employees [50] and by the end of 2018 that number increased by 74 [51] workers, while for the same period, operating income tripled, i.e. increased by as much as € 76 million.

Therefore, either Bemax hired other companies to carry out most of its highway subcontracting work instead of it, by taking some of the profits for themselves, or that company did not report all of its employees.

[49] This item includes net earnings and contributions at the expense of the employee and the employer, service contract fees, as well as accommodation and meals on a business trip

[50] MANS is not in possession of the Bemax management report for this year, so we do not have information on the number of employees assigned to them by the labour agencies that year.

[51] Statistical annex of Bemax LLC for 2018, website of the Tax Administration.



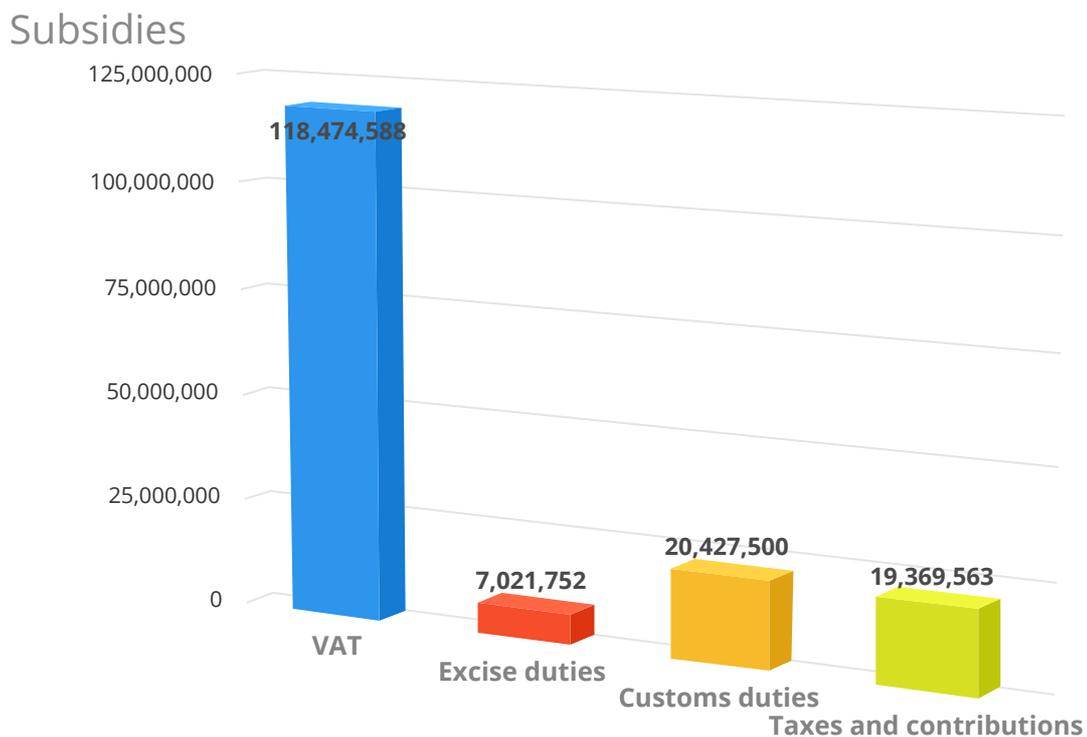
Subsidies

Contractor on the highway, Chinese company CRBC is exempt from: VAT, customs duties on building materials, equipment and facilities, taxes and contributions on earnings of foreign employees, income tax, as well as fees for the exploitation of quarries and fees for technical building blocks. [52] The Government stated that this would reduce the cost of constructing this section of the highway, and thus the loan, i.e. interest.

However, there is no clear overview of the amount of these subsidies, and government institutions provide completely different data.

Total subsidies, from the beginning of the construction of the highway to mid-2019, amount to over € 160 million, not including the value of building blocks, on which there is no information at all (Graph 10). This amount does not include taxes and contributions on earnings paid in China.

Official data show that the total amount of VAT exemptions was over 118 million, customs subsidies amounted to around twenty million while exemption of excise duties amounted to around seven million. Unpaid taxes and contributions for foreign workers paid in Montenegro are over 19 million.



Graph 10: Amounts of subsidies for highway construction.
Sources: Tax Administration and Customs Administration

[52] Article 14, 16, 17, 18 and 19 of the Law on the Bar Boljare Highway and Article 21 of the Contract on Design and Construction for the Bar - Boljare Highway, section Smokovac - Uvač - Mateševo, sub-clause 1.15.



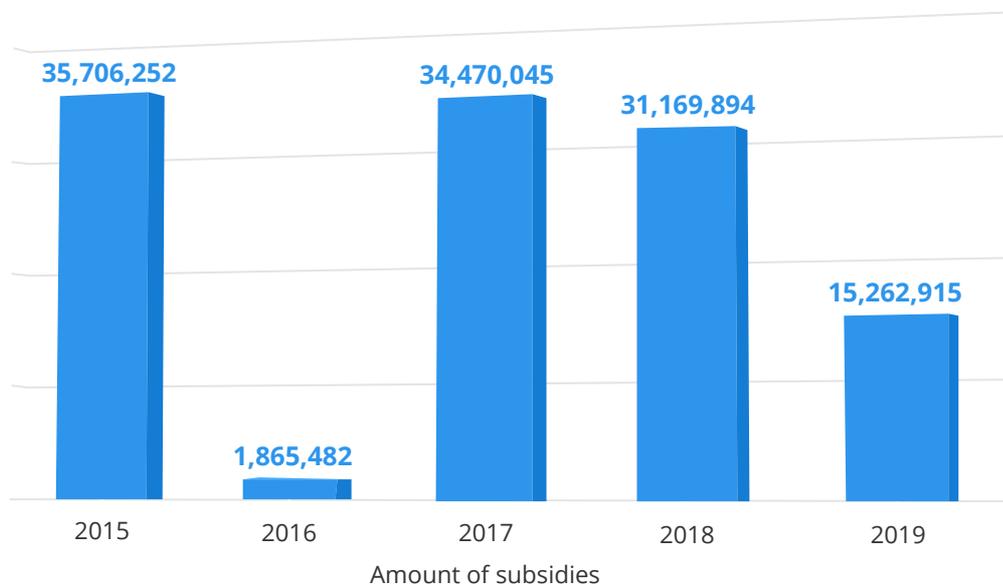
Subsidies

VALUE ADDED TAX

Highway contractors, as well as subcontractors, are exempt from VAT. [53] According to the Tax Administration [54], the total amount of VAT subsidy for the construction of the first section of the highway, as of August 2019, amounts to around €118 million.

According to official data, the largest amount of VAT subsidies was recorded in 2015, when they amounted to around €36 million, and least the following year when they amounted to only around €2 million (Graph 11).

Unpaid VAT



Graph 11: Exemption from customs duties for contractors and subcontractors, by years, in Euros (ending with August 2019). Source: Tax Administration

The Tax Administration did not provide us with separate information on VAT subsidy for CRBC and subcontractors, so the graph shows aggregate data.

[53] Law on the Bar - Boljare Highway (Official Gazette 52/14), Article 16: Value added tax shall be paid at the rate of 0% for the sale of products and services intended for the construction of the highway realized by the contractor, or this realization is carried out on behalf of the contractor of the highway construction works.

[54] On the basis of the Law on Free Access to Information, MANS requested from the Tax Administration the amounts of VAT exemptions, pursuant to the Law on the Highway. MANS numbers 18/124919-124922 (26.11.2018), 19/125768 (11.02.2019), 19/127536-127537 (10.05.2019), 19/127756 (24.06.2019) and 19/128911 (09/09/2019)



Subsidies

CUSTOMS DUTIES

Customs subsidies are around € 20 million, but the exact amount is unknown, as the Customs Administration withholds information or submits information completely different from data published by other institutions.

Since the start of the highway construction, MANS has repeatedly tried to obtain accurate information on the contractor's exemption from customs duties.

Only once, at the end of 2016, did the Customs Administration publish the customs declarations and check marks for the highway filed in the second part of that year. [55] Immediately after that, the institution changed the practice and declared the information trade secret [56], stating that the customs payer had not authorized to release the data and that there was no prevailing public interest in disclosing it (Photos 11 and 12).

MINISTARSTVO FINANSIJA
UPRAVA CARINA

03/03 Broj D-13440/9
VG

Podgorica, decembar 01 2016.godine
VG

Uprava carina postupajući po zahtjevu NVO „MANS“ iz Podgorice broj 16/102691-102695 od 20.10.2016. godine, radi dostavljanja informacija, na osnovu člana 30 i člana 31 Zakona o slobodnom pristupu informacijama („Sl. List CG“ broj 44/12) donosi,

RJEŠENJE

Dozvoljava se NVO „MANS“ iz Podgorice pristup informacijama/dokumentima koje se nalaze u posjedu Uprave carina, a koje se odnose na dostavljanje kopije:

- svih zahtjeva za oslobađanje iz čl. 21 Zakona o autoputu Bar – Boljare koji su podnijeti Upravi carina u toku septembra 2016. godine;
- svih zahtjeva za oslobađanje iz čl. 21 Zakona o autoputu Bar – Boljare koji su podnijeti Upravi carina u toku avgusta 2016. godine;
- svih zahtjeva za oslobađanje iz čl. 21 Zakona o autoputu Bar – Boljare koji su podnijeti Upravi carina u toku jula 2016. godine;
- svih zahtjeva za oslobađanje iz čl. 21 Zakona o autoputu Bar – Boljare koji su podnijeti Upravi carina u toku juna 2016. godine;
- svih zahtjeva za oslobađanje iz čl. 21 Zakona o autoputu Bar – Boljare koji su podnijeti Upravi carina u toku maja 2016. godine;

Pristup traženim informacijama/dokumentima ostvaruje se dostavom kopije istih na adresu podnosioca zahtjeva – Ul. Dalmatinska br. 188, Podgorica, nakon dostavljanja dokaza o uplati troškova postupka.

*Photo 11: Allowed access to import information.
Source: Customs Administration*

CRNA GORA
MINISTARSTVO FINANSIJA
UPRAVA CARINA

03/03 Broj: D-15047/2
VG

Podgorica, decembar 29 2017.god.

Uprava carina postupajući po zahtjevu NVO „MANS“ iz Podgorice broj 17/116432-116437 od 20.12.2017. godine, radi dostavljanja informacija, na osnovu člana 30 i člana 31 Zakona o slobodnom pristupu informacijama („Sl. list CG“ broj 44/12 i 30/17) donosi,

RJEŠENJE

Odbija se zahtjev za slobodan pristup informacijama NVO „MANS“ iz Podgorice, broj 17/116432-116437 od 20.12.2017. godine, koji se odnosi na dostavljanje kopije:

- svih zahtjeva za oslobađanje iz člana 21 Zakona o autoputu Bar – Boljare koji su podnijeti Upravi carina u toku januara 2017. godine;
- svih zahtjeva za oslobađanje iz člana 21 Zakona o autoputu Bar – Boljare koji su podnijeti Upravi carina u toku februara 2017. godine;
- svih zahtjeva za oslobađanje iz člana 21 Zakona o autoputu Bar – Boljare koji su podnijeti Upravi carina u toku marta 2017. godine;
- svih zahtjeva za oslobađanje iz člana 21 Zakona o autoputu Bar – Boljare koji su podnijeti Upravi carina u toku aprila 2017. godine;
- svih zahtjeva za oslobađanje iz člana 21 Zakona o autoputu Bar – Boljare koji su podnijeti Upravi carina u toku maja 2017. godine;
- svih zahtjeva za oslobađanje iz člana 21 Zakona o autoputu Bar – Boljare koji su podnijeti Upravi carina u toku juna 2017. godine;

Troškova postupka nije bilo.

*Photo 12: Rejected request for information on import.
Source: Customs Administration*

After that, we tried to obtain basic statistics on customs subsidies, but the Customs Administration persistently claimed that they did not have the information we were looking for, that is, they stated that we asked them to make new information that they did not have.

However, in July this year, the Customs Administration provided data to the daily Dan, which stated that CRBC had been exempted from customs duties in the amount of over € 20 million [57] since the beginning of the works (Photo 13).

Kinezima oprostili 24 miliona carina i akciza

CRBC, kao glavni izvođač radova, od 2015. godine do sada je oslobođen plaćanja 24 miliona eura za carine na uvoz i akcize, od čega se 20,4 miliona odnosi na carinu, a 3,6 miliona na akcizu

Photo 13: Headline in the daily "DAN", which states the amount of customs exemption of CRBC

[55] MANS' requests for free access to information to the Customs Administration, MANS' numbers 16/102691-102694. Check stamps are type data on the value of goods exempt from customs duties, while customs declarations contain information on the value of goods being imported, suppliers and dates of import.

[56] MANS' requests for free access to information to the Customs Administration, MANS' numbers 17/116432-116437

[57] Daily Dan, Kinezima oprostili 24 miliona <https://www.dan.co.me/?nivo=3&rubrika=Vijest%20dana&datum=2019-05-24&clanak=697388>, accessed: 29.09.2019



Subsidies

When we requested that the institution provide us with the same information it provided to that daily newspaper, we received a completely different information that CRBC was exempted from paying **less than two million Euros in customs duties** (Photo 14).



CRNA GORA
UPRAVA CARINA

03/03 Broj: D-8383/3

Podgorica, 01.06.2019 god.

„MREŽA ZA AFIRMACIJU NEVLADINOG SEKTORA - MANS“

ul. Dalmatinska br.188
Podgorica

Predmet: Zahtjev NVO „MANS“ br. 128827 od 18.07.2019. godine

Postupajući po vašem zahtjevu za slobodan pristup informacijama br. D-8383/1 od 18.07.2019. godine, u prilogu akta dostavljamo rješenje Uprave carina br. D-8383/2 od 31.07.2019. godine, kojim se dozvoljava pristup traženim informacijama.

S tim u vezi, dostavljamo vam podatke o oslobođenju od plaćanja carine za kinesku kompaniju CRBC, izvođača radova na izgradnji prioritetne dionice autoputa Bar - Boljare, Smokovac – Uvač – Mateševo, po godinama:

2015. g. – 657.956,73 €;
2016. g. – 66.096,52 €;
2017. g. – 661.912,80 €;
2018. g. – 476.616,09 €;
2019. g. – 70.474,39 € (na dan 18.07.2019. godine).



Photo 14: Customs exemption for CRBC. Source: Customs Administration

Not only does this data not coincide with the information provided to the media by the Customs Administration, but also with the response of the Minister of Finance, Darko Radunović, to the parliamentary question (Photo 15), in which he states the data on the CRBC's exemption from customs duties.

The document states that from the start of the highway works until December 1, 2018, the total exemption on imports, which is the sum of VAT, customs duties and excise duties, amounted to around € 37 million. It is also noted that tax exemptions for VAT in the domestic traffic amounted to a total of around € 76 million.



Subsidies

According to the Ministry's data for 2017, total VAT exemptions on import in the domestic traffic as well, plus customs duties, amounted to € 37.2 million. On the other hand, data from the Tax Administration show that in that year the total VAT exemption was €34.5 million. Thus, a comparison of the information provided by these institutions shows that the customs clearance in 2017 was around € 2.7 million. On the other hand, the Customs Administration, in the information provided to MANS, states that the subsidy in that year was around € 660 thousand i.e. four times less.

Zakonom o autoputu Bar –Boljare i Ugovorom o projektovanju i izgradnji autoputa Bar- Boljare, Dionica : Smokovac – Uvač – Mateševo („Službeni list CG“, broj 54/14) propisane su vrste poreskih oslobođenja za izvođače radova na autoputu Bar-Boljare. U cilju implementacije odredbi navedenih propisa ovo ministarstvo je donijelo Pravilnik o postupku oslobađanja od plaćanja poreskih i carinskih obaveza za izvođenje radova na izgradnji autoputa Bar- Boljare („Sl. list CG“, br. 3/15, 13/15 i 31/15).

Shodno navedenim propisima PDV se plaća po stopi od 0% na promet proizvoda i usluga namjenjenih za izgradnju autoputa koje realizuje izvođač radova(kompanija CRBC). ili se ta

In the import procedure, only the contractor is exempted from paying of VAT and customs taxes...

(izlazni PDV) i na ispostavljene situacije za izvršene radove na autoputu (izlazni PDV). Pravilnikom je usvojen model po kojem izvođač radova koristi kontrolnu markicu da bi ostvario pravo na oslobođenje prilikom izvršenih nabavki proizvoda i usluga, koje služe za izgradnju autoputa.

Ugovorom propisano da je za angažovanje podizvođačkih radova na gradilištu, kao i poslove projektovanja neophodna prethodna saglasnost Ministarstva saobraćaja i pomorstva.

Podaci o manje naplaćenim budžetskim prihodama, korišćenjem prava iz čl.16 do 21 Zakona o autoputu Bar-Boljare:

POREZ NA DOBIT: CRBC je za 2015, 2016 i 2017 god. imao gubitak.

PORESKA OSLOBOĐENJA PRILIKOM UVOZA (*CARINE, PDV-a I AKCIZE*) zaključno sa 1.12.2018. godine

Uvozne dažbine	2015 (mil €)	2016 (mil €)	2017 (mil €)	2018 (mil €)	ukupno (mil €)
PDV+carina	9,48	4,83	10,84	9,02	34,17
akcize	-	0,24	0,96	1,27	2,47
Ukupno	9,48	5,07	11,8	10,29	36,64

PORESKA OSLOBOĐENJA (*PDV*) U UNUTRAŠNJEM PROMETU

PDV – unutrašnji promet	2015 (mil €)	2016 (mil €)	2017 (mil €)	2018 (mil €)	ukupno (mil. €)
PDV	8,13	14,03	26,4	27,55	76,11
Ukupno	8,13	14,03	26,4	27,55	76,11

Photo 15: Minister of Finance's response to the parliamentary question on subsidies for highway construction, 13.12.2018. Source: Parliament of Montenegro



Subsidies

SUBSIDIES FOR EXCISE TAXES ON FUEL

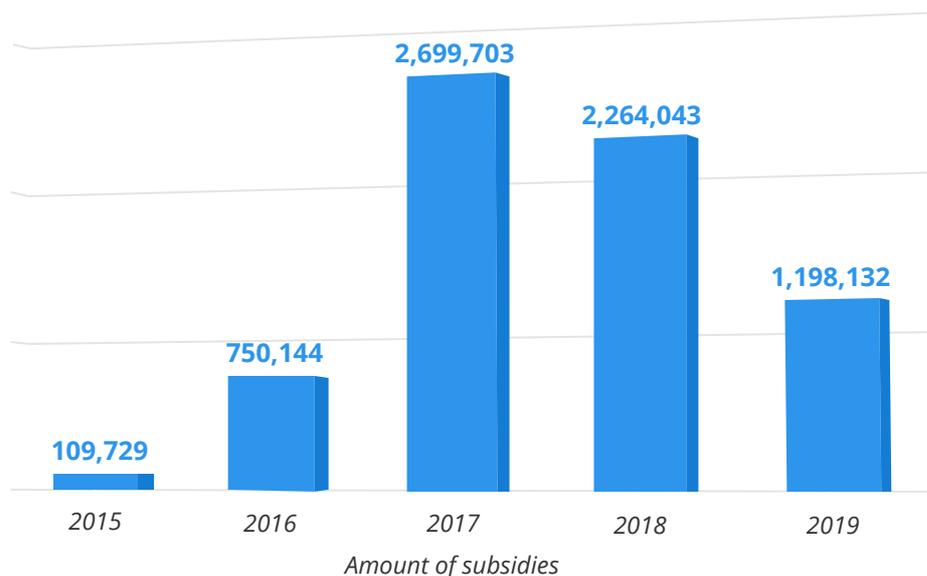
Subsidies for excise taxes on fuel were around seven million Euros, but these data are also not reliable, because the Customs Administration provided us with contradictory information. According to regulations, a thousand liters of fuel cost CRBC around €270 less and subcontractors around €180 less than other customers.

The contract for the design and construction of the Bar - Boljare highway, section Smokovac - Uvač - Mateševó, states that the contractor is entitled to a refund of paid excise tax on fuel above the amount of €169 per thousand liters. [58] The Law on Excise Taxes stipulates that the subcontractor shall also be entitled to a refund of excise tax paid above the amount of € 259 per thousand liters. [59]

Since the law stipulates that the amount of excise tax on motor fuels is €440 per thousand, subcontractors are entitled to a refund of excise tax of around 18 Euro cents per liter, while CRBC is entitled to a refund of excise tax of around 0.27 Euro cents per fuel liter. [60]

According to the information received by MANS from the Customs Administration, from the beginning of the construction of the Bar - Boljare highway until the end of the first half of 2019, a total excise tax refund of around € 7 million [61] was made (Graph 12).

Subsidies on excise tax on fuel



Graph 12: Subsidies on excise tax on fuel in Euros, by years. Source: Customs Administration

[58] Sub-clause 1.15

[59] Article 30 of the Law on excise taxes; (7) During the purchase of gas oils used as motor fuel for industrial and commercial purposes, the contractor of works that uses these oils to perform the works on the Bar-Boljare Highway Project shall be reimbursed a part of the excise above the amount of €169 per 1000 litres, and the subcontractor exercises the right to refund an excise part above the amount of € 259 per 1,000 litres.

[60] According to Article 52 of the Law on excise taxes, the amount of excise tax on motor fuels is €440 per thousand liters, thus the contractor is reimbursed €271 per thousand liters, i.e. 27.1 cents per liter. In the case of subcontractors, they are reimbursed € 181 per thousand liters, i.e. 0.181 cents per liter.

[61] On the basis of the Law on Free Access to Information, MANS requested information from the Customs Administration on the total amount of excise tax on fuel. Request number 18/125480-125484 (response date 12/17/2018), 19/126221 (response date 01/03/2019), 19/127552-127553 (response date 22/04/2019), 19/127743 (response date 16.05.2019), 19/128977 (response date 01/08/2019)



Subsidies

The highest refunds of excise tax on fuel were recorded in 2017 when around €2.7 million were repaid and in 2018 when around €2.26 million were repaid to contractors and subcontractors. In 2015, a minimum refund amount of € 109 thousand was approved.

However, the Customs Administration gave us completely different data on the refund of excise taxes on fuel.

In response to one request, it provided us with a spreadsheet of the amounts by companies. However, in a number of other replies, that institution gave us completely different data on the amounts of excise tax refunds.

For example, the Customs Administration provided us with information that in January 2019 companies were refunded € 165 thousand, while in another response, in a tabular view, it stated that CRBC was refunded € 580 thousand that month, and a total of around €165 thousand was refunded to domestic companies.

In February, the data in both answers coincide, stating that almost € 170,000 was refunded to "Bemax".

In March, the data are again different - the table shows that in that month there was no refunding to any company, while in another response it was stated that in that period around €330 thousand were refunded.

The data also differ in April, as refund to "Montenegro petrol" was not included in the response in which the total amount was given.

For May, completely incomparable data were given, as one response states that almost €148 thousand was refunded to CRBC and an additional €16 thousand to "Montenegro petrol", while another response states that a total of around €82 thousand was refunded.

Postupajući po vašem zahtjevu za slobodan pristup informacijama br. 19/126221 od 01.02.2019. godine, u prilogu akta dostavljamo rješenje Uprave carina br. D-897/4 od 28.02.2019. godine kojim se dozvoljava pristup traženim informacijama.

S tim u vezi obavještavamo vas da je u januaru 2019. godine, po osnovu povraćaja dijela plaćene akcize na gorivo, imao cima prava za izgradnju autoputa Bar – Boljare vraćeno 165.440,28 €.



*Photo 16: Data on refunding of excise tax on fuel for January 2019,
Source: Response of the Customs Administration to request for information No. 19/126221 of 03/01/2019*



Subsidies

Postupajući po vašem zahtjevu za slobodan pristup informacijama br. 129451 od 24.09.2019. godine, u prilogu akta dostavljamo rješenje Uprave carina br. D-10943/7 od 21.10.2019. godine, kojim se dozvoljava pristup traženim informacijama.

S tim u vezi obavještavamo vas da u februaru 2019. godine, glavnom izvođaču na projektu autoputa Bar – Boljare, kineskoj kompaniji „CRBC“, nije bilo povraćaja akcize na gorivo, dok je kompaniji „BEMAX“ vraćeno 169.757,61€.



Photo 17: Data on refunding of excise tax on fuel for February 2019,

Source: Response of the Customs Administration to request for information No. 19/129451 of 22.10.2019

Postupajući po vašem zahtjevu za slobodan pristup informacijama br. 19/127743 od 24.04.2019. godine, u prilogu akta dostavljamo rješenje Uprave carina br. D-4435/3 od 15.05.2019. godine kojim se dozvoljava pristup traženim informacijama.

S tim u vezi obavještavamo vas da je u martu 2019. godine, po osnovu povraćaja dijela plaćene akcize na gorivo, imao prava za izgradnju autoputa Bar – Boljare vraćeno 330.407,46 €.



Photo 18: Data on refunding of excise tax on fuel for March 2019,

Source: Response of the Customs Administration to request for information No. 19/127743 of 16.05.2019

Predmet: Zahtjev NVO „MANS“ br. 128977 od 26.07.2019. godine

Postupajući po vašem zahtjevu za slobodan pristup informacijama br. D-8806/1 od 26.07.2019. godine, u prilogu akta dostavljamo rješenje Uprave carina br. D-8806/2 od 31.07.2019. godine, kojim se dozvoljava pristup informacijama koje se odnose na iznos povraćaja akciza na gorivo po osnovu Zakona o autoputu, pojedinačno za mjesece april, maj i jun 2019. godine.

S tim u vezi obavještavamo vas da je, po ovom osnovu, u aprilu mjesecu 2019. godine ukupno vraćeno 619.767,83 €, u maju 2019. godine vraćeno je ukupno 82.516,59 €, dok u junu mjesecu 2019. godine nije bilo donijetih rješenja o povraćaju dijela plaćene akcize ni prema izvođačima niti prema podizvođačima radova na autoputu Bar - Boljare.



Photo 19: Data on refunding of excise tax on fuel for April, May and June 2019,

Source: Response of the Customs Administration to request for information No. 19/128977 of 01.08.2019



Subsidies

Predmet: Zahtjev NVO „MANS“ br. 129465 od 24.09.2019. godine

Postupajući po rješenju Uprave carina br. D-10962/7 od 21.10.2019. godine, u prilogu akta dostavljamo podatke koji se odnose na povraćaj akciza na gorivo po osnovu Zakona o autoputu, za period od 01.07.2018. do 31.08.2019. godine, i to:

	CRBC	Bemax	Cijevna Komerc	Montenegro petrol
Jul 2018.g.	Nije bilo povraćaja	Nije bilo povraćaja	Nije bilo povraćaja	Nije bilo povraćaja
Avgust 2018.g.	379.301,27€	Nije bilo povraćaja	Nije bilo povraćaja	Nije bilo povraćaja
Septembar 2018.g.	Nije bilo povraćaja	Nije bilo povraćaja	Nije bilo povraćaja	Nije bilo povraćaja
Oktoibar 2018.g.	Nije bilo povraćaja	Nije bilo povraćaja	Nije bilo povraćaja	Nije bilo povraćaja
Novembar 2018.g.	Nije bilo povraćaja	Nije bilo povraćaja	Nije bilo povraćaja	Nije bilo povraćaja
Decembar 2018.g.	Nije bilo povraćaja	Nije bilo povraćaja	Nije bilo povraćaja	Nije bilo povraćaja
Januar 2019.g.	580.687,16	Nije bilo povraćaja	110.073,13	55.367,15€

Februar 2019.g.	Nije bilo povraćaja	169.757,61	Nije bilo povraćaja	Nije bilo povraćaja
Mart 2019.g.	Nije bilo povraćaja	Nije bilo povraćaja	Nije bilo povraćaja	Nije bilo povraćaja
April 2019.g.	412.132,77€	207.635,06€	Nije bilo povraćaja	12.131,96€
Maj 2019.g.	147.869,82	Nije bilo povraćaja	Nije bilo povraćaja	16.717,24€
Jun 2019.g.	Nije bilo povraćaja	Nije bilo povraćaja	Nije bilo povraćaja	Nije bilo povraćaja
Jul 2019.g.	Nije bilo povraćaja	153.388,09€	109.242,55€	Nije bilo povraćaja
Avgust 2019.g.	Nije bilo povraćaja	Nije bilo povraćaja	Nije bilo povraćaja	Nije bilo povraćaja



Photo 20: **Data on refunding of excise tax on fuel from July 2018 to end of August 2019,**
Source: Response of the Customs Administration to request for information No. 19/129465 of 22.10.2019



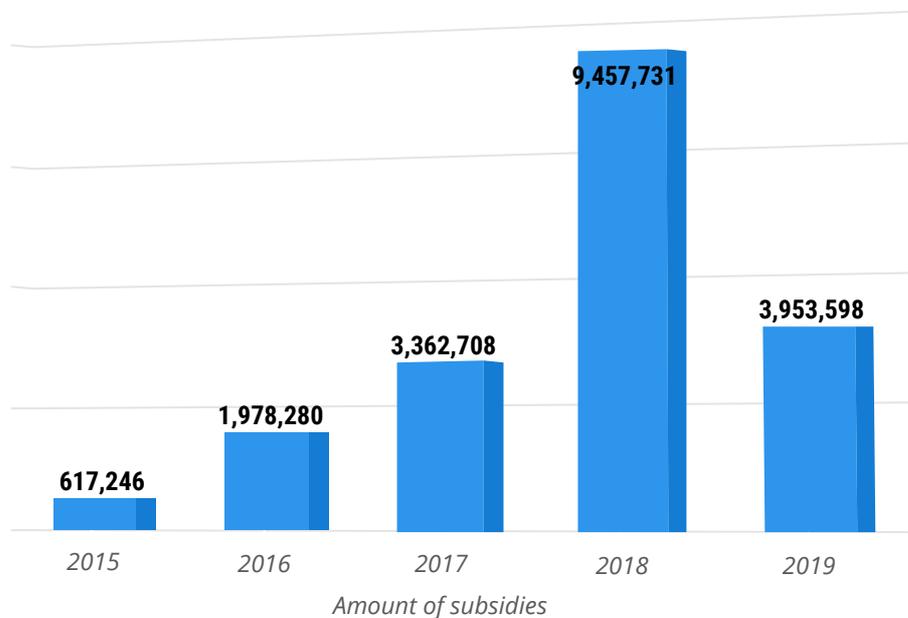
Subsidies

UNPAID TAXES AND CONTRIBUTIONS

According to the Tax Administration, CRBC is exempted from paying around € 19 million on taxes and contributions on foreign workers' earnings. However, the total amount of exemption on this basis is not known, since only part of the wages paid in Montenegro is included in the official calculation. [62]

The contractor is exempt from the income tax, as well as compulsory social security contributions for all employees who do not have Montenegrin citizenship or do not have residence in Montenegro. [63] Data from the Tax Administration show that the total amount of exemptions on this basis, as of August 2019, is over € 19 million [64] (Graph 13).

Unpaid taxes and contributions



Graph 13: Exemption from taxes and contributions in Euros. Source: Tax Administration

Highest exemption from taxes and contribution to foreign workers' salaries was recorded in 2018, when it amounted to € 9.45 million. The lowest amount was recorded in 2015, amounting to € 617 thousand.

[62] For more information on earnings, see Chapter 6 Employment

[63] Law on the Bar - Boljare Highway, Article 17: Tax on personal income that is gained in Montenegro shall not be payable by the staff of the Contractor who are not Montenegrin nationals or residents of Montenegro and who gain income from the work on the Highway construction. Article 18: Expatriate staff of the Contractor being engaged for the construction of the Highway shall be exempted from payment of contributions for mandatory social security.

[64] On the basis of the Law on Free Access to Information, MANS requested information from the Tax Administration on the amounts of taxes and contributions unpaid. Request numbers: 18/125449/125452 (01/02/2019), 19/127536/127537 (10/05/2019), 19/129079 (09/09/2019).



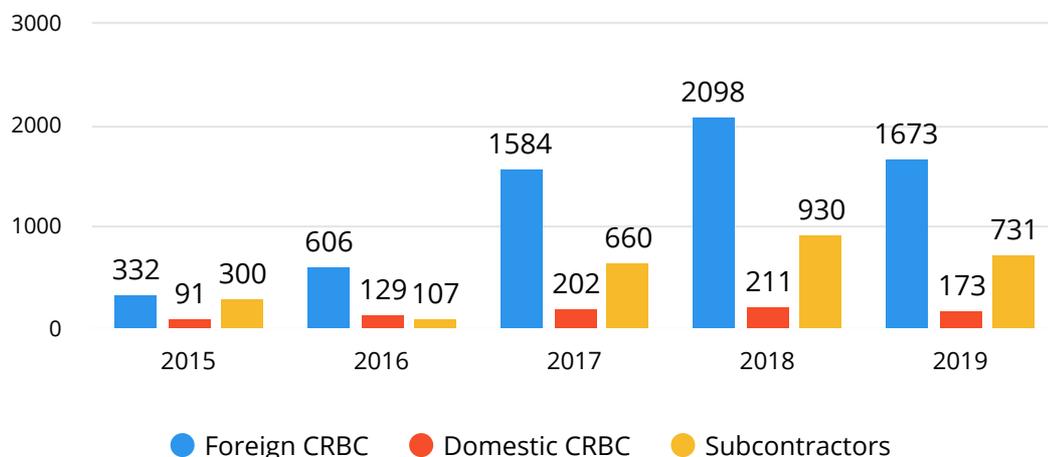
Employment

According to official figures, 1.7 thousand Chinese workers and around 900 domestic workers, mostly contracted by subcontractors, were hired to build the highway this year. The number of employees from Montenegro on this project is probably even smaller, because it is unknown how many workers from the neighbouring countries were hired by subcontractors.

Number of highway construction staff

Monteput data [65] shows that in 2015, the average number of all employees [66] on the construction of the first section of the highway was 723. In 2016, the average number of workers increased to 842, and in 2017 to 2,446. [67] Last year, an average of 3,239 employees worked on the highway, and by the end of August this year, an average of 2,578 employees were engaged in the project (Graph 14).

Average number of employees on the construction of the highway



Graph 14: Average number of foreign and domestic employees employed per month by CRBC and subcontractors.
Source: Monteput

In 2015 alone, more domestic than Chinese workers worked on the highway, but already in the following year, their number doubled, thus exceeding two thousand in 2018, and decreased to less than 1.7 thousand by the end of August this year.

Monteput's monthly data [68] show that the number of foreign workers employed by CRBC dropped sharply in early 2018, and especially in early 2019, as well as the number of employees of the subcontractors (Graph 15).

[65] On the basis of the Law on Free Access to Information, MANS received information from Monteput LLC Podgorica on the number of employees on the Bar - Boljare highway project. Request numbers: 18/125370-125373 (from 11/27/2018), 18/125737 (from 10/01/2019), 19/125869 (from 24/01/2019), 19/126242 (from 18/02/2019), 19/127497 (from 05/04/2019), 19/126242 (from 18.02.2019), 19/127497 (from 05.04.2019), 19/127751 (from 09.05.2019), 19/128979 (from 12.08. 2019).

[66] We got the average number of employees by collecting annual data on the number of employees and dividing them by the number of months in the year.

[67] Monteput's response do not contain data on the number of employees of subcontors in November and December 2016 and January 2017, while the average was calculated based on available data.

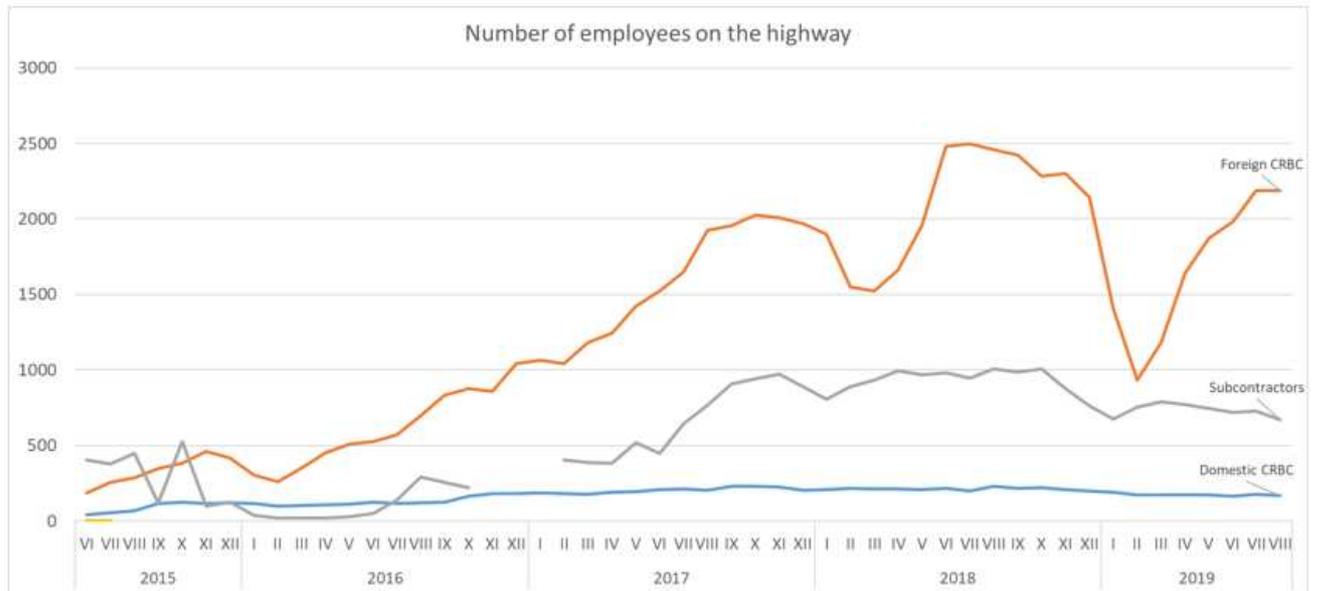
[67] U okviru odgovora Monteputa nedostaju podaci o broju zaposlenih kod podizvođača u u novembru i decembru 2016. i januaru 2017. godine, a prosjek smo računali na osnovu raspoloživih podataka.

[68] Monteput did not provide us with data on the number of employees with subcontractors for November and December 2016, as well as January 2017.



Employment

CRBC employed a small number of domestic workers and their numbers did not change much, after a slight increase in the initial years.



Graph 15: Number of foreign and domestic employees with contractors and number of employees with subcontractors.
Source: Monteput [69]

MANS does not have information on the structure of domestic and foreign employees with subcontractors on the highway.

It is interesting that, according to official data [70], Bemax company employed around 270 persons in all its projects last year [71], and the total number of domestic employees with all subcontractors on the highway was three times higher.

Thus, other subcontractors hired at least twice as many people as Bemax, which contracted works larger than all other subcontractors together. This may mean either that Bemax does not actually perform the highway works but rather hires its own subcontractors and takes some of the profits, or the employees of that company are not reported to the state.

[69] The Graph lacks data on the number of employees (November, December 2016 and January 2017) with subcontractors, as Monteput's response did not contain that data.

[70] Statistical annexes and management reports of Bemax LLC, website of the Tax Administration.

[71] According to official data from that company, in 2018, they employed 189 workers, and an additional 80 through a labour agency.



Employment

(Mis)matching of official data

According to data from CRBC's financial statements [72], in 2018, the company hired around 650 employees less than the official Monteput data show, which is in charge of managing the complete Bar-Boljare highway project on behalf of the state. [73]

However, the audit reports state that in 2018 CRBC spent more than € 2.5 million on hiring workers from outside sources, i.e. from 2016 to 2018, a total of around seven million Euros. We do not know the number of employees involved, or whether they are included in the average number of employees reported in the company's financial records.

According to CRBC's statistical annex, the average number of employees in that company in 2018 was around 1654 (Photo 21).

According to Monteput's data on the number of employees (Photos 22, 23 and 24), the average number of employees with contractors in that year was around 2,300. [74]

Moreover, according to Monteput, in each month of that year, the number of CRBC employees was higher than the average reported by that company in its financial statements.

STATISTIČKI ANEKS				Broj iskaza	
u periodu od 01.01.2018. do 31.12.2018. godine				108709/2018	
Popunjava pravno lice					
Matični broj: 03016480		Šifra djelatnosti: 4213			
Popunjava: Damir Krasnici					
Naziv: CHINA ROAD & BRIDGE CORPORATION D.O.O. PEKING, NR KINA - DIO STRANOG DRUŠTVA PODGORICA					
Sjedište: NOVA DALMATINSKA BB. , PODGORICA, CRNA GORA					
Grupa	Pozicija	Red. broj	Napomena	Tekuca godina	Prethodna godina
1	2	3	4	5	6
	Prosječan broj zaposlenih (ukupan broj zaposlenih krajem svakog mjeseca podijeljen sa brojem mjeseci)	001		1,654.00	1,610.00

Photo 21: Average CRBC staff in 2018. Source: CRBC's Statistical Annexes, Taxis Portal

Monteput provided us with data on the number of employees per month, gave part of the data in the form of a table (Photo 22), and for the remaining months provided us with specific information (Photo 23 and 24).

We calculated the average number of employees at the year-level by applying the arithmetic mean to the data on monthly number of employees that Monteput provided to us.

[72] The data is taken from the statistical annexes of this company, which we downloaded from Taxis portal of the Tax Administration.

[73] Monteput established a business unit to manage the Bar - Boljare highway construction project (35/14).

[74] We calculated the average number of employees by summing the total number of workers and dividing it by the number of months in the year.



Employment

STATUS ZAPOSLENIH KOD CRBC i PODIZVOĐAČA

Mjesec	Crnogorski državljani	Strani državljani	Ukupan broj zaposlenih kod CRBC	Podizvođači
2015				
JUN	39	184	223	406
JUL	54	256	308	376
AVGUST	66	285	351	448
SEPTEMBAR	116	346	462	119
OKTOBAR	126	380	506	526
NOVEMBAR	117	459	576	100
DECEMBAR	118	415	533	123
2016				
JANUAR	117	305	422	36
FEBRUAR	97	258	355	17
MART	102	350	452	17
APRIL	108	451	559	17
MAJ	112	510	622	30
JUN	123	528	651	48
JUL	117	568	685	138
AVGUST	121	696	817	290
SEPTEMBAR	123	832	955	256
OKTOBAR	165	874	1039	222
NOVEMBAR	179	860	1139	
DECEMBAR	181	1041	1222	
2017				
JANUAR	184	1063	1247	
FEBRUAR	181	1042	1223	405
MART	176	1181	1357	388
APRIL	189	1243	1432	381
MAJ	194	1423	1617	516
JUN	208	1521	1729	448
JUL	211	1651	1862	644
AVGUST	204	1925	2129	765
SEPTEMBAR	228	1956	2184	906
OKTOBAR	230	2025	2255	941
NOVEMBAR	223	2009	2232	973
DECEMBAR	201	1971	2172	889
2018				
JANUAR	207	1898	2105	808
FEBRUAR	214	1549	1763	890
MART	210	1525	1735	935
APRIL	210	1664	1874	996
MAJ	209	1962	2171	968
JUN	218	2479	2697	983
JUL	200	2496	2696	945
AVGUST	228	2457	2685	1009
SEPTEMBAR	217	2425	2642	985
OKTOBAR	219	2282	2501	1008

Photo 22: Table showing the number of employees from the beginning of the highway construction to the end of October 2018.

Source: Monteput

Total number of domestic employees hired by the Contractor in November 2018 was 205, while the total number of foreign employees hired by the Contractor in November 2018 was 2301.

Ukupan broj radnika kod Podizvođača za mjesec novembar 2018. godine iznosio je 875.

Monteput doo PodgoricaPJ autoput Bar – Bojare
Ludvika Kube bb. Gorica C, Podgorica
PIB 02462494; PDV 30/31-05092-7; žiro račun 530-23120-08 NLB banka
e-mail: pjautoput@t-com.me; tel. +382-20/224-493; 202-510; fax 224-419

Photo 23: Number of employees on the highway construction in November 2018. Source: Monteput

Total number of domestic employees hired by the Contractor in December 2018 was 198, while the total number of foreign employees hired by the Contractor in December 2018 was 2142.

Ukupan broj radnika kod Podizvođača za mjesec decembar 2018. godine iznosio je 762.

Radi boljeg pojašnjenja, organ vlasti ukazuje podnosiocu zahtjeva da se gore navedeni podaci baziraju na informacijama koje je organu vlasti Izvođač radova dostavljao u mjesečnim

Monteput doo PodgoricaPJ autoput Bar – Bojare
Ludvika Kube bb. Gorica C, Podgorica
PIB 02462494; PDV 30/31-05092-7; žiro račun 530-23120-08 NLB banka
e-mail: pjautoput@t-com.me; tel. +382-20/224-493; 202-510; fax 224-419

Photo 24: Number of employees on the highway construction in December 2018. Source: Monteput



Employment

Wages of employees in CRBC

According to official figures [75], from 2016 to the end of 2018, CRBC paid around €220 million for the wages of domestic and foreign employees. [76] At least € 170 million flowed out of the country on the basis of wages paid to foreign employees in China, which is four times higher than the average wage in that country (Table 4 and Graph 16).

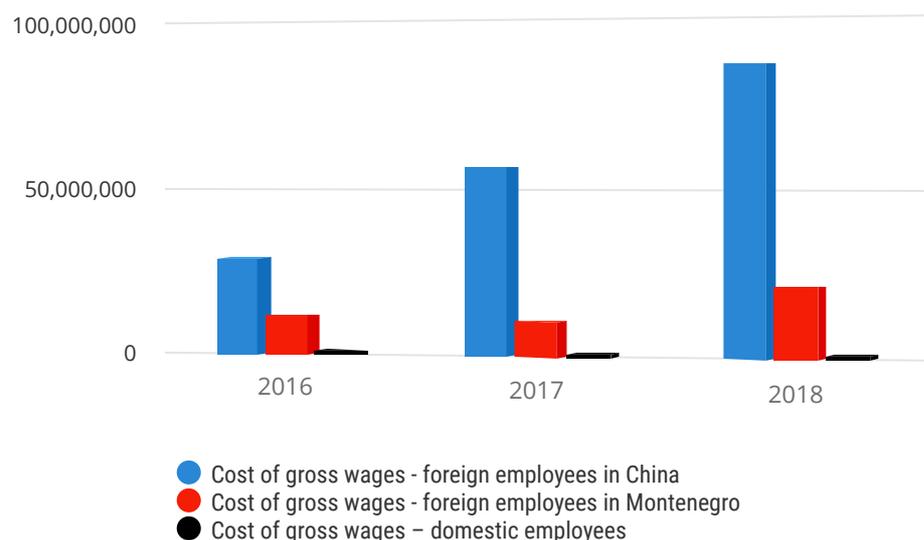
Year	Cost of gross wages - foreign employees in China	Cost of gross wages - foreign employees in Montenegro	Cost of gross wages – domestic employees
2016	29,031,403	12,110,223	1,151,865
2017	56,656,753	10,509,444	1,347,996
2018	86,998,613	21,505,974	1,395,496
Total:	172,686,769	44,125,641	3,895,357

Table 4: Cost of gross wages at CRBC in Euros. Source: CRBC Financial Statements.

In 2016, that company had wages and compensation expense of around €40 million, nearly €70 million in 2017, and close to €110 million in 2018. [77]

During this period, the total wages of domestic employees were over 55 times lower than the wages paid to Chinese workers.

Cost of gross wages



Graph 16: The cost of gross wages for foreign employees in Montenegro and China, as well as for domestic workers in CRBC, in Euros. Source: CRBC audit reports

[75] Data from the audit reports, note to the financial statements and performance reports of the CRBC management. On the basis of the Law on Free Access to Information, MANS received from the Tax Administration the audit reports of CRBC for 2016 and 2017. Request Number 19/128260, Response Date 04/09/2019.

[76] We chose the period from 2016 to the end of 2018, because for this period we have data on the cost of wages for domestic and foreign employees. The total cost of earnings with 2015 is €232.1 million.

[77] In this part of the analysis, in addition to the gross wages, we included in the wage costs of domestic employees hired by CRBC also the costs of taxes and contributions on wages and salaries at the expense of the employer. We have also included the cost of wage contributions paid in China in the cost of wages of foreign employees to foreign workers.



Employment

It is important to note that the earnings of foreign highway employees are exempt from paying taxes and contributions because, according to the Government, this reduces the cost of the loan.

However, the data show that wages of Chinese highway workers are many times higher than the average wages they receive in their country, so the question is whether the employees are actually paid that high or whether the highway construction costs are being increased fictitiously.

Bearing in mind the number of domestic and foreign employees hired by CRBC provided by Monteput, and the official data from that company's financial statements, the average domestic employee earned around €550 last year, **the average wage of Chinese employees was €4.3 thousands per month [78]** (Table 5).

Year	Average cost of wages of foreign workers (in Euros)	Average cost of wages of domestic workers (in Euros)
2016	5,657	746
2017	3,533	555
2018	4,309	550

*Table 5: Average wages of foreign and domestic workers at CRBC.
Sources: CRBC audit reports (wages data) and Monteput (number of foreign and domestic workers).*

According to available data, the average monthly salary in China ranges from €800 to 1200, depending on the region. [79] **The question is why the average Chinese worker on our highway is paid four times the average salary in his/her country.**

[78] These are gross amounts.

[79] Internshipschina.com, How Much Is the Average Salary in China? 23.07.2019

<https://internshipschina.com/average-salary-in-china/>, accessed: 15.11.2019

Chinadaily.com.cn, Average monthly salary in major cities nears 8,500 yuan, 04.07.2019

<https://www.chinadaily.com.cn/a/201907/04/WS5d1d63cfa3105895c2e7ba4d.html>, accessed: 15.11.2019

Checkinprice.com, Average and Minimum Salary in Beijing, China, 25.07.2019.

<https://checkinprice.com/average-minimum-salary-beijing-china/>, accessed: 15.11.2019



Inspections

According to limited data on inspection and supervision of the construction of the highway that are available to the public, the inspections have conducted numerous controls and imposed fines totaling around € 30 thousand.

MANS has repeatedly tried to obtain information, records, decisions and reports from competent inspections. 17 times MANS did not receive the answer, due to the silence of administration, explanation that they did not have information, and most often because the project was declared trade secret. [80]

The only answers [81] we received were from: Sector for Mining, Geology and Hydrocarbon Inspection, Labour Inspection and Environmental Inspection and they included information on the number of controls, number of fines and the amount of fines (Table 6).

Name of inspection	Number of controls	Number of fines	Total amount of fines
Labour Inspection	100	42	13,060
Environmental Inspection	68	5	19,100
Sector for Mining, Geology and Hydrocarbon Inspection	65	0	0
Construction Inspection	No controls performed	No controls performed	No controls performed
Sector for Urbanism and Geodetic Inspection	No controls performed	No controls performed	No controls performed
Road Inspection	No reply	No reply	No reply

Table 6: Statistical overview of the number of controls, number of fines and the amount of fines (in thousands of Euros) of inspections on the construction of the highway. Sources: Administration for Inspection Affairs.

Total amount of fines imposed by these three inspections is just over € 32.000 (from the start of the highway construction to June 2019).

In four years since the construction of the highway that has devastated the Tara River, environmental inspectors have visited the site more than 60 times and filed multiple misdemeanor charges, but the authorities fined the Chinese company CRBC and subcontractors in the amount less than €20.000.

[80] On the basis of the Law on Free Access to Information, MANS requested access to information containing minutes, decisions and reports made by inspections regarding the implementation of the Bar - Boljare highway project. Request numbers: 18/124923-124925 (from 10/15/2018), 18/124986 and 18/124991 (from 10/26/2018), 18/125110 (from 01/11/2018), 18/125172 and 18/125264 (of 31.10.2018), 18/125567 (of 11.12.2018), 19/128081 and 19/128086 (of 05.06.2019), 19/128095 (of 03.06.2019), 19/128402, 19 / 128403, 19/128405, 19/128406, 19/128408 (06/14/2019)

[81] On the basis of the Law on Free Access to Information, MANS requested information on the total number of controls, fines imposed and the total amount of fines imposed. Request numbers: 19/128080, 19/128083, 19/128084 (06/03/2019).



Inspections

The Department for Inspection in the Construction and the Sector for Urbanism and Geodetic Inspection, working within the Ministry of Sustainable Development and Tourism, replied that they did not perform control because the supervising authority (Ingerop Conseil and Ingenere Geodata), or the State Commission for technical inspection of highway construction works did not report to the inspection (Photo 25).

Pored navedenog nadzornog organa formirana je i Državna komisija za tehnički pregled na izgradnji autoputa Bar - Boljare, prioritetne dionice Smokovac – Uvač – Mateševo, koja kontrolira usklađenosti izvedenih radova sa revidovanim glavnim projektom, kao i sa propisima, standardima, tehničkim normativima i normama kvaliteta koje važe za pojedine vrste radova, odnosno materijale, opremu i instalacije.

Shodno članu 95, stav 1, tačka 1-11 Zakona o planiranju prostora i izgradnji objekata („Sl. list Crne Gore”, br.64/17, 44/18 i 63/18), propisane su obaveze lica koja vrše stručni nadzor prilikom izvođenja radova.

Shodno članu 101, stav 3 Zakona o planiranju prostora i izgradnji objekata („Sl. list Crne Gore”, br.64/17, 44/18 i 63/18), propisano je da ako izvođač radova u propisanom roku ne otkloni utvrđene nedostatke, stručni nadzor je dužan da građenje objekta suprotno revidovanom glavnom projektu, ovom zakonu i posebnim propisima, bez odlaganja prijavi nadležnom inspekcijском organu.

As there were no initiatives or requests by the State Commission, technical inspection and expert supervision for the facility in question, there was need for this inspection to act.

Članom 30 Zakona o slobodnom pristupu informacijama, propisano je da o zahtjevu za pristup informaciji, osim u slučaju iz člana 22 ovog zakona, organ vlasti odlučuje rješenjem, kojim dozvoljava pristup traženoj informaciji odnosno ponovnu upotrebu informacija ili njenom dijelu ili zahtjev odbija. Rješenje kojim se odbija zahtjev za pristup informaciji, odnosno ponovnu upotrebu informacija sadrži detaljno obrazloženje razloga zbog kojih se ne dozvoljava pristup traženoj informaciji, odnosno ponovna upotreba informacija.

Odredbom člana 29 stav 1 tačka 1 prednje citiranog zakona propisano je da će organ vlasti odbiti zahtjev za pristup informaciji ako pristup informaciji zahtijeva ili podrazumijeva sačinjavanje nove informacije.

Budući da ovo ministarstvo, nije u posjedu tražene dokumentacije, odlučeno je kao u dispozitivu rješenja.

Uputstvo o pravnoj zaštiti: Protiv ovog rješenja može se izjaviti žalba Savjetu Agencije za zaštitu podataka o ličnosti i pristup informacijama, preko ovog organa u roku od 15 dana od dana prijema istog.



Photo 25: Response of the Administration for Inspection Affairs.

The Road Inspection Directorate has not yet responded to our request.



Environmental impact

Detailed information on the impact of the construction of the highway on the Tara River is given in a separate publication: Case Study: "Will Tara Survive the highway construction?". [82]

One year since through NGO MANS' campaign the issue of the survival of the Tara River has been internationalized, i.e. of its part that comes into contact with the construction of the Bar - Boljare highway, the situation is unchanged. Huge amounts of construction waste are still being discharged on the banks of the river, wastewater is discharged into the river, and new illegal landfills arise on the banks of its tributaries.

Meanwhile, Chinese company "China Road and Bridge Corporation" opened another illegal landfill near Drcka River, which flows into the Tara River near Mateševo. [83] Material from the excavation of the Mateševo tunnel, which represents the final point of construction of the priority section Smokovac-Mateševo, is deposited on the bank of the Drcka River. Due to the opening of an illegal landfill, NGO MANS filed a criminal complaint with the Special State Prosecutor's Office against the Minister of Sustainable Development and Tourism, Pavle Radulović, the Minister of Transport and Maritime Affairs Osman Nurković, Nikola Medenica, director of the Agency for Nature and Environment Protection, Alija Košuta, director of the Administration for Inspection Affairs, as well as CRBC company. [84]



Landfill on the tributary of Tara

Meanwhile, the impact of construction of the highway on the Tara River has also been recognized by UNESCO since the river is under its double protection. In November 2018, Montenegro was visited by UNESCO mission that visited Durmitor National Park, which forms part of the World Heritage Programme. [85]

[82] <http://www.mans.co.me/en/wp-content/uploads/2019/11/studija-ENG.pdf>

[83] See more at: <http://www.mans.co.me/kompanija-crbc-otvorila-jos-jednu-nelegalnu-deponiju/>

[84] Criminal complaint no. 25483/06 of June 25, 2019

[85] See more at: <https://whc.unesco.org/en/list/100>



Environmental impact

The main conclusion of the mission, published in the report in June 2019, was that construction of bridges, the exploitation and disposal of gravel and sand severely devastated the Tara River bed, all within the area protected by UNESCO programme "Man and Biosphere". [86] As the biggest negative impact, the mission points out planned ramps and inclusions/exclusions from the highway to the so-called floodplain of the river. [87]

After the UNESCO mission noted several landfills, gravel and sand dumps in the floodplain, as well as in the river bed, members of the mission warned that while clearly certain issues could be repaired once construction was complete, it was clear that visible consequences of the works would remain even after the completion of the highway construction works.

The aforementioned findings of the mission were also confirmed by the UNESCO World Heritage Committee, which noted in its July 2019 report the serious impact the highway construction has on the Tara River. [88]

NGO MANS organised conference under the title "Will Tara survive the highway construction?" on November 1 in Podgorica, which was attended by local and foreign experts. The conference was organized in cooperation with the Belgrade office of the Heinrich Böll Foundation, and contained two panels, one dealing with infrastructure and environmental protection - international experience and EU standards, and the second addressing Montenegro's experience in building a highway and impact on the Tara River. [89]

Simon Ilse, Head of Heinrich Boll Stiftung Office Belgrade, opened the conference by saying that "things are not going in the right direction in spite of Chapter 27 for the EU integration being opened. When I look at this highway project, I am asking myself how the Government is planning to close this Chapter". Talking to reporters, Ilse pointed out that it would be very difficult for Montenegro to close Chapter 27 if the authorities continued with the same attitude towards nature, while ignoring the public. [90]

Environmental experts Maja Čolović Daul and Roel Sloopweg took part at the first panel, which targeted international experiences and EU standards in correlation with major infrastructure projects and environmental protection. Čolović Daul said the Tara River would never be the same again and that environmental protection had not been taken into account. [91] Sloopweg noted that "Tara is a serious case of devastation, and the drone footage showed very clearly what chaos was made." Sloopweg also said that Montenegro must immediately enter the process of revitalization of the Tara River. [92]

[86] See more at: <http://www.unesco.org/new/en/natural-sciences/environment/ecological-sciences/biosphere-reserves/europe-north-america/>

[87] The report can be found at: <https://whc.unesco.org/en/documents/174707>

[88] See more at: <https://whc.unesco.org/archive/2019/whc19-43com-18-en.pdf>

[89] The conference report can be found at: <https://www.mans.co.me/izvjestaj-sa-konferencije-da-li-ce-tara-prezivjeti-auto-put/>

[90] TV Vijesti interview with Simon Ilse of November 16, 2019: https://www.youtube.com/watch?v=x_hKfGZ_FHQ

[91] Daily newspaper Daninterview with Maja Čolović Daul, published on November 13, 2019: <https://www.dan.co.me/?nivo=2&rubrika=Ekonomija&datum=2019-11-13>

[92] Daily newspaper Vijesti interview with Roel Sloopweg, published on November 10, 2019: <https://www.vijesti.me/vijesti/drustvo/tara-ne-smije-da-ceka-ni-dan-kamoli-osam-godina>



Access to information on highway construction

Relevant state institutions persistently declare information on highway construction and state subsidies confidential, while the court practice is not consistent. The Supreme Court considers that it is the duty of the Customs Administration to explain why the data on customs subsidies are confidential. However, the same court finds that the Tax Administration can declare information on subsidies for taxes and contributions confidential, without any detailed explanation.

Subsidies for customs declared official secrets

The Customs Administration restricts access to information on customs subsidies given to the highway contractor by declaring it official secret under the the Law on Customs Service. [93] This position is also accepted by the Administrative Court, which considers that in this case it is not relevant to the public interest for the data to be published.

However, the Supreme Court found that it must be explained why the subsidy data constitutes "confidential information". [94]

Namely, the Customs Administration declared secret requests of the contractor of the highway for exemption from payment of customs duties for goods, equipment and plants, which is provided for by Article 21 of the Law on the Bar - Boljare Highway. [95] The Customs Administration states that it conducted harm test from disclosing this information and that disclosing it would constitute a "breach of positive customs regulations".

At the beginning of 2019, MANS filed a lawsuit with the Administrative Court, indicating that the public has an interest in obtaining information on subsidies, and that in this case it is the Bar-Boljare highway, which in many ways directly affects all citizens of Montenegro, since the construction of the highway is financed from public revenues.

In April 2019, the Administrative Court accepted such position of the Customs Administration and stated that the Customs Law was a *lex specialis* for the actions of the customs authorities, which obliged them to keep an official secret. The Administrative Court concludes

„In the view of this Court, the harm caused by the disclosing of information obtained by the customs authorities in accordance with Article 15 of the Customs Law has been assessed by the aforementioned provisions of Articles 16 and 17 of the same law, which makes the prosecutor's reference to the harm test irrelevant.“

For the Administrative Court, public interest relating to subsidies through customs duty exemption obtained by the highway contractor (CRBC) from the Government of Montenegro is "irrelevant, not important, insignificant."

[93] Article 15 and 16 of the Law on Customs Administration

[94] No.922/19 dated 31.10.2019

[95] Article 21 of the Law on the Bar - Boljare Highway The following shall be exempted from the payment of customs duty: 1) construction material to be used for the Highway construction; 2) equipment to be installed in the Highway structures or for the purposes of the Highway construction; 3) plants to be installed in the Highway structures or for the purposes of the Highway construction. The exemption referred to in paragraph 1 of this Article shall apply to the goods, equipment and plants imported into Montenegro by the Contractor engaged for the Highway construction.



Access to information on highway construction

In other words, the Administrative Court considers that it is not necessary to conduct a special harm test to determine the public interest in disclosing the requested information if such harm was assessed by the Law on Customs Administration. Such interpretation is contrary to the Law on Free Access to Information, which clearly stipulates that it is necessary to determine the public interest in each particular case. [96]

With such position, the Court disregards the public interest, which is more significant in the concrete case, and in particular since there is no valid interest against it that would need to be protected.

MANS filed a request for review of the court decision with the Supreme Court of Montenegro, which has adopted and reversed the ruling of the Administrative Court. [97] The Supreme Court stated in its ruling:

„The provision of Article 16, paragraph 1 of the Law on Customs Administration provides that information which is by its nature confidential or obtained in such way, shall be considered an official secret and shall not be disclosed further by the customs authority without the express consent of the person or the authorized body that provided it. In view of the above, this court holds that the Administrative Court did not provide a reasoning as to what is “confidential information” within the meaning of the cited legal provision, and on the basis that the data referred to in Article 21 of the Law on the Bar - Boljare Highway constitutes confidential information within the meaning of the said legal provisions.”

Therefore, the Supreme Court took position that the Administration has to explain why it declares certain information an official secret, or why it is confidential.

Until the completion of this study, the Administrative Court did not render a new ruling in this case.

[96] Article 16 of the Law on Free Access to Information stipulates that access to information shall be restricted if disclosure of information would significantly jeopardize the interest referred to in Article 14 of this Law, or if there is a possibility that disclosure of information would cause adverse consequences for an interest that is more important than the public interest to know this information, unless there is an overriding public interest prescribed by Article 17 of this Law.

[97] No. 922/19 of 31.10.2019



Access to information on highway construction

Subsidies for employees declared tax secrets

Many data on the highway construction have been declared tax secrets and hidden from the public, based on a legal provision introduced by the Amendments to the Law on Free Access to Information, which was adopted in mid-2017.

The Tax Administration does not determine at all whether there is a public interest in disclosing the requested information and refuses to disclose completely different types of information with identical reasons.

However, the courts accept the vague reasoning of the Tax Administration that all information about specific taxpayers is tax secrets, disclosure of which would violate the law and endanger trust in the institution.

In the midst of political crisis, while all opposition political parties boycotted the work of the Parliament, MPs of the ruling party adopted amendments to this law that mandated additional restrictions on access to information, including tax and trade secrets. [98]

The Tax Administration restricts access to data related to the construction of the highway by referring precisely to the new provisions of the Law on Free Access to Information on tax secrets, as well as to the Law on Tax Administration. According to this Law, almost all information on taxpayers is secret. [99]

However, the Law on Free Access to Information obliges institutions to carry out the so-called harm test, and stipulates that access to data can be restricted only if it is possible that disclosure would have harmful consequences for a protected interest greater than the public's interest in knowing that information. [100]

Nonetheless, the Tax Administration only makes vague reference to tax secret, without determining whether there is a greater public interest in disclosing the information than harm that may arise for the protected interest.

Such acting is also supported by the Agency for Personal Data Protection and Free Access to Information, which only accepts the allegations of the Tax Administration and does not deal with establishing of facts, and in particular does not deal with the public interest, which was the subject of dispute before the Administrative Court, which after more than one year rendered a ruling confirming the position of both the Tax Administration and the Agency.

[98] Article 14 paragraph 1 item 6 of the Law on Free Access to Information, amended on May 17, 2017

[99] Article 16, paragraph 1 of the Law on Tax Administration: Tax secret shall mean any information or datum about the taxpayer at the disposal of the tax authority, except for information and data:

- 1) for which the taxpayer states in writing that they are not considered as tax secret;
- 2) that cannot be related to a particular taxpayer, and cannot be identified in any other manner;
- 3) pertaining to the existence of tax debt if the mortgage, or fiduciary right used as security is registered in the public books;
- 4) on registration of the taxpayer, TIN, name (firm) and principal place of business;
- 5) value of immovable property;
- 6) published by the Tax Administration on quarterly basis in the list of tax debtors.

[100] The so-called harm test, Article 16 paragraph 1 of the Law on Free Access to Information



Access to information on highway construction

The Tax Administration, for example, declared the forms of taxes paid and contributions [101] submitted to the institution by CRBC tax secrets. The reasoning states:

„tax secret is any information or data about a taxpayer held by the tax authority, except for information and data that the taxpayer declares in writing that they are not considered a tax secret, as well as information and data that cannot be linked to a specific taxpayer or the other way is to identify, i.e. the information that the Tax Administration publishes quarterly on the list of taxpayers“.

The Tax Administration notes that it conducted a harm test that "determined that disclosure of this information would be a violation of the positive regulations of the Law on Tax Administration in particular." At the same time, they found that

*„the disclosure of information protected by this law has caused **distrust of taxpayers towards state administration bodies**, specifically the Tax Administration, which was assessed as a greater public interest harm for the disclosure of the said information“.*

At the same time, Tax Administration states that **there is no prevailing public interest in publishing specific information**, because its contents do not indicate the reasons prescribed by the Article 17 of the Law on Free Access to Information. [102]

In the end, the Tax Administration concludes that it rejects the request for information since

„in the specific case it is a tax secret, whereby the taxpayer to whom the data relates has not given written permission for the disclosure of the said data, or is it data for which there is prevailing public interest in disclosing“.

The Administrative Court fully accepts interpretation of the Tax Administration that disclosing information on taxes and contributions of the Chinese company, which constitutes state subsidies, would "cause distrust" towards the Tax Administration. At the same time, the Administrative Court did not determine at all whether disclosing of information on state subsidies for taxes and contributions of CRBC was a matter of public interest.

[101] IOPPD Forms - Unique forms of reporting on calculated and paid personal income tax and compulsory social security contributions.

[102] The provisions of Article 17 of the Law on Free Access to Information stipulate that a prevailing public interest in disclosing information or a part thereof exists when the requested information contains information that reasonably indicates: 1) corruption, non-compliance, unlawful use of public funds or abuse of power in the exercise of public office; 2) suspicion that a criminal offense has been committed or the existence of a reason for challenging the court decision; 3) unlawfully obtaining or spending funds from public revenues; 4) endangering public security; 5) endangering life; 6) endangering public health; 7) endangering the environment.



Access to information on highway construction

The Administrative Court dismissed our lawsuit and took the stance that the Tax Administration lawfully prohibited access to information that constitutes tax secret[1]. The Court fully accepts the allegations made by the Tax Administration that it carried out a harm test and does not deal with the existence of a public interest as opposed to the protected interest, which consists in violation of the Law on Tax Administration. The ruling states:

*„Namely, bearing in mind the cited legal provisions, **starting from the fact that the first instance authority conducted a harm test from disclosing the disputed information and determined that disclosure of this information would be a violation of the Law on Tax Administration**, which regulates rights and obligations of the tax authority and taxpayers in the procedure for determining, collecting and controlling taxes and other charges, **as well as that, in this case, it is the tax secret, thus, according to the Court, the conclusion** of the first and second instance bodies **that there were no conditions to allow access** to the requested information is correct in accordance with the Article 13 of the Law on Free Access to Information.“ [104]*

In its ruling, the Administrative Court refers to the Supreme Court's [105] position regarding a case where inspection records of a taxpayer that had nothing to do with highway construction were declared business secret. [106] In that ruling, the Supreme Court stated that the Tax Administration was not obliged to conduct a special harm test if it stated in vague reasoning that disclosing of information violated the Law on Tax Administration. That ruling states:

*„Pursuant to Article 16 of the Law on Free Access to Information, harm test implies linking of harm to protected interests, which would result from the disclosing of information on one hand, with the interest of the public to know that information on the other, and assessing what is more prevailing. Bearing in mind the aforementioned, they do not state that the harm test was not performed, because this assessment was given in the reasoning of the contested decision, and **it is irrelevant that there is no harm test in the case files, in addition to such reasoning of the contested decision.**“*

In this case, as in all the other replies in which it declared information tax secret, the Tax Administration gave the same reasoning.

[103] The first instance authority duly rendered the decision given that in accordance with Article 16 paragraph 1 of the Law on Tax Administration, the requested information was a tax secret and duly referred to Article 14 paragraph 1 item 6 of the Law on Free Access to Information.

[104] No. 3312/18 of 05.09.2019

[105] No.558 /19 of 21.03.2019

[106] The request for free access to information, to which the Supreme Court's ruling relates, asked for copies of all records of taxpayer "Pubs and bars" LLC from Podgorica (TIN: 03086976)



Access to information on highway construction

Zakon o slobodnom pristupu informacijama u članu 14 stav 1 tačka 6 dozvoljava ograničenje pristupu informacijama ili dijelu informacije kada organ vlasti utvrdi da se radi o poslovnoj ili poreskoj tajni u skladu sa zakonom.

Pri ovakvom stanju stvari Poreska uprava je sprovela test štetnosti objavljivanja ove informacije, u skladu sa odredbama člana 16 stav 1 Zakona o slobodnom pristupu informacijama i utvrdila da bi objelodanjivanje ove informacije predstavljalo kršenje pozitivnih propisa - konkretno Zakona o poreskoj administraciji. Zakonom o poreskoj administraciji se uređuju prava i obaveze poreskog organa i poreskih obveznika u postupku utvrđivanja, naplate i kontrole poreza i drugih dažbina i istim je propisana obaveza poreskog organa da u ostvarivanju svojih nadležnosti čuva poresku tajnu, pri čemu bi objavljivanje podataka koji su zaštićeni ovim zakonom proizvelo nepovjerenje poreskih obveznika prema organima državne uprave, konkretno prema Poreskoj upravi, što je procijenjeno kao veća šteta od javnog interesa za objavljivanje navedenih informacija.

Smatramo, da ne postoji preovladjujući interes za objavljivanje konkretne informacije iz razloga što sadržina iste ne ukazuje na član 17 stav 1 Zakona o slobodnom pristupu informacijama. Naime, odredbama člana 17 Zakona o slobodnom pristupu informacijama propisano je da preovladjujući javni interes za objelodanjivanjem informacije ili njenog dijela postoji kada tražena informacija sadrži podatke koji osnovano ukazuju na: 1) korupciju, nepoštovanje propisa, nezakonito korišćenje javnih sredstava ili zloupotrebu ovlaštenja u vršenju javne funkcije; 2) sumnju da je izvršeno krivično djelo ili postojanje razloga za pobijanje sudske odluke; 3) nezakonito dobijanje ili trošenje sredstava iz javnih prihoda; 4) ugrožavanje javne bezbjednosti; 5) ugrožavanje života; 6) ugrožavanje javnog zdravlja; 7) ugrožavanje životne sredine.

Kako se u konkretnom slučaju radi o poreskoj tajni, pri čemu poreski obveznik na koga se odnose podaci nije dao pisano odobrenje za objavljivanje navedenih podataka, niti je riječ o podacima za koje postoji preovladjujući javni interes za objavljivanje, to je odlučeno kao u dispozitivu rješenja.

PRAVNA POUKA: Protiv ovog rješenja može se izjaviti žalba Agenciji za zaštitu podataka o ličnosti i slobodan pristup informacijama u roku od 15 dana od prijema rješenja, neposredno ili preko Poreske uprave. Žalba se podnosi u dva primjerka, sa dokazom o uplati 5,00€ administrativne takse na žiro račun Budžeta br. 907-000000083001-19, shodno tarifnom br. 2 Zakona o administrativnim taksama ("Sl.list RCG" br. 53/03...02/06 i "Sl.list CG" br. 22/08...26/11...37/17).

DIREKTOR
Miomir M. Mugoša

Photo 26: Excerpt from the decision of the Tax Administration no. 03/1-2851/2-18 denying request for information no. 118402 - 118407 relating to CRBC's taxes and contributions

Pri ovakvom stanju stvari Poreska uprava je sprovela test štetnosti objavljivanja ove informacije, u skladu sa odredbama člana 16 stav 1 Zakona o slobodnom pristupu informacijama i utvrdila da bi objelodanjivanje ove informacije predstavljalo kršenje pozitivnih propisa - konkretno Zakona o poreskoj administraciji. Zakonom o poreskoj administraciji se uređuju prava i obaveze poreskog organa i poreskih obveznika u postupku utvrđivanja, naplate i kontrole poreza i drugih dažbina i istim je propisana obaveza poreskog organa da u ostvarivanju svojih nadležnosti čuva poresku tajnu, pri čemu bi objavljivanje podataka koji su zaštićeni ovim zakonom proizvelo nepovjerenje poreskih obveznika prema organima državne uprave, konkretno prema Poreskoj upravi, što je procijenjeno kao veća šteta od javnog interesa za objavljivanje navedenih informacija.

Smatramo, da ne postoji preovladjujući interes za objavljivanje konkretne informacije iz razloga što sadržina iste ne ukazuje na član 17 stav 1 Zakona o slobodnom pristupu informacijama. Naime, odredbama člana 17 Zakona o slobodnom pristupu informacijama propisano je da preovladjujući javni interes za objelodanjivanjem informacije ili njenog dijela postoji kada tražena informacija sadrži podatke koji osnovano ukazuju na: 1) korupciju, nepoštovanje propisa, nezakonito korišćenje javnih sredstava ili zloupotrebu ovlaštenja u vršenju javne funkcije; 2) sumnju da je izvršeno krivično djelo ili postojanje razloga za pobijanje sudske odluke; 3) nezakonito dobijanje ili trošenje sredstava iz javnih prihoda; 4) ugrožavanje javne bezbjednosti; 5) ugrožavanje života; 6) ugrožavanje javnog zdravlja; 7) ugrožavanje životne sredine.

Kako se u konkretnom slučaju radi o poreskoj tajni, pri čemu poreski obveznik na koga se odnose podaci nije dao pisano odobrenje za objavljivanje navedenih podataka, niti je riječ o podacima za koje postoji preovladjujući javni interes za objavljivanje, to je odlučeno kao u dispozitivu rješenja.

PRAVNA POUKA: Protiv ovog rješenja može se izjaviti žalba Agenciji za zaštitu podataka o ličnosti i pristup informacijama u roku od 15 dana od prijema rješenja, neposredno ili preko Poreske uprave. Žalba se podnosi u dva primjerka, sa dokazom o uplati 5,00€ administrativne takse na žiro račun Budžeta br. 907-000000083001-19, shodno tarifnom br. 2 Zakona o administrativnim taksama ("Sl.list RCG" br. 53/03...02/06 i "Sl.list CG" br. 22/08...26/11).

DIREKTOR
Miomir M. Mugoša

Photo 27: Excerpt from the decision of the Tax Administration no. 03/1-9589/2-17 denying request for information no. 112045 relating to inspection reports

Regardless of the type of information whose disclosure is requested, the Tax Administration gives identical reasonings, without at all assessing the importance of the public interest in making the information public.

Such acting was encouraged by the aforementioned ruling of the Supreme Court of Montenegro and then by the rulings of the Administrative Court, according to which it is sufficient for the Tax Administration to refer generally to the Law on Tax Administration and thus hide from the public any information of public interest.



OTHER MAJOR PROJECTS

During 2019, a significant shift took place in formalizing the protection of Ulcinj Salina, which was finally nationally protected and subsequently listed on the Ramsar list of protected areas.

Nevertheless, unsustainable exploitation of the spatial resources of the Skadar Lake National Park continues, despite recommendations of the Secretariat of the Berne Convention, which recommended that the Government of Montenegro suspend further construction of tourist facilities on Lake Skadar.

The area of Buljarica can be characterized as particularly endangered after the adoption of the new Law on Expropriation and the Law on Spatial Planning and Construction of Structures, bearing in mind that the Government of Montenegro has repeatedly publicly expressed its intention to fully valorise the space by giving it to investors who would build tourist capacities.

For the time being, the Municipality of Kotor manages to maintain the status of an area protected by the UNESCO World Heritage Programme, while at the same time facing irresponsible space planning, now by the highest instances, but also by not implementing recommendations from umbrella documentation that should ensure the conservation of the area.

The Government of Montenegro has formally abandoned the construction of the second block of the Thermal Power Plant in Pljevlja, after years of pressure from the civil sector, but continues to invest in coal. Recently, a consortium was selected which will carry out ecological reconstruction of the existing block of the thermal power plant, which will ensure its work in the next 20 to 30 years.

ULCINJ SALINA

The area of the Ulcinj Salina "Bajo Sekulić", which represents valuable artificial ecosystem whose protection is also set as the final benchmark for closing the Chapter 27 in the process of Montenegro's accession to the European Union, was formally declared a nature park at the session of the Assembly of the Municipality of Ulcinj on June 24, 2019. [107]

Afterwards, in September 2019, Salina was declared a wetland of international importance and listed on the Ramsar wetlands list. [108] RAMSAR is an international agreement that provides a framework for national actions and international cooperation for the conservation and use of wetlands and their resources.

However, the issue of land ownership of Salina remains unresolved, which was also discussed at the 5th International Conference on the Protection of Ulcinj Salina, organized by the project partner - the Center for Protection and Research of Birds (CZIP). [109]

At the event in April this year that gathered more than 100 participants interested in the issue of the protection of Salina, it was pointed out that the ecological degradation of the area was indisputable and that the process of protection was extremely slowed down. [110] In the meantime, the company's bankruptcy administration has advertised the sale of its assets, including the 15 million square feet of land that Salina only uses - not owns. As the sole owner of the land is the state of Montenegro, several non-governmental organizations have filed criminal charges against the bankruptcy trustee for advertising the sale. [111]

[107] See more at: <http://www.ul-gov.me/Aktuelnosti/4482/Skupstina-Opstine-Ulcinj-izglasala-odluku-o.shtml>

[108] See more at: <https://www.ramsar.org/news/montenegro-names-ulcinj-salina-as-a-ramsar-site>

[109] See more at: <https://www.slobodnaevropa.org/a/solana-zastita-crna-gora/29886588.html>

[110] See more at: <https://www.slobodnaevropa.org/a/solana-zastita-crna-gora/29886588.html>

[111] See more at: <https://www.mina.news/minabusiness/podnijeli-krivicnu-prijavu-zbog-prodaje-imovine-solane/>



OTHER MAJOR PROJECTS

LAKE SKADAR



[112] In March 2019, at the site of Mihailovići, at the very outskirts of Skadar Lake, works were carried out on leveling the ground and preparing for drainage. These are preparatory works for the construction of the “White Village” hotel complex, which was made possible because the lower order plans are still in effect. [113]

Although environmental NGOs previously complained to the Berne Secretariat, after which Montenegro's Government was urged by the recommendations of the Berne Convention to halt further construction of tourist facilities on Lake Skadar, the execution of the works completely discredits the international protection of the area. [114]

Adopted recommendations of the Berne Convention indicate that all further works in the area of the Mihailovići site should be suspended until a reference list of all existing Natura 2000 habitats is made. Since the habitat mapping has not been carried out, the Environmental Impact Assessment Study as well as the Environmental Monitoring Programme, and therefore all building permits issued so far, are completely discredited. Montenegro, as a responsible member of the Berne and Ramsar Convention, through the Ministry of Sustainable Development and Tourism, as the national contact institution, should not have allowed beginning of construction at this site. In this way, the status of the protection of the area at the international level is endangered and it will be decided at the next session of the Secretariat of the Berne Convention to be held from 3 to 6 December 2019. [115]

[112] Photo: Google Earth

[113] See more at: <https://www.vijesti.me/vijesti/drustvo/no-skadarskom-jezeru-u-toku-radovi-uprkos-preporukama-medunarodnih-organizacija>

[114] Berne Convention - The Convention on the Conservation of Migratory Species of Wild Animals, through which EMERALD sites are identified, most also move into NATURA 2000 habitats, which imply the implementation of a strict and legally binding regime in the EU. The appeal filed by Green Home and the informal Virpazar Citizens' Association was decided by the Berne Secretariat on 30 November 2018 at the 38th Strasbourg Standing Committee Meeting. The official recommendations of the Berne Convention are available at: <https://rm.coe.int/recommendation-on-the-development-of-a-commercial-project-in-skadar-la/native/16808e95c7>

[115] Information on the next session of the Berne Convention Secretariat: <https://www.coe.int/en/web/berne-convention/-/39th-standing-committee-meeting>



OTHER MAJOR PROJECTS

BULJARICA

The area of Buljarica area is still at development intersection, as confirmed by controversial legal solutions adopted in previous years on the proposal of the Government of Montenegro - the Law on Expropriation and the Law on Spatial Planning and Construction of Structures. [116]



The aforementioned laws have completely deprived citizens of their role in deciding on the space planning at the local level, and now the Government can advertise or lease privately owned land. A key amendment to the new Law on Expropriation relates to "Entry into possession before the expropriation decision becomes final," which provides that an expropriation beneficiary may apply for the entry into possession of real property if it is "necessary because of the urgency of the construction of a particular facility or works". [117] Such legal provision impairs the right to judicial protection, which prevents all citizens of Montenegro from protecting their property until a final decision is rendered by the court.

[118] On the other hand, the Government, by a special act, determines the public interest for the expropriation of real estate, but also the beneficiary of the expropriation, which may cause the Government of Montenegro to confiscate the assets of natural and legal persons for the benefit of investors. [119]

For this reason, in October 2019, a dialogue with the citizens of Buljarica was initiated, when a public debate on the topic "Buljarica - one bay, many values: Dialogue towards the sustainable solution" was organized by the project partner, Montenegrin Ecologists Society (CDE).

The event discussed possible urban solutions for the development of Buljarica, a strategy for tourism development and the principles of environmental engineering. The locals expressed their dissatisfaction with the current situation in Buljarica, the neglect of the area and the lack of basic conditions for tourism development, but also hoped that the development solution for Buljarica would respond to the needs of its inhabitants, while evaluating the authentic environment. [120]

[116] Law on Expropriation (Official Gazette of the Republic of Montenegro 55/2000, 12/2002 - decision of the CC and 28/2006 and Official Gazette of Montenegro 21/2008, 30/2017 and 75/2018); Law on Spatial Planning and Construction of Structures (Official Gazette of Montenegro No. 64/2017, 44/2018, 63/2018 and 11/2019 - correction)

[117] Art. 29 of the Law on Expropriation (Official Gazette of the Republic of Montenegro 55/2000, 12/2002 - decision of the CC and 28/2006 and Official Gazette of Montenegro 21/2008, 30/2017 and 75/2018)

[118] Photo: Montenegrin Ecologists Society (CDE)

[119] Art. 14 of the Law on Expropriation (Official Gazette of the Republic of Montenegro 55/2000, 12/2002 - decision of the CC and 28/2006 and Official Gazette of Montenegro 21/2008, 30/2017 and 75/2018)

[120] RTV Budva's show on the public debate, aired on October 15, 2019, from 4:45 to 8:15, see: <https://www.youtube.com/watch?v=5oNSKbjxarI>



OTHER MAJOR PROJECTS

PROTECTED AREA OF KOTOR

Spatial and urban plan of the Municipality of Kotor

Spatial and urban plan of the Municipality of Kotor is a key planning document for the municipality area which includes the Natural and Culturo-Historical Area of Kotor, which is on the UNESCO World Heritage List [121], while a public hearing on the draft SUP was organized by the Ministry of Sustainable Development and Tourism (MSDT) between April 23 and June 11, 2019. [122]

During this time, EXPEDITIO, a project partner, organized an expert roundtable on the draft SUP on June 5, 2019. The conclusions of the round table were that the draft document did not resolve the existing conflicts in space, nor did it guarantee the protection of the exceptional universal value of the Kotor area. [123]

Subsequently, joint comments on the Spatial and Urban Plan for the Municipality of Kotor and the Draft Report on Strategic Environmental Impact Assessment were defined and submitted to the MSDT. [124] The comments were translated into English and sent to the UNESCO World Heritage Center in July 2019. [125]

The competent institutions were required to submit the draft SUP to the UNESCO World Heritage Center, and it is expected that the document will be finalized after their comments. There is still no official information on whether any comments on the draft SUP have been received from the UNESCO World Heritage Center and whether this document is being finalized.

According to the decisions of the UNESCO World Heritage Committee at its 43rd session in Baku, held from 30 June to 10 July 2019, Montenegro should submit to the Committee revised documents related to the Kotor Area, including SUP, as well as a report on the state of protection of the Area and the activities undertaken by 1 February 2020. [126]

[121] See more at: <https://whc.unesco.org/en/list/125>

[122] See more at: <http://www.kotor.me/me/javne-rasprave-sekretarijata-za-urbanizam-gradjevinarstvo-i-prostorno-planiranje/termini-javnih-rasprava-za-nacrt-prostorno-urbanisti%C4%8Ckog-plana-op%C5%A0tine-kotor/>

[123] See more at: <https://www.dan.co.me/?nivo=3&rubrika=Regioni&clanak=699460&datum=2019-06-07>

[124] Comments on the Draft Spatial Urban Plan of the Municipality of Kotor and the Draft Environmental Assessment Report, submitted on 11 June 2019

[125] Comments on the Draft Spatial Urban Plan of the Municipality of Kotor and the Draft Report on Strategic Environmental Impact Assessment

[126] Report of the UNESCO World Heritage Committee on the Decisions taken at its 43rd session, held in Baku on 30 June to July 10, 2019: <https://whc.unesco.org/archive/2019/whc19-43com-18-en.pdf>



OTHER MAJOR PROJECTS

Revision of the Management Plan for the Natural and Culturo-Historical Area of Kotor

The Management Plan for the Natural and Culturo-Historical Area of Kotor is a strategic document aimed at ensuring effective protection and enhancement of the significance of the World Heritage site, and was adopted by the Government of Montenegro in 2011 for a period of 15 years.

It was then envisaged that the Management Plan revision would be carried out every three years, based on updated data, however, the revision has not been conducted so far and was planned this year. The body that ensures that the Kotor area is managed according to the Management Plan is the Management Council, which is formed by the Government of Montenegro. [127]

In December 2019, in cooperation with the members of the Working Group, EXPEDITIO plans to organize a roundtable on the Management Plan that would invite all key stakeholders and discuss key topics and priorities related to the protection of the Kotor Area.

Amendments to the Law on the Protection of the Natural and Culturo - Historical Area of Kotor

The Government of Montenegro adopted the Draft Law on Amendments to the Law on the Protection of the Natural and Culturo - Historical Area of Kotor at the 136th Session, held on September 26, 2019. [128] The draft law is now in the procedure in the Parliament of Montenegro. [129]



[127] Article 8 of the Law on the Protection of the Natural, Culturo-Historical Area of Kotor (Official Gazette of Montenegro No. 56/2013 and 13/2018)

[128] Materials from the 136th Session of the Government of Montenegro, held on September 26, 2019: http://www.gov.me/sjednice_vlade_2016/136

[129] See more at: <http://www.skupstina.me/index.php/me/sjednice/sjednice-skupstine-crne-gore>



OTHER MAJOR PROJECTS

THERMAL POWER PLANT PLJEVLJA

After the Government of Montenegro had been advocating the construction of the second block of the Thermal Power Plant Pljevlja for years, despite persistent opposition from the public over economic unfeasibility and additional negative environmental consequences, the Prime Minister of Montenegro Duško Marković finally announced in September 2019 that the Government was giving up this project as well as valorisation of coal due to environmental protection. [130]



In November 2019, the Electric Power Company of Montenegro (EPCG) selected a consortium consisting of the companies “Dec International”, “Bemax”, “BB Solar” and “Permonte” to carry out works on the ecological reconstruction of the existing block of TPP Pljevlja. [131] The value of the works is €55 million and the work will be completed by 2022. BB Solar is co-owned by Blažo Đukanović, son of Milo Đukanović - President of Montenegro. [132]

A contract on ecological reconstruction with the selected consortium is expected to be concluded by the end of the year, which should ensure the operation of the Thermal Power Plant for a period of 20 to 30 years. [133]

In mid-October 2019, in order to constructively address the challenges in the process of implementation of benchmarks and closing Chapter 27, with a focus on the issue of air quality in Pljevlja, a project partner NGO Green Home attended a meeting of the Committee on European Integration of the Parliament of Montenegro and representatives of the Pljevlja Thermal Power Plant as well as NGOs. The meeting concluded that EU accession would not be possible until the black ecological point such as Pljevlja had been resolved, as well as that the previous solutions were short-lived and unsustainable, and that it was necessary to adopt a plan for the next minimum of one hundred years.

[130] See at: <https://www.antenam.net/ekonomija/133165-markovic-vlada-se-odrekla-drugog-bloka-te-u-korist-zivotne-sredine>
[131] Decision of the Electric Power Company of Montenegro no. 20-00-4184 of November 7, 2019, on the selection of the most favorable offer for the performing of works on ecological reconstruction of the existing block of the Thermal Power Plant
[132] Photo: Electric Power Company of Montenegro
[133] See more at: <https://www.epcg.com/media-centar/saopstenja-za-javnost/izabrana-najpovoljnija-ponuda-za-ekolosku-rekonstrukciju-te>



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