



FAVOURED FRIEND:

**What is the benefit for Serbia
in the sale of RTB Bor or Chinese Zijin?**



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EXECUTIVE SUMMARY

International cooperation between Serbia and China began in 2009 with the Joint Letter on Strategic Partnership between the two countries. It has shown rapid growth in recent years. The Chinese Belt and Road initiative, and its evolving presence in Eastern Europe, established the foundation for the development of this cooperation. The new Serbia-China partnership marked the new era of loan financing from Chinese banks for infrastructure projects, most of which were then implemented by Chinese state-owned companies. Since a few years ago, China has been publicly portrayed as one of Serbia's most important investors. Serbia-China cooperation is, however, not limited to the economy. It also covers politics, both at the state and party level, and technology, culture, education, and even the military.

In 2018, Chinese mining giant Zijin took control of one of Serbia's state-owned companies - RTB Bor – active in copper mining and smelting. RTB Bor struggled for years as it remained unreformed from the time of socialist Yugoslavia. It also posed a significant burden on Serbia's national budget. In the past 20 years, the government made several attempts to privatize and revitalize the company. Neither approach was successful. After some major budget cuts in 2017-2018, the government launched a public tender to privatize RTB Bor through a "strategic partnership," where the government remains a minority shareholder. Zijin won the tender.

The privatization process was riddled with controversy from the tender to the signing of the Agreement on Strategic Partnership. The tender created a perception that the Serbian government intentionally favoured Chinese investment. This study's legal analysis shows that Serbia and China's agreement allowed Zijin to avoid domestic regulations for environmental protection in the early years of RTB Bor ownership. Since early 2019, the media, civil society organizations, the public, and Serbia's Ministry of Environmental Protection have claimed that Zijin's rapid rise in copper production at RTB Bor caused unprecedented air pollution in Bor city. Zijin operates RTB Bor with old equipment. Over time, the equipment could be refurbished or replaced through investments from company revenue. It is, however, not expected to happen through direct investment from China's Zijin.

Zijin's takeover of RTB Bor should mean good news for Serbia and its taxpayers' public budget, but it does not entirely. There are serious environmental concerns about RTB Bor's operations and little evidence

of Zijin's corporate social responsibility. As this analysis will outline, it is the state's role to close governance gaps, allowing the conclusion of deals like Bor's privatization to mitigate the negative effects of potentially corrosive capital.¹ It is also the state's responsibility to protect its citizens' interests and ensure functioning market economy. All democratic governments, including Serbia, should, therefore, negotiate foreign investment deals without compromising the two.

Keywords: Zijin, Serbia, China, RTB Bor, copper, mining, smelting

1 The Center for International Private Enterprise (CIPE) uses the term "corrosive capital" to more clearly label financing that lacks transparency, accountability, and market orientation flowing from authoritarian regimes into new and transitioning democracies. See more online at: <https://www.cipe.org/resources/channeling-the-tide-protecting-democracies-amid-a-flood-of-corrosive-capital/>

INTRODUCTION

For years, Serbia has pursued a development model heavily reliant on foreign direct investment. In parallel, the country has been lagging in the requirements to complete the European integration process, especially regarding the rule of law. Serbia's progress has been held back by the weight of political challenges inherited by Yugoslavia's violent destruction. In this cascade of challenges, Serbia's successive governments have been unable to attract foreign direct investment without incentives attractive to foreign partners, but ultimately expensive for Serbia. Additionally, it has been challenging to find investors attracted to Serbia's unstructured mammoth domestic companies under state ownership. These politically controlled companies, often associated with corruption and party financing, have created a perpetual burden on the state budget. In 2006, different state administrations began attracting foreign investment through direct negotiations with foreign companies and governments, offering financial and other incentives. In 2012, the new ruling majority, the Serbian Progressive Party (SNS) and the Socialist Party of Serbia (SPS) embraced it. Although most of the existing investments have come to Serbia from the West, there are also investments from non-democratic or illiberal countries viewed warily by the international community. These include China, Turkey, Russia and the United Arab Emirates (UAE). Putting the political dimension aside, the lack of transparency around such investments raises concerns about the potential influx of corrosive capital to Serbia.²

For several years, Serbia's cooperation with China has been on an unprecedented rise. In August 2009 the two states signed the Joint Statement on Establishing Strategic Partnership during the visit of then president Boris Tadić to China.³ In addition, they signed the Agreement on Economic and

2 The definition of corrosive capital was coined by the Center for International Private Enterprise (CIPE_ to more clearly label financing that lacks transparency, accountability, and market orientation flowing from authoritarian regimes into new and transitioning democracies (...) which advances authoritarian foreign policy goals at the expense of local institutions and western geopolitical interests. See John Morell at al, Channeling the Tide: Protecting Democracies Amid a Flood of Corrosive Capital, CIPE, September 2018, p.2-3, <https://www.cipe.org/resources/channeling-the-tide-protecting-democracies-amid-a-flood-of-corrosive-capital/>.

3 Joint Statement of the People's Republic of China and the Republic of Serbia on Establishing Strategic Partnership, 19-25 August 2009 https://www.fmprc.gov.cn/web/ziliao_674904/1179_674909/t579833.shtml

Technical Cooperation in the area of Infrastructure.⁴ This paved the way for several infrastructure projects and loans requiring to hire Chinese companies as their primary contractors. This scheme is typical of how China financially operates in the Western Balkans and other regions. When China introduced the 16+1 Initiative in 2012 and the Belt and Road Initiative (BRI) in 2013, enhanced cooperation prospects increased. After Chinese President Xi Jinping visited Serbia on June 19, 2016 and then signed the Joint Statement of the People 's Republic of China and the Republic of Serbia on Establishing a Comprehensive Strategic Partnership Serbia became a hub for Chinese investments in the Western Balkans. Today, Serbia is not only a primary Balkans destination for Chinese loans but also brownfield and greenfield investments by China. This could be understood as Serbia is the largest economy of the Western Balkans. However, there is also evident domestic political will to deepen Chinese economic presence.

This paper aims to examine one of the largest Chinese brownfield investments⁵ - the RTB Bor Copper Mining and Smelting Company in the city of Bor. As previously noted, RTB Bor was privatized in 2018 through a strategic partnership⁶ of this company and the Republic of Serbia with Chinese Zijin Mining Group Co., Ltd. RTB Bor is one of the most important mining complexes in Serbia. Until its purchase by Zijin, this failing socialist-era conglomerate weighed heavily on the national budget of Serbia. Since the end of Slobodan Milosevic's regime in 2000, consecutive governments tried to solve the RTB Bor issue through several unsuccessful privatization attempts. In 2009, the government began an investment cycle, financed through the state budget, to modernize the company and make it profitable. All these attempts, however, failed. With budget cuts, Serbia's leadership was left with two viable solutions. Privatize RTB Bor or close it down. The government avoided its closure as the Bor region economy depends heavily on RTB Bor. Although several officials and experts presented RTB's purchase by Zijin as 'light at the end of the tunnel', serious issues accompanied the process of its privatization and how its business operations impacted the environment. These issues raise significant concerns about the investment's economically corrosive potential and its impact on Serbia's long-term

4 [Agreement on Economic and Technical Cooperation in the area of Infrastructure between the Republic of Serbia and the Peoples' Republic of China, 2009](#)

5 [in Serbia](#)

6 [Strategic Partnership Agreement between the Republic of Serbia, RTB Bor and Zijin Mining Group Co, Ltd.](#)

national interests. This paper will reflect on these challenges and provide relevant policy recommendations.

Zijin's investment in RTB Bor is one of Serbia's key economic projects that received extensive media attention. They also fundamentally shaped the image of China as one of Serbia's key international partners. The investment came after a lengthy public campaign by senior Serbian officials laying the ground for the Chinese takeover of RTB Bor. This contributed to the impression that China is the most desirable (perhaps the only) partner that could save RTB Bor and remove Serbia's burden. The investment of USD 1.46 billion⁷ (total of initial recapitalization, return of debts, and agreed follow-on investments) makes RTB Bor the most significant Chinese investment in Serbia to date.

To be clear, this analysis is not arguing against investments from China to Serbia or cooperation between the two countries. The goal is to promote cooperation with all foreign countries based on the principles of transparency, oversight, accountability, international standards, and ethical business practices. Such agreements should also respect Serbia's legal framework, its strategic development, foreign policy objectives, and the and the long-term interests of the Serbian people. The authors of this analysis believe the increased public debate about cooperation with foreign partners, no matter their origin, could only be beneficial for Serbia, its citizens, and the region. International cooperation based on sound democratic and market economy principles and inclusive public discussion is in everyone's long-term interests. This includes foreign investors, as it brings predictability and stability.

This analysis is based on publicly available sources (Agreement on Strategic Partnership on RTB Bor, national laws and international agreements), academic works, media articles, and interviews by the research team conducted from January to May 2020 in Belgrade and the city of Bor. Interviews were conducted with 18 experts on foreign direct investment, environmental protection, international relations, international norms, and domestic law. The interviews also included employees of RTB Bor and representatives of the local environmental civil society organizations. Interviews were conducted through open-ended questionnaires developed from previous secondary research.

7 "Kineske investicije u Srbiji: "Zijin Mining" kupio RTB Bor za 1,4 milijardi dolara", Kina Danas, <http://www.kina-danas.com/kineske-investicije-u-srbiji-zijin-mining-kupio-rtb-bor-za-14-milijardi-dolara/>

2009-2020: CHINA-SERBIA COOPERATION

As previously noted, cooperation between Serbia and China saw an unprecedented rise in the past decade, especially after the 2016 Comprehensive Strategic Partnership. The cooperation increased steadily with loans for infrastructure development (construction of sections of the highway to Montenegro (Zemun-Borca bridge in Belgrade, co-called Corridor XI, high speed railroad Belgrade-Stara Pazova and Novi Sad-Subotica (parts of Belgrade-Budapest high speed railroad), and energy projects (reconstruction of two blocs of Kostolac coal power plant), direct brownfield and greenfield investments, and political cooperation.

While the 2009 Agreement on Economic and Technical Cooperation was amended in 2012, 2013, and 2017, it continues to serve primarily as a basis for the loans on infrastructure and energy projects that China provides to Serbia. The first was the bridge over the Danube River in Belgrade. Other projects include the reconstruction of Kostolac Coal Power Plant, improvement of “Nikola Tesla” coal Power Plant in Obrenovac (Belgrade), construction of a section of the highway to Montenegro, and railway modernization between Belgrade and Stara Pazova⁸ These projects have been implemented by various Chinese state-owned companies, a condition of loans from China. The conditions were outlined in separate commercial contracts and the 2009 Agreement on Economic and Technical Cooperation.⁹ The Exim Bank of China provided all the loans to Serbia for infrastructure development.

As a member of the “16+1” Initiative (“17+1” after the admission of Greece in 2019), Serbia regularly participates in its annual summits and other relevant meetings. In 2014, Serbia hosted a “16+1” meeting, which included the Prime Minister of China. After President X Jinping’s visit in 2016, China’s Hesteel Group bought the assets of Smederevo Steel Mill (formerly US Steel Serbia 2002-2012), the first Chinese brownfield investment in Serbia. After US Steel returned it to Serbia’s government, this company was also a huge burden on the state budget. It never made a profit, was expensive to operate, and the government could not shut it down because it would have enormous economic consequences for the city of Smederevo and the area. The Chinese

8 A part of the future high-speed railway Belgrade-Budapest. Chinese partners are expected to build the section from Novi Sad to Subotica/border with Hungary, while the section between Stara Pazova and Novi Sad is being constructed by a Russian company (and financed by Russia).

9 The above-mentioned Agreement (Annex 2) excluded the need for public procurement.

purchase solved the issue. It was also a steppingstone for new, improved relations between the two countries and enhanced China's image in Serbia.

Officials of both countries, including Serbia's President Vucic, refer to the Serbia-China friendship as "made of steel."¹⁰ After relatively frequent meetings between Serbian officials and their Chinese counterparts, the two sides signed a long list of bilateral agreements, memorandums and statements. To put that in context, in 51 years (1957 to 2008) Serbia (Yugoslavia) and China signed only 39 agreements. In just 7 years after (2009-2016), the two sides signed 59 agreements encompassing cooperation on economic and technical issues, infrastructure projects, loans, military, education, culture, digital technologies, transport infrastructure and more.¹¹ The trend continues with additional new agreements since then. China is providing support for reconstruction of key transport routes to fully connect Serbia with the planned roadways of the BRI.¹²

After the two significant brownfield investments in Smederevo Steel Mill and RTB Bor, China is currently implementing its first large scale greenfield project in Serbia. The construction began in 2020 for the Ling Long tire factory in the city of Zrenjanin. That project is estimated to be worth around USD 900 million.¹³ This trio of projects shows that China sees Serbia as a strategic hub in the Western Balkans. Their cooperation on the digital agenda is also evolving. China's Huawei Technologies Co. has been implementing the project "Safe City" since 2019. The main objective is to install surveillance equipment in major Serbian cities. This project is highly controversial. Civil

10 Srbija i Kina – čelično prijateljstvo i strateško partnerstvo, RTS, April 19, 2019, <https://www.rts.rs/page/stories/sr/story/13/ekonomija/3499042/srbija-i-kina--celicno-prijateljstvo-i-stratesko-partnerstvo.html>

11 List of international bilateral agreements between the Republic of Serbia and Peoples' Republic of China, Ministry of Foreign Affairs of the Republic of Serbia, http://www.mfa.gov.rs/sr/images/stories/bilaterala_ugovori/kina.pdf

12 Prvog dana posete KINI potpisano više SPORAZUMA i memorandum, Blic, April 24, 2019, <https://www.blic.rs/biznis/vesti/prvog-dana-posete-kini-potpisano-vise-sporazuma-i-memoranduma/ld1eyd3>

13 <https://www.rts.rs/page/stories/sr/story/13/ekonomija/3472372/zrenjanin-dobija-fabrika-guma-posao-za-1200-ljudi.html>

society organizations in Serbia have outlined a number of serious concerns.¹⁴ Huawei is also expected to develop a 5G network in Serbia.¹⁵ Based on the 2016 agreement, Serbia and China also mutually abolished travel visas for short-term visits. Serbia is the first country in Europe to allow this kind of privilege for Chinese travellers.¹⁶ This visa agreement even remained in effect during the COVID-19 pandemic. The ease of access for China into Serbia evolved in another direction in 2019. The two countries agreed to conduct joint police patrols in Belgrade, Novi Sad and Smederevo.¹⁷ This law enforcement partnership has been justified by the increasing numbers of Chinese tourists and workers in these cities.

Serbian officials recently announced that Chinese investment in Serbia would reach USD 10 billion soon.¹⁸ What they did not explain is the structure of the "investments". There are no specifics in these statements on how much would be loans and how much would be a true direct investment. However, the official data of the National Bank of Serbia show that the investments from China (including Taiwan and Hong Kong) amounted to 1.671 USD billion in the period 2015-2019. While the primary source of capital and investment in Serbia remains the West, the Chinese share is growing at its own pace.

14 See Huawei knows everything about cameras in Belgrade – and they are glad to share!, Share Foundation, March 29, 2019, <https://www.sharefoundation.info/en/huawei-knows-everything-about-cameras-in-belgrade-and-they-are-glad-to-share/>

15 Marijana Pečić, Razvoj 5G mreže u Srbiji do sredine 2020, Huawei glavni partner, April 27, 2019, <https://pcpress.rs/razvoj-5g-mreze-u-srbiji-do-sredine-2020-huawei-glavni-partner/>

16 Srbija i Kina potpisale sporazum o ukidanju viza, Beta, November 11, 2016, <http://rs.n1info.com/Vesti/a206189/Potpisan-sporazum-izmedju-Srbije-i-Kine-o-ukidanju-viza.html>

17 Kineski policajci u patroli sa srpskim, RTS, September 18, 2019, <https://www.rts.rs/page/stories/sr/story/125/drustvo/3664947/kineski-policajci-u-patroli-sa-srpskim.html>

18 Kinesko čudo u Srbiji, investicije od blizu 10 milijardi dolara, Politika, January 5, 2019, <http://www.politika.rs/sr/clanak/419657/Kinesko-cudo-u-Srbiji-investicije-od-blizu-10-milijardi-dolara>

Graph 1 – Chinese FDIs in Serbia 2015-2019 (in USD million, including the investments from Hong Kong and Taiwan)



Source: National Bank of Serbia

To put it simply, the lack of transparency can only bring questions of corruption in Serbia's relations with China. It is difficult even to find the documentation to understand the agreements. The 2016 Joint Statement on the Comprehensive Strategic Partnership currently can only be found on the Chinese government's websites. The lack of transparency is, however, a common characteristic of other foreign investments in Serbia. It is the same opacity pattern for the United Arab Emirates investments in Air Serbia, Belgrade Waterfront, and Al Rafawed Srbija. For Italian Fiat's takeover of Zastava Automobili in 2008, multiple provisions in the investment contract also remain secret.¹⁹ The investments typically come under the pretext of international agreements approved by Serbia's parliament. In this way, they stay outside domestic laws. This allows China and Serbia's senior leadership to develop necessary portions of the business deals as business secrets.

19 "Koliko je zaista Srbiju koštao "posao veka"", 021, July 10, 2019, <https://www.021.rs/story/Info/Srbija/218570/Koliko-je-zaista-Srbiju-kostao-posao-veka.html>

Many of the relevant individuals the research team interviewed for this analysis, therefore, pointed out that Serbian cooperation with China is much less complicated than with the West. Loans are also easily accessible, and the money comes quickly. As one expert noted in the research, "Whatever our side suggests, Chinese are ready to accept."²⁰ There are seemingly no concerns regarding business ethics and no reform-oriented contingencies in the agreements, as is the case for EU funded projects. The results of the cooperation with China are visible in the short-term. That is important and beneficial for politicians relying on four-year electoral terms.

In the political sphere, Serbia-China cooperation is also intensifying at the party and state level. The main ruling party, the Serbian Progressive Party (SNS), has established a close relationship with the Communist Party of China (CCP). SNS's vice president, Marko Djuric, led SNS delegations at the latest All China Congress at the end of 2019.²¹ At the celebration of SNS's 10th anniversary in 2018 the only foreign guest was China's Ambassador to Serbia, Lee Mancang acting as special envoy of the Communist Party of China.²² In previous congresses the main foreign guests were always from the West. China supports Serbia's position on Kosovo, but it was never vocal about it. At the same time, Serbian officials supported China regarding its position on what was viewed as terrorism in the Chinese province Xinjiang²³. Serbian officials also backed China on its national security law for the Hong Kong Special Administrative Region.²⁴ Belgrade's determination to develop a robust and long-term partnership with China became even more evident during the COVID-19 pandemic. Serbian President Aleksandar Vucic openly slammed the EU for lack of solidarity and praised Serbia's partnership with its "Chinese brothers". Vucic said they are the only ones that can and will help Serbia.²⁵ Chinese medical equipment indeed arrived several days later. It was

20 Interview with a Serbian foreign investments expert, February 7, 2020.

21 Đurić u višednevnoj poseti Kini na poziv Kounističke partije, TV Pink, November 18, 2019, <https://pink.rs/politika/166966/djuric-u-visednevnoj-poseti-kini-na-poziv-kounisticke-partije>

22 Decade of Progressive Party creates basis for Serbia's development: Serbian president, Xinhua, October 22, 2018, http://www.xinhuanet.com/english/2018-10/22/c_137549115.htm

23 Interview: On Xinjiang and terrorism, U.S. double standards on display, Xinhua, December 18, 2019, http://www.xinhuanet.com/english/2019-12/18/c_138641055.htm

24 Serbia backs China's national security law for HK in letter to President Xi Jinping, CGTN, May 30, 2020, <https://news.cgtn.com/news/2020-05-30/Serbia-supports-China-s-national-security-law-for-HK-in-letter-to-Xi-QUYkZ4ljQs/index.html>

25 Vučić oduševio kineze, mediji preplavljeni emotivnim video snimcima: Pomozimo Srbiji,

widely covered in the media and promoted by some of the most important state officials.²⁶ This caused a widespread debate in Serbia and abroad about the geopolitical struggle in the Western Balkans.²⁷ Some current and former senior-level EU officials criticized the actions of the Serbian government,²⁸ including the EU's High Representative for the Foreign and Security Policy Joseph Borell and former Swedish Prime Minister Carl Bildt. The current impression is China "won the day" in Serbia, both in terms of favourable media coverage and as a political and economic partner.²⁹

Serbia is an intriguing opportunity for China compared with some other states. The country is situated on one of BRI's main routes and led by the regime that has shown disproportionate willingness to deepen relations with Beijing. As a candidate for EU membership, Serbia is an interesting testing ground for implementing infrastructure and energy projects backed by Chinese loans. Many say that the first case of a Chinese state owned construction (China Bridge and Road Corporation-CBRC) company winning one EU funded project, Peljesac bridge in Croatia, was a direct consequence of CRBC's successful implementation of a project of Zemun-Borca bridge

mi smo braća, Kurir, March 16, 2020, <https://www.kurir.rs/vesti/politika/3428653/vucic-odusevio-kineze-mediji-preplavljeni-emotivnim-video-snimcima-pomozimo-srbiji-mi-smo-braca-video>

26 Strahinja Subotić, Miloš Janjić, Milena Lazarević, What have we learned from the COVID-19 crisis in terms of Sino-Serbian relations?, April 2020, p. 5

27 Biber: Veća pažnja Srbije pomoći iz Kine i Rusije nego onoj iz EU - loša poruka, N1, April 24, 2020, <http://rs.n1info.com/Vesti/a592395/Biber-Veca-paznja-Srbije-pomoci-iz-Kine-i-Rusije-nego-onoj-iz-EU-losa-poruka.html>

28 Borel: "Nema bilborda kojim se Srbija zahvaljuje EU", Nova S, April 21, 2020, <https://nova.rs/politika/nema-bilborda-kojim-se-srbija-zahvaljuje-za-pomoc-iz-eu/> and Carl Bildt, Twitter, March 27, 2019, <https://twitter.com/carlbildt/status/1243496185505210368?lang=en>

29 According to CIPE's recent opinion poll in Serbia (from July 2020):

- 57% percent of respondents see China favourably (compared to 56% in 2018), while 17% have a negative attitude (11% in 2018);
- 26% see China as a state/international institution that supports Serbia the most (a significant increase compared to 12%in 2018), which second only to Russia, whom 42% of respondents see as the biggest supporter of the country;
- 25% of respondents (19% in 2018) see China as a state that supported financially Serbia the most, second only to the EU with 27% (same result as in 2018);
- 62% see China as the country/international organization with a positive economic influence in Serbia (57% in 2018) and only 10 percent consider it negative (same result in 2018). Interestingly, 49% see the economic influence of the EU as positive (drop from 2018's 56%).

in Belgrade, which was backed by a Chinese loan.³⁰ Finally, the state of democratic governance and the institutional checks and balances' weakness make China easier to cooperate with Serbia than some other countries.

30 Interview with an expert for FDI coming from China, Belgrade, February 7, 2020

CASE STUDY: RTB BOR BEFORE ZIJIN'S TAKEOVER

RTB Bor was one of the mammoth industrial conglomerates from the former Yugoslavia that survived the 1990s UN sanctions and continued to operate after Serbia's regime change in 2000. It is strategically located in Bor's municipality, the seat of the Bor District in Eastern Serbia. The region has the richest deposits of copper in Serbia and precious metals, such as gold and silver. During the 1990s, the company was in relatively good shape. It produced copper products used to support the Serbian economy.³¹ Despite relatively high production rates, the lack of ongoing investment in equipment, facilities, and new technologies left RTB Bor in dire shape by the end of the decade.³² The main issues that caused a lack of investors were the company's aging equipment, poor facilities, lack of innovation, and low copper price on the global market. It also was handicapped by a huge debt of around USD 1 billion (mostly to other state companies and institutions for electricity, water, social contributions, etc.).

Unable to find an investor to privatize RTB Bor, in 2009, Serbia's government started a new investment cycle to provide the company new equipment and facilities to put it on a track towards profitability. That process was possibly corrupt, as the amount of government investment was inflated each year without any visible results. Consecutive governments invested at least USD 430 million in RTB Bor. The entire initiative was a failure. The funds were spent inappropriately³³ and investment in the equipment and facilities were mismanaged.³⁴ Eventually, RTB Bor was in almost the same situation as before the state investment cycle, relying on Serbia's budget's constant support. Its equipment remained outdated and continued to cause severe air pollution. The pollution was so bad that the company scaled down its production 60 percent.³⁵

31 Interview a former high-level employee of RTB Bor, Bor, February, 13, 2020

32 Ibid

33 Serijal: Rudnik dugova - Transkript prve epizode <https://insajder.net/sr/sajt/rudnikdugova/344/Transkript-prve-epizode.htm>

34 Ibid

35 According to the interviewees from the town of Bor, the production was scaled down after the protests of Bor's citizens.

RTB Bor was, however, again at a dead end, and the only solution was privatization. With a debt that reached USD 1.47 billion and stretched back to the 1990s, the company's situation was dire.

Serbia's government decided, together with 16 of other state-owned mammoth conglomerates, to fix its problems by cutting debts through so-called 'pre-prepared reorganization plans'. To allow for this solution, the IMF demanded all the companies stop receiving support from Serbia's budget and operate independently.³⁶ The court approved the plan for RTB Bor, and the government took over USD 1.1 billion of Bor's total debt at the beginning of 2018. This set the stage for the privatization of the company.

This was followed by media reports in February 2016 that Chinese company Li Ten had sent a letter of intent suggesting a strategic partnership model of privatization with an investment of USD 490 million in RTB Bor.³⁷ This offer could explain why the government chose a plan where the state remains a minority shareholder in the company.

Issue no. 1: Tender trouble for privatizing RTB Bor

Serbia signed the 8th revision of its stand-by arrangement with the IMF in December 2017. It required Serbia to announce a public tender for finding a strategic partner for the company, as a move that would ensure restructuring of this company which was requested by the IMF. The offers of interested investors were needed to contain the following according to the announcement by the government:

- a) Recapitalization of the company in the amount of USD 350 million;
- b) Taking over of the existing remaining debts;
- c) Maintaining the existing number of jobs in the company;
- d) A substantial increase in the company's production ;
- e) All the companies that wanted to participate at the tender had to have at least USD 500 million revenue requirement.³⁸

36 Slađana Vukašinović, Plan vlade za 17 žigosanih Šta će biti sa preduzećima koja od 31. maja ostaju bez zaštite države, Blic, May 20, 2015 <https://www.blic.rs/biznis/plan-vlade-za-17-zigosanih-sta-ce-biti-sa-preduzecima-koja-od-31-maja-ostaju-bez/d28h08b>

37 Srbija: Kinezi spremni da ulože 400 miliona evra u RTB Bor, Danas, February 26, 2016, <https://www.danas.rs/ekonomija/kinezi-spremni-da-uloze-400-miliona-evra-u-rtb-bor/>

38 Danas ističe rok za RTB Bor: Kinezi i Rusi najviđeniji za strateškog partnera, Blic, August 20, 2018, <https://www.blic.rs/biznis/privreda-i-finansije/danas-istice-rok-za-rtb-bor-kinezi-i-rusi->

In mid-2017, a year before the tender was released, the media reported that 11 different companies and groups coming from Russia, China, Canada, Turkey, and one European-Kazakhstan consortium expressed their interest in the tender.³⁹ The list of potential bidders was narrowed down to four in February 2018.⁴⁰ After several postponements, the strategic partner tender for RTB BOR was launched in July 2018.

Zijin is one of the lead mining companies in China and is branded as one of the nation's top multinational companies. According to publicly available company ownership data, retail investors own 53%, private companies 23%, institutional investors 21%, and insiders 1% percent. Although Zijin is traded on the public stock market, Serbian opposition claims it is actually a state-owned entity controlled by the state. The largest and controlling shareholder of the company is Minxi Xinghang State-owned Investment & Operation Co., LTD. This is a company controlled by the Chinese state according to publicly available data. Zijin's management has a very close relationship with the Communist Party of China and its local branch in Fujian province. For example, its Chairman of the Board of Directors Chen Jinghe was a delegate at the 10th, 11th and 12th National People's Congress of Fujian Province.

Zijin has the appearance of a generally reputable company. However, in the past Zijin has been involved in several scandals. It was criticized in March 2009 over the Rio Blanco project in Peru. Citizens protested Zijin's investment, which led to clashes with the police and two protestors' deaths. In 2010, Zijin was accused of attempting to bribe reporters after a major toxic waste leak at a facility in Fujian province. Zijin has also faced harsh criticism "from the media, civil society, and financial analysts in China because it has neglected internal management, risk management, and the environment as it aggressively seeks to expand globally."⁴¹

[najvideniji-za-strateskog-partnera/d1n1cv6](#)

39 Za strateško partnerstvo sa RTB Bor zainteresovano 11 kompanija, E Kapija, July 10, 2017, <https://www.ekapija.com/news/2187170/za-stratesko-partnerstvo-sa-rtb-bor-zainteresovano-11-kompanija>

40 B92 saznaje: 4 kompanije bi RTB Bor, tender uskoro, B92, January 8, 2018, https://www.b92.net/biz/vesti/srbija.php?yyyy=2018&mm=01&dd=08&nav_id=1344686

41 Rio Blanco Copper Mine Peru, Banktrack, November 1, 2015, https://www.banktrack.org/show/dodgydeals/rio_blanco_copper_mine/_blank/pdf

It seemed that even before the tender was announced, some of Serbia's public officials strongly favoured a strategic partner for RTB Bor coming from China. In a series of statements, public officials portrayed RTB Bor as a dying company that Serbia desperately wanted to get rid of. That is despite the fact that new, rich deposits of ore had been discovered in Cukaru Peki near Bor.⁴² In parallel, senior state officials contributed to the impression that only China could takeover RTB Bor. In October 2016, the then Prime Minister Aleksandar Vučić stated he would "beg, and if necessary, even kneel" before Chinese Prime Minister during their upcoming bilateral meeting in Riga.⁴³ In January 2018, President Vučić announced that he had requested, through the Chinese Embassy in Belgrade, President Xi Jinping help find a solution for the RTB Bor problem.⁴⁴ Also, in January 2018, Tomislav Nikolić, the former President of Serbia and Head of the National Council for Coordination of Cooperation with the Russian Federation and the People's Republic of China, met with Chen Jinghe, Chairman of the Managing Board and Executive Director at Zijin. The main point of the meeting was the privatization of RTB Bor. In that meeting, Nikolić solicited the concept by saying that if Zijin privatized RTB Bor, it would be the largest mining investment within BRI. "RTB Bor is the right opportunity for us to strengthen our friendship", Nikolić said.⁴⁵ In March 2018, Vučić met with Zijin representatives who expressed their desire to invest in Serbia.⁴⁶ In May 2018, Vučić said in Smederevo, where China's Helsteel had taken over the steel mill, he would ask China's President to take over also RTB Bor. This pattern strongly suggests that the government favored China's Zijin as a strategic partner from the beginning of the tender campaign and that the tender was just a formality.

42 Public officials were quite vocal about Cukaru Peki in 2016. Still, no one mentioned it in the same context with RTB Bor, nor could it be connected with the company's privatization.

43 Vučić: Klečaću na kolenima i moliću kineskog premijera da preuzmu RTB Bor, Nova ekonomija, 30.10.2016, <https://novaekonomija.rs/vesti-iz-zemlje/vu%C4%8Di%C4%87-kle%C4%8Da%C4%87u-na-kolenima-i-moli%C4%87u-kineskog-premijera-da-preuzmu-rtb-bor>

44 Vučić zamolio Sija da pomogne oko RTB Bora, B92, January 6, 2018, https://www.b92.net/biz/vesti/srbija.php?yyyy=2018&mm=01&dd=06&nav_id=1344157

45 Nikolić u poseti kompaniji zainteresovanoj za RTB Bor, RTV, January 27, 2018, https://www.rtv.rs/sr_ci/ekonomija/aktuelno/nikolic-u-poseti-kompaniji-zainteresovanoj-za-rtb-bor_888988.html

46 Vučić sa predstavnicima kineske kompanije zainteresovane za RTB Bor, Danas, March 12, 2018, <https://www.danas.rs/ekonomija/vucic-sa-predstavnicima-kineske-kompanije-zainteresovane-za-rtb-bor/>

The tender for RTB Bor was opened on July 18, 2018. Three companies bought corresponding tender documentation and announced they would bid: Chinese Zijin, Canadian-Finnish fund Champion, and U Gold officially from Cyprus (the ultimate beneficiary of U Gold is allegedly a Russian company active in Ukraine and Montenegro).⁴⁷ At the end of August, Serbia's government announced Zijin won the tender, and in September, the Agreement on Strategic Partnership was signed. Zijin then gained 63% of RTB Bor, after paying USD 350 million for the company's recapitalization. The company was renamed Zijin Bor Copper (authors will continue to use RTB Bor for clarity).

As the second-placed bidder, U Gold was dissatisfied with the outcome and publicly claimed that their offer was better. They pushed the point that their bid included a permanent guarantee for maintaining 5000 jobs. Zijin's job guarantee is only good for 3-years.⁴⁸

A separate but essential reference for understanding the RTB Bor privatization is the Cukaru Peki case. In 2010, the Serbian government gave a license and exploration rights to Rakita Exploration Company, a subsidiary of the international mining conglomerate Freeport-McMoRan. No details on the license or its content have been made public. Rakita's expert teams discovered that Cukaru Peki, south of the town Bor, contains significant copper and gold deposits. According to available estimates, there are around 14 million tons of copper deposits and 300 tons of gold.⁴⁹ Through different transactions, majority rights over Cukaru Peki ended in the Canadian

47 Novosti: RTB Bor preuzimaju kineski "Zi jin", ruski "U gold" ili kandsko-finski "Čempion", Nova Ekonomija, August 22, 2018, <https://novaekonomija.rs/vesti-iz-zemlje/novosti-rtb-bor-preuzimaju-kineski-zi-jin-ruski-u-gold-ili-kandsko-finski-%C4%8Dempion>

48 Russian U Gold dissatisfied with Serbia decision to sell RTB Bor to Chinese Zijin, Minex Forum, September 18, 2018, <https://www.minexforum.com/en/russian-company-u-gold-dissatisfied-with-serbia-decision-to-sell-copper-company-rtb-bor-to-chinese-zijin/>. Although the research team attempted to receive the tender requirements through the request for access of information of public importance, the Ministry of Economy denied the request, claiming that it is a business secret. The research team also sent an inquiry to U Gold to interview them regarding the claims, but it was unsuccessful. Interviewed experts claimed that UGold, despite their claim, did not give a better offer, because otherwise, they would opt for international arbitration.

49 Ibid. This amount is significantly higher than all the copper (3.5 million tons) and gold (160 tons of gold) that were produced by RTB Bor in the last 100 years.

company Nevsun Resources, and Freeport held the minority rights. Zijin was negotiating to purchase Nevsun at the same time it was bidding for RTB Bor.

Just five days after the announcement that they won the RTB Bor tender, Zijin took over Nevsun Resources for USD 1.86 billion. The deal included the contract for the exploration rights of Cukaru Peki, under still largely unknown conditions. Zijin bought the exploration rights for the remainder of Cukaru Peki from the US-based Freeport Company for USD 390 million. This means Zijin now has the exploration rights of the entire region around Bor.⁵⁰

With these acquisitions, Zijin now has complete control over the production facilities, existing mines of RTB Bor, and all known deposits in the Bor District. Despite questions on how the deal happened for RTB Bor, Zijin has fulfilled its obligations to Serbia. In December 2018, Zijin paid USD 350 million for recapitalization and took control of 63% of RTB Bor. In January 2019, Zijin fulfilled its remaining obligations (not related to the agreed additional investments) and paid USD 200 million in the old debts of RTB Bor.

Zijin's purchase of RTB Bor was portrayed favourably in public and by parts of the expert community. Some claim there was no other option as "only Chinese could privatize RTB Bor as a long-term investment and no Western company has the interest to wait for 10 years for the investment to pay off".⁵¹ However, experts also pointed out that the deal may not be as favourable as it might look at first glance. Misa Brkic, a well-known economic journalist in Serbia, questioned the negotiations process with Zijin and the fact that the same company obtained rights to exploit Cukaru Peki deposits also near Bor. He suggests the state could have positioned itself more strategically, and to put Cukaru Peki into the final equation regarding RTB Bor. Some other economic journalists claim, taking over the Cukaru Peki deposits is a signal to Serbia that RTB Bor may have been sold cheaply or that the state should have maintained a more significant share in the company.⁵² In other words, Serbia could have received a much better deal. Zijin's purchase of Cukaru Peki and RTB Bor is clear evidence that China has long-term ambitions in Serbia.

50 Zijin buys another copper and gold mine in Serbia, N1, November 4, 2019, <http://rs.n1info.com/English/NEWS/a540951/Zijin-buys-another-copper-and-gold-mine-in-Serbia.html>

51 Interview with a reputable Serbian economist, Belgrade, February 3, 2020.

52 Miša Brkić, Da li su nas Kinezi preveslali sirote preko zlata, Danas, September 16, 2018, <https://www.danas.rs/nedelja/da-li-su-nas-kinezi-preveslali-sirote-preko-zlata/>

Zijin Could Increase Ownership: One expert interviewed by the research team expressed concern that with additional investments, not foreseen in the Agreement, Zijin could increase their share in the company. This would marginalize Serbian influence over the company.⁵³

Mining royalty tax: Despite the rich deposits of ore and prospects for China's huge profits, the agreement did not foresee any changes in the 5% mining royalty tax on net income made from the exploration of ore deposits. Compared with taxes from some other countries, 5% is relatively low. However, experts claim that Serbia cannot impose taxes like other countries (where taxes can be 20-30%) as it would limit the profit potential for other possible foreign investors.⁵⁴ Some have suggested Serbia should base the mining royalty tax on the size of the countries from where investors are from.⁵⁵

The tender procedure results suggest a strong bias in favour of Zijin's acquisition of RTB Bor and that the Serbian government could have made a much better deal. Zijin now has total control over the Bor district's mining at a relatively low cost. It is still unclear why the Serbian government did not pursue a stronger negotiating position by linking the acquisition of RTB Bor to Cukaru Peki.

53 Interview with a reputable Serbian economist, Belgrade, February 3, 2020

54 Rudna renta: Srbija 3% do 7% prihoda – Evropa i svet 20% do 30% prihoda, Solaris Media, February 22, 2017, <https://www.solarismediabor.rs/rudna-renta-srbija-3-do-7-prihoda-evropa-i-svet-20-do-30-prihoda/>

55 See G. Vlaovic, "Srbija nema snage da podigne rudnu rentu", Danas, June 7, 2020, <https://www.danas.rs/ekonomija/srbija-nema-snage-da-podigne-rudnu-rentu/>

Issue no. 2: The Strategic Partnership Agreement between the Republic of Serbia, RTB Bor and Zijin Mining Group – Legal Analysis

Unlike documentation for other Chinese projects in Serbia, the 1000+ pages Agreement on Strategic Partnership between Serbia, RTB Bor and Zijin signed September 17, 2018, is publicly available.⁵⁶ In October 2018, the Anti-Corruption Council (ACC) demanded the Government of Serbia publish all contracts inaccessible to the public, including the Strategic Partnership Agreement.⁵⁷ For this analysis, the most critical parts of the Agreement are: purchase conditions, new owner investment, and production obligations, the job security of existing employees, and provisions concerning environmental protection. The Agreement is one of the few documents related to Serbia-China cooperation that is accessible to the public. However, this is a weak effort at transparency. The document's important pages are scanned as pictures, making it difficult to browse and find relevant information.

According to the Agreement, Zijin is obliged to invest 350 million USD until September 2021 in RTB Bor to become the owner of 63 percent of shares. Serbia will remain a minority shareholder with just 36.99 percent. After that milestone, Zijin is obligated to invest an additional USD 780 million in the next three years for a total investment of USD 1.26 billion over six years. Serbia keeps the right to monitor the implementation of obligations of Zijin through an independent audit. The investment plan is covered by capital directly from Zijin, through loans, revenues from the company, or other available sources. Zijin already announced it would be financed through the revenues. They did not specify if the revenues are from the mother company or revenues of RTB Bor. **This leaves the impression that the plan is to finance the whole investment only through the income of RTB Bor, although the impression that was created in the media was that the whole investment is coming from China.**⁵⁸

56 Full text of the Strategic Partnership Agreement in Serbian, https://media.srbija.gov.rs/medsrp/dokumenti/rtb_bor-ugovor-za-objavu.pdf

57 Savet za borbu protiv korupcije traži objavu ugovora nedostupnih javnosti, N1, October 24, 2018, <http://rs.n1info.com/Vesti/a537669/Savet-za-borbu-protiv-korupcije-trazi-od-Vlade-objavu-ugovora-nedostupnih-javnosti.html>

58 Just in January 2020, the net profit of RTB Bor was around USD 8.5 million. According to the same source, despite the “low investment rate,” Chinese plan to earn USD 112 million in 2020, with a production rate which is twice as high as in 2018, before the Strategic Partnership Agreement. See Kinezi planirali da dupliraju proizvodnju u RTB “Bor”, Novosti Online, April 2, 2020<https://www.>

Zijin is also obligated to raise RTB Bor's refined copper production to 80 thousand tons from its mining resources within four years of the company takeover. Between the 6th and 7th anniversary of closing of transaction, it must produce 120 thousand tons of copper cathode coming from RTB Bor's mining activities. **This means that Serbia is pushing RTB Bor's production capacity to limits that could have potentially dire environmental consequences. These are much higher production levels than RTB had achieved before.** In 2018, RTB Bor produced 43 thousand tons of copper, 700 kg of gold, and 5 tons of silver.⁵⁹ RTB Bor is obligated to reach higher production levels if the price of copper on the world market remains above USD 5 thousand per ton. If the market price falls below that, RTB Bor can even terminate the production.

For Serbia, protecting existing jobs at RTB Bor was one of the most critical issues reported in the media. However, the provisions regarding the employment are problematic for two reasons. First, Cyprus' U Gold objected to that Zijin did not offer to keep 5000 permanent employees as the tender required. According to the Agreement, Zijin only has to keep 5000 existing employees on staff for three years. Suppose Zijin planned to expand the production as outlined in the Agreement for RTB Bor (120 thousand tons of output between the 6th and 7th anniversary of its takeover). In that case, it is unclear why the government would not insist the employees remain permanent. This makes even more sense considering Zijin obtained mining rights at Cukaru Peki. The second issue concerns Serbia's job subsidies. The Agreement requires the Serbian government to help Zijin acquire all available subsidies (according to the Law on Investments and connected regulations) for new employees at RTB Bor. These subsidies would support both domestic as well as foreign workers that could come from China or elsewhere. This is very problematic as the subsidies are tools used primarily for Serbian citizens' employment and state investment in underdeveloped areas. Since Zijin is obligated only to keep current workers for three years, **this allows Zijin to potentially fire some existing employees and then to rehire them by taking subsidies from the government. They could even fire some current Serbian employees and hire Chinese and other foreign citizens with subsidies paid for by Serbian taxpayers. This happened in other instances in Serbia before.**⁶⁰

novosti.rs/vesti/naslovna/ekonomija/aktuelno.239.html:856887-Kinezi-planirali-da-dupliraju-proizvodnju-u-RTB-Bor

59 Ibid

60 Daniela Ilić Krasić, *Otpustiš radnike na lizing, na određeno i – dobiješ pomoć*, Nova S, April 13, 2020, <https://nova.rs/biznis/otpustis-radnike-na-lizing-na-odredeno-i-dobijes-pomoc/>

Of particular importance in the Agreement are the environmental protection provisions. As part of the deal, a joint working group was to be formed to prepare a due diligence analysis and environmental study to determine the likely environmental damage and develop an action plan (EAP) to improve the situation around RTB Bor. The environmental study should serve to define the bottom line of RTB Bor pollution at the time of purchase. The Agreement does not provide a timeframe when the study should be completed. Finally, the Agreement says it is not likely RTB Bor will need additional effort or expenses to follow contemporary environmental standards or in any other way to uphold environmental regulations of Serbia. In other words, the government is concluding, to a virtual guarantee, that RTB Bor is functioning in accordance with the existing regulations.

The government is supposed to assist RTB Bor with its action plan to acquire necessary permissions and ensure it is in line with existing regulations. It is also allowed that during the “transition environmental period,” RTB Bor will not be sanctioned or fined for not abiding by Serbia’s regulations. It seems the purpose of this provision is to protect RTB Bor and its new owner from the application of existing environmental regulations. This provision allows RTB Bor to ignore the entire system of environmental protection for Serbia. The Agreement also does not define the timeframe for the action plan to be created or the length of the transition period. This is complicated and problematic from the standpoint of the Constitution of Serbia. This arrangement essentially allows a single commercial agreement to suspend the legal order of Serbia effectively. Legally speaking, this is not possible, but it is foreseen by the Agreement.

All of this raises serious questions about why the state can claim RTB Bor is operating within environmental regulations, while the environmental study has not even begun. That leads to another question, why is Zijin protected from existing regulations on the environment “during the transition environmental period”? If RTB Bor’s operations are to be considered environmentally safe and Zijin is not liable for environmental issues, why is the action plan being developed to improve the current situation regarding environmental risks? This leads to a likely conclusion that at the moment of purchase, RTB Bor did not respect the applicable environmental regulations and that the above-mentioned state guarantee that it is following the environmental regulations does not stand. It seems likely Zijin was well informed that RTB Bor did not respect the domestic environmental regulations and wanted to avoid paying any penalties.

It must now be asked whether RTB Bor will be obligated to respect the Law on the Protection of the Environment in the transition period, based on the

guiding principles of **prevention and precaution**.⁶¹ The law clearly states any activity should be planned and implemented to reduce to a minimum the risk for the environment to help citizens optimally use the land, raw materials, and energy and to prevent or reduce the impact on the environment ultimately. The precaution and prevention principles are implemented through an estimate of environmental impact and utilizing the best available technologies, techniques, and equipment. It is not known what kind of equipment will be installed in RTB Bor during the transition period and if the new owner will respect Serbia's environmental regulations.

61 Article 9, Law on the Environment Protection (last time amended 2018), https://www.paragraf.rs/propisi/zakon_o_zastiti_zivotne_sredine.html

Issue no. 3: RTB Bor under Chinese ownership – Government Indolence and Civic Protests

After one year of operation under Zijin ownership, RTB Bor faced unprecedented environmental damage allegations from its operations. The criticism came from Bor's residents and environmental civil society organizations.

It should be emphasized that Serbia's environmental protection is one of the most critical aspects of the EU membership negotiations. The EU integration is a driving force of reform on many issues, most recently especially this one. Serbia's legal framework on the environment is solid on paper but lacks effectiveness in practice. In January 2020, Serbia submitted its negotiation position for Chapter 27-Environment to the EU. It has still not been made public. Most of the EU environmental legislation has not been transferred into the domestic legal framework. The implementation of legal provisions that are already adopted by Serbia is seriously lagging.⁶²

Within the environmental concerns, air pollution is particularly relevant in this case. Serbia has generally good legal framework in this area,⁶³ but there are a number of problems in terms of implementation. The first is air quality measurements. Despite increased measurement stations throughout Serbia, in many cases the data is unreliable. The Environmental Protection Agency (CEPA), under the Serbian Ministry of Environmental Protection, is tasked with measuring of air quality in Serbia. In its most recent report from 2018, CEPA admitted that only 48% of the air quality measurement in Serbia was implemented. 90% measurement is considered the necessary standard. In 2017, the air quality measurement was only 22%.⁶⁴ This leaves a very gloomy picture of air pollution in Serbia and shows that the systems in place are not reliable. This means the relevant institutions cannot provide valid information

62 See Milena Antić (Ed.), Chapter 27 in Serbia: Money talks - March 2018 – February 2019, Coalition 27, Belgrade, 2019, p. 12-13, https://www.koalicija27.org/wp-content/uploads/2019/10/izvestaj_2019_ENG_WEB.pdf

63 2013 Law on Air Protection, 2016 Regulation on Measurements of Air Pollutant Emissions from Stationary Sources of Pollution, 2011 Regulation on determining the Air Quality Control Programme within the State Network, 2013 Regulation on Monitoring Condition and Air Quality Requirements, 2012 Regulation on Determining Zones and Agglomerations, 2016 Regulation on Determining the List of Air Quality Categories by Zones and Agglomerations in the Territory of the Republic of Serbia for 2016 etc.

64 Annual Report on the Air Quality in the Republic of Serbia for 2018, Environmental Protection Agency, 2019, p. 7

on air pollution in Serbia. That leaves risky regulation gaps for possible manipulation of the system by large-scale polluters. To put this into context, CEPA in its annual report listed Bor's city was listed as having good air quality in 2018. This is despite multiple media reporting, public criticism, and recent incidents that show the air quality situation there remains very serious. Even in September 2020, when this report was about to get published, there are constant reports in the media on this.⁶⁵

Many policies and tools still lack, such as the state Strategy on Air Pollution, local air quality plans, etc. As the Coalition 27⁶⁶ rightly assessed, "continuous postponement of the implementation of the Law on Integrated Prevention and Control of the Environmental Pollution (adopted 2004, amended 2015) makes it impossible to use powerful tools to prevent air pollution". It is left to the polluters themselves to measure emissions.⁶⁷ The Ministry of Environmental Protection lacks resources, including staff, and tools for environmental inspections. This leaves them unable to fill the gaps in the strategic, legal, and institutional environmental frameworks.⁶⁸ Political will in Serbia to make necessary environmental improvements and reforms is very limited. This gives investors that are major polluters opportunity for breaking the rules regarding air pollution limits. According to media reports, local activists, and environmental civil society organizations, all of these issues apply in the case of RTB Bor.

According to them, the air quality in Bor has gotten worse since Zijin took over RTB Bor. The situation was not good before,⁶⁹ but the evidence shows it became worse after the ownership change. They report that since the beginning of 2019, air pollution has often gone above limits prescribed by law.⁷⁰ SO₂ (sulphur dioxide) concentrations in the air are the most obvious

65 Ne prestaje aerozagadenje u Boru, RTV Bor, September 9, 2020, <https://www.youtube.com/watch?v=pRcxH5WgQ4s>

66 Coalition of several CSOs that monitor Serbia's progress related to the Chapter 27-Environment of Serbia's EU accession negotiations. See <https://www.koalicija27.org/en/home/>

67 See Milena Antić, *op.cit*, p. 28

68 Ibid

69 About impact of the RTB Bor's work on the environment in the Bor district before the Zijin's investment see: Marina Paunkovićm Analiza stanja životne sredine od šteta nastalih kao posledica predhodnog rada RTB-Bor, Univerzitet u Nišu, Niš, 2017, https://www.pmf.ni.ac.rs/download/master/master_radovi_geografija/geografija_master_radovi/2017/2017-10-04-pm.pdf

70 AirQualityMeasurements, Serbian Environmental Protection Agency, Ministry of Environmental Protection

challenge. Even CEPA re-published measurements (of the Institute of Metallurgy in Bor) show high concentrations of this foul-smelling and toxic gas around Bor a number of times throughout the year.⁷¹ SO₂ does not cause immediate health issues for people, but a constant exposure can lead to chronic disease. There is also a problem regarding the concentration of suspended particles (PM10) and heavy metals in the air. High concentrations of these metals (**arsenic, mercury cadmium and others**) can cause malign diseases. Official local measurements showed that in 2018 arsenic concentration was 24 times higher than allowed.⁷² Local activists claim the arsenic concentration in P10 particles in November 2019 was 200 times higher than the legal limit.⁷³ During several days in December 2019, the level was 600 times higher than it should be.⁷⁴

The suspected cause for air pollution is the major increase in copper, gold, and silver production RTB BOR compared to the previous production levels from 2015-2018. To highlight this issue, after the drastic increase in production, copper cathode became Serbia's largest export product to China in 2018. According to the Serbian Statistical Office's data, in 2019, the rise of Serbia's export of refined copper has led to the dramatic increase (according to the Minister of Trade, Rasim Ljajic, of 213 %)⁷⁵ of the overall export of Serbia to China.

71 RTB Bor – proizvodnja koja guši, Insajder, October 30, 2018, <https://insajder.net/sr/sajt/vazno/15960/>

72 Arsen i Kadmijum u vazduhu iznad Bora, Media Center Bor, February 17, 2019. <https://www.mc.kcbor.net/2019/02/17/arsen-i-kadmijum-u-vazduhu-iznad-bora/>

73 Interview with local environmental activists, Bor, February 12, 2020. Later confirmed by the official measurements of the Mining and Metallurgy Institute in Bor (part of CEPA) for November and December, published at the official website of the Municipality of Bor. See Report for November, http://bor.rs/wp-content/uploads/2019/12/Izv.-o-kvalitetu-vazduha-u-Boru_novembar_2019-br.33005-19.pdf and Report for December http://bor.rs/wp-content/uploads/2020/01/Izv.-o-kvalitetu-vazduha-u-Boru_decembar_2019-br.33777-19.pdf

74 Interview with local environmental activists, Bor, February 12, 2020

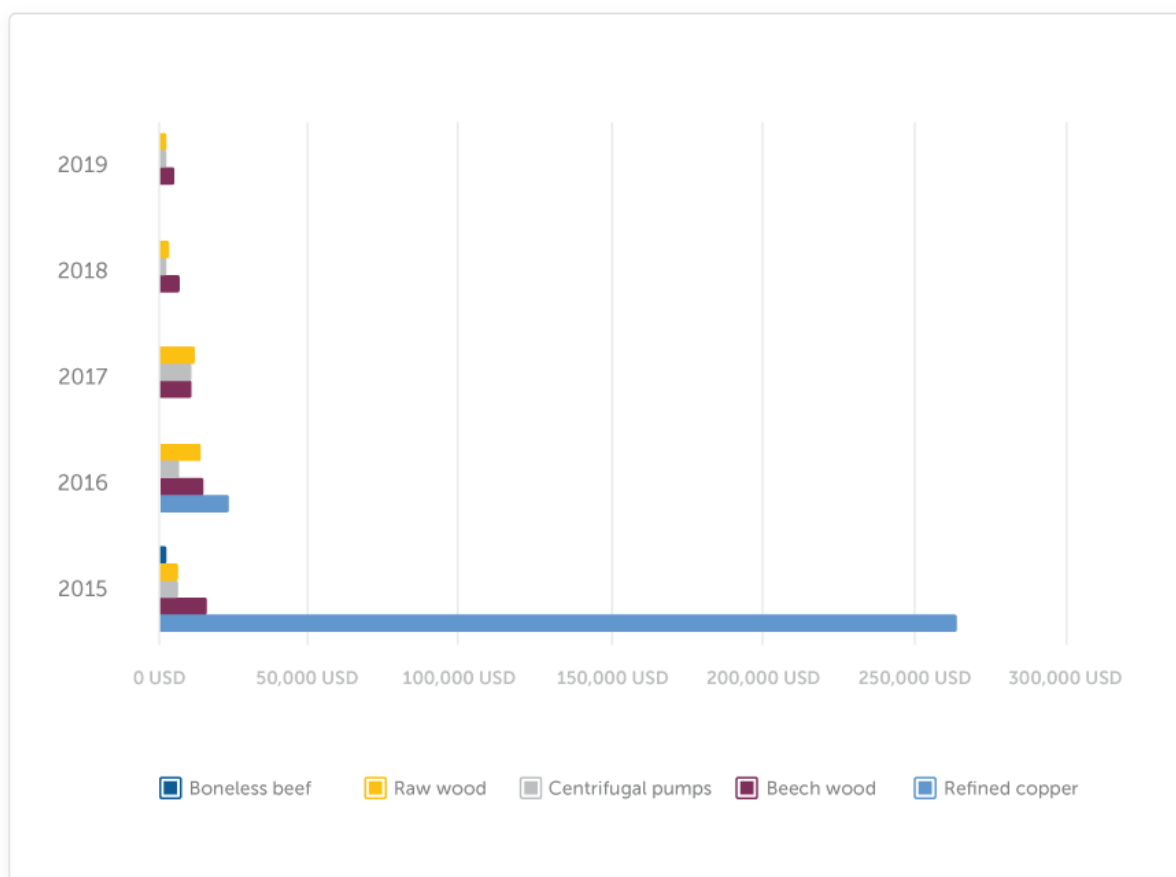
75 Ljajić: "Izvoz u Kinu porastao za 213 ODSTO", Blic Online, August, 8 2020, <https://www.blic.rs/biznis/vesti/ljajic-izvoz-u-kinu-porastao-za-213-odsto/fhy4k26>

Table 1 – Top ten export products of Serbia to China (in USD million)

Product	2019	2018	2017	2016	2015
Redefined copper	263,507	23,594	0	0	0
Beech wood	16,669	15,069	11,489	7,361	5,507
Centrifugal pumps	7,043	7,163	11,333	3,086	2,034
Raw wood	6,777	14,450	12,585	3,138	2,000
Boneless beef	2,635	0	0	0	0
DC motors and generators	2,100	5,019	2,829	159	0
Assembled floor tiles	1,629	5	181	0	0
Beef with bones	1,484	0	0	0	0
Various types of fertilizers	1,289	187	0	0	0
Wines	1,173	933	945	390	73

Source: Statistical Office of the Republic of Serbia

Graph 2 – Data about export of 2019 top five export products from Serbia to China in the period of 2015-2019



Source: Statistical Office of the Republic of Serbia

The main problem with SO₂ concentration in the air is that the facility for disposing of sulfuric acid does not have sufficient capacity to contain all the SO₂, a by-product of copper production. That leaves significant quantities of the toxic gas to be released into the air.⁷⁶ The problem with the suspended particles, and high concentration of heavy metals within them, is caused by alleged use and smelting of dangerous raw materials (slag: leftovers from previous production cycles containing a solid concentration of precious metals).⁷⁷

The situation has worsened so much that from June 2019 to February 2020, civic activists in Bor organized four protests and two short-term blockades of the RTB Bor production site.⁷⁸ They also brought charges against ex-CEO of RTB Bor Mr Long Yi. They also had charges filed for the lack of care and protection of the environment against Bor's Mayor Aleksandar Milikic (from SNS) and the Minister of Environmental Protection Goran Trivan (from the Socialist Party of Serbia).⁷⁹ Before the charges, local activists made an appeal to the mayor to take action against the pollution. Milikic communicated with RTB Bor, but their response was only a promise to solve the issues of air pollution around Bor by the end of 2021. This was only announced later in the media and not communicated directly to the mayor or the public.^{80 81}

76 Bor je ponovo najzagađeniji u Srbiji, zašto je šira javnost tek danas reagovala?, July 3, 2019, <https://www.solarismediabor.rs/bor-je-ponovo-najzagadjeniji-u-srbiji-zasto-je-sira-javnost-tek-danas-reagovala/>

77 Interview with representatives of the Renewables and Environmental Regulatory Institute – “RERI”, Belgrade, May 20, 2020

78 Interview with local activists, Bor, February 12, 2020. Also see Igor Mitrović, Četvrti protest protiv zagađenja u petak ispred direkcije Zidina u Boru', Bor 030, November 11, 2019, <https://www.bor030.net/cetvrti-protest-protiv-zagadjenja-u-petak-ispred-direkcije-zidjina-u-boru>

79 Zbog zagađenja u Boru krivične prijave protiv direktora Zidin, gradonačelnika i ministra Trivana, Danas, December 2, 2019 <https://www.danas.rs/drustvo/zbog-zagadjenja-u-boru-krivicne-prijave-protiv-direktora-zidjin-gradonacelnika-i-ministra-trivana/> and Krivične prijave zbog zagađenja u Boru protiv direktora Zidina, gradonačelnika i ministra Trivana, Insajder, December 2, 2019, <https://insajder.net/sr/sajt/vazno/16269/>

80 Zijin Company in Bor, environmental issues lead to court in Serbia, Serbia-Energy, February, 26 2020, <https://serbia-energy.eu/zijin-company-in-bor-environmental-issues-lead-to-court-in-serbia/>

81 In September 2020, the authorities of Bor subsequently filed a criminal complaint against those responsible in Chinese company Serbia Zijin Bor Copper, alleging the excessive levels of sulfur dioxide and other substances harmful to human health. https://www.euractiv.com/section/all/short_news/serbian-town-sues-chinese-company-zijin-over-air-pollution/

Until now, it appears that Zijin communicated exclusively with municipal and central authorities and not with the public, apart from a few meetings on unrelated issues. Local activists and environmental civil society organizations campaigned for nearly a year to push Zijin to invest more in environmentally acceptable production and act in accordance with Serbia's environmental regulations. They claim that Zijin, as a private owner of RTB Bor, has no excuse for not acting within the legal parameters and socially responsible.

Due to this public pressure, both the Ministry and Municipality reacted - though in a limited way. Instead, they played a game of passing the responsibility to each other. The Ministry claimed that the municipality does not have a short-term action plan on air pollution,⁸²; therefore, it cannot take action. But there are explicit provisions of the Law on Air Pollution and other related documents that show the Ministry could act on its own. The Environment Inspectorate visited RTB Bor in November 2019. It pressed charges against the company because air pollution with SO₂ in Bor before the Commercial Court in the town of Zajecar. According to the Inspectorate's report, concentrations were 5.6-8.3 times higher than the applicable law allows.⁸³ Even if it was true, RTB Bor is still allowed to continue to work at full capacity. RTB Bor's representatives challenged the Inspectorate's conclusion, claiming they are not the ones responsible in front of the court.⁸⁴

If the interpretation in the previous chapter of this analysis is correct, through its Agreement, Serbia relieved RTB Bor of any responsibility regarding environmental damages in the transition period. In any case, the Agreement encourages RTB Bor to increase production levels, which can only lead to increased environmental damage.

82 Foreseen by Article 33 of the Law on Protection of Air

83 CINS: Ministarstvo pokrenulo postupak protiv Židina zbog zagađenja vazduha, N1, February 24, 2020, <http://rs.n1info.com/Vesti/a572163/CINS-Ministarstvo-pokrenulo-postupak-protiv-Zidjina-zbog-zagadjenja-vazduha.html>

84 Židin na sudu: Dokažite da je zagađenje u Boru prekoračeno baš zbog nas, CINS; March 5, 2020, <https://www.cins.rs/zidin-na-sudu-dokazite-da-je-zagadenje-u-boru-prekoraceno-bas-zbog-nas/>

Today, RTB Bor continues to work at full capacity, despite protests and outrage. From time to time, company halts production for a day or two due to high air pollution (like it happened on September 9th, 2020), but then regularly continues with operations.⁸⁵ It seems that those public institutions that are responsible have reacted in a limited manner and with reluctance. The Ministry of Environmental Protection seems to have avoided addressing the issues raised, not counting the Inspectorate's action. No state official, specifically those that de facto enabled the investment, have said anything regarding the environmental problems in Bor.

85 Excessive air pollution recorded today in Bor, Balkan Green Energy News, September 9, 2020, <https://balkangreenenergynews.com/excessive-air-pollution-recorded-today-in-bor/>

CONCLUSIONS AND RECOMMENDATIONS

The second Chinese brownfield investment in Serbia, Zijin's purchase of the majority of RTB Bor shares in 2018, is a peculiar case. It unmistakably shows the fragility of the democratic governance in Serbia and the lack of Serbia's capacity (or even lack of interest) to negotiate business deals in Serbian people's interests. Considering the previous decades, when RTB Bor was in the hands of the state, Zijin's investment is welcome. But a better deal for Serbia could have been made. The authors' standpoint is that there were several issues regarding this process. This includes how the strategic partnership with Zijin was concluded, the provisions of the Agreement on the Strategic Partnership between the Republic of Serbia, RTB Bor and Zijin, and the significant environmental consequences to Zijin's takeover of RTB Bor.

It is possible the Serbian government was unaware that Zijin would obtain Cukaru Peki, with its rich deposits of ore, and expand its activities in the region of Bor. However, it seems more plausible that the issue was simply ignored, and that the government chose to accommodate the Chinese. Interviewed experts outlined that the immediate effect of investments often blinds states.

Our analysis of the Agreement on Strategic Partnership shows that Serbia's negotiators potentially compromised country's interests in several areas and did not consider the country's long-term interests and citizens. The Agreement allows indefinite *carte blanche* exemption from penalties connected with violation of environmental regulations because there is no time limit on the timeframe of the environmental transition period. However, this exemption is against the Law, and no commercial agreement, even this one, can exempt any company from penalties.

During substantial periods of air pollution in major Serbian cities at the beginning of 2020, some state officials dismissed it as a consequence of economic development. It must be stated, Serbia does not exist in a limbo. It is surrounded by the EU member states that would certainly not tolerate a non-member country being the origin of air pollution affecting them. This is especially true with the upcoming EU "Green Deal".

The total investment of Zijin is presented as money that will come from China. Aside from the initial recapitalization of USD 350 million and taking over Bor's existing debts, the remaining sum of USD 780 million will come from profits of RTB Bor. This thinking is enhanced by the rapid increase of

production and copper products, suddenly becoming the primary export good from Serbia to China.

From these conclusions related to the case of RTB Bor and Serbia's relationship with Zijin, the authors have developed a number of recommendations for Serbia's stakeholders.

Transparency

- ◆ **Investment Screening:** It would be of utmost importance for Serbia (government and parliament) to consider adopting regulation for screening foreign investments (similar to REGULATION (EU) 2019/452), with explicit provisions for the improved transparency of investment negotiations.
- ◆ **Transparency of Decision-Making about Investments:** Independent experts, public, and civil society organizations should be included in decision-making on significant investments. as they can have a long-term impact on different aspects of the country's interests and people's lives.
- ◆ **Direct deals versus public tenders:** Companies that implement significant investment projects should be selected through public procurement that is transparent and competitive. Government representatives should refrain from public pleas to foreign investors to takeover certain companies. Poor procurement and privatization practices are detrimental to the country's image and send a bad message about Serbia as an investment destination for constructive capital.⁸⁶
- ◆ **Transparency of Pollution Data:** Relevant public institutions should invest not only in improving the measurement of air pollution, including equipment, and human capacities. but also, communication with citizens, including by regularly disseminating credible information about air quality and pollution.

86 On how to become a destination for constructive capital see: Eric Hontz, *Building a Market for Everyone: How Emerging Markets Can Attract Constructive Capital and Foster Inclusive Growth*, CIPE Insights, CIPE, October 25, 2019, <https://www.cipe.org/newsroom/building-a-market-for-everyone-how-emerging-markets-can-attract-constructive-capital-and-foster-inclusive-growth/>

- ◆ **Transparency of Investment Agreements:** There is no reason for such agreements between Serbia and investors not to be transparent, publicly accessible, and searchable. They should be published as such along with justification for their conclusion.

Investment, development, growth

- ◆ **Balancing economic development and growth with environmental protection:** The Government and Parliament of Serbia should balance the needs of the country's economic development and growth and environmental protection. They must ensure that:

- ✗ Serbia's policy and regulatory frameworks are in line with contemporary EU environmental protection standards;
- ✗ proper institutional and informal "checks and balances" are in place to prevent concentration of decision-making in one institution;
- ✗ institutions' roles and responsibilities are respected;
- ✗ public consultations are an integral part of the public policymaking;
- ✗ and corresponding sanctions against public institutions are enforced when needed.

- ◆ **Responsible economic public policy and decision-making:**

- ✗ Existing regulations should not be compromised for the sake of investors' interests:
 - The government should strive to take loans without clauses on obligations to companies from the same state.
 - Investors should be held accountable to (at least) existing domestic regulations. Relevant public institutions should swiftly address any regulatory violations, including those pertaining to environmental protection.

- Public officials should be aware and educated on how to negotiate and enforce contractual obligations that are in line with such regulations, especially when it comes to environmental protection and, for example, for contracts to avoid vague terms.
- ✘ **The Mining Royalty Tax Rate should be reconsidered:** The government and expert community should start a public debate on Serbia's mining royalty tax rate so that Serbia remains an attractive investment destination and gets a premium return.
- ✘ **Subsidies should be used strictly for domestic employment:** Subsidies according to the 2015 Law on Investments should be strictly used for increasing Serbian citizens' employment, not foreign workers' employment.
- ✘ **Provision of subsidies should be amended:** Currently, subsidies are based only on the number of employees and/or invested amounts. Other factors are generally not considered. Also, investors involved in specific sectors should not be provided with subsidies. Mining, for example, is one area where rich resources most likely guarantee high profits. The parliament should amend the corresponding law accordingly.
- ◆ **Serbia's EU accession negotiations:** With the EU "Green Deal", which will be critical to Serbia's potential membership, the government should closely cooperate with the EU on all related matters. One of the largest and most demanding chapters (in terms of its implementation and financial impact) is Chapter 27-Environment. [The negotiations should be inclusive and as transparent as possible.](#)

Local communities

Companies' engagement with local communities should improve:

- ◆ The government in collaboration with other stakeholders, such as business support organizations and civil society organizations, should develop a code of conduct for all investors when it comes to their commitment to local communities where they operate, including regular open communication.
- ◆ The code of conduct should include an obligation for investors to regularly communicate with both the local authorities and citizens. Gathering formal groups on issues of local concern would add further "checks and balances" to investment governance, provide genuine local perspective on companies' growth, including their environmental impact, and inform their contribution to the sustainability of local communities.
- ◆ An index to measure companies' engagement with their local communities. It would bring transparency to assessment of companies' engagement and promote their efforts to address identified areas for improvement. This would also motivate companies to compete in a good way.

