



Republic of Serbia
**COMMISSION FOR
PROTECTION OF
COMPETITION**

25/IV Savska Street, Belgrade
Number: 9/0-02-689/2023-2
Date: October 05, 2023

**MINISTRY OF
CONSTRUCTION, TRANSPORT AND INFRASTRUCTURE**

22-26 Nemanjina Street
Belgrade

The Ministry of Construction, Transport and Infrastructure submitted to the Commission, the Draft Law on the Amendments and Supplements to the Law on Utility Activities (hereinafter referred to as: Draft Law), for the purpose of giving opinion.

The Council of the Commission for the Protection of Competition, based on Article 22 and in connection with Article 21, Paragraph 1, item 7) of the Law on the Protection of Competition ("Official Gazette of the RS", no. 51/2009 and 95/2013), at the 135th session as of October 05, 2023, renders the following:

OPINION

Please note that the act of the Commission for the Protection of Competition, number 9/0-02-472/2023-03 as of May 11, 2023 provided an opinion regarding the Draft Law on Amendments and Supplements to the Law on Utility Activities, which was then available on the Ministry's website.

In the said opinion, after reviewing the opinions of the Commission from 2016 and 2019, which related to legal and by-law regulations related to the performance of utility activities, it was indicated, among other things, that it is important not to deviate from the position that the funeral services remain defined as an activity which is not delegated, but can be performed by all business entities that meet the prescribed conditions.

And on this occasion, we wish to note that it is important that the principle of not delegating the aforementioned utility activity is retained in the Draft Law that was submitted to the Commission on October 3, 2023, in the provisions of Article 7 of the Draft Law.

With full appreciation of the fact that the performance of utility activities is of exceptional importance for the realization of the life needs of natural and legal persons, the position of the Commission is that the Law on utility activities should enable certain services, which are related to utility activities, but can be performed independently, be clearly defined as services of a commercial nature that can be provided by everyone under equal conditions (for example, Article 5, paragraphs 2 and 3 Law on Utility Activities ("Official Gazette of RS", No. 88/2011, 104/2016 and 95/2018). The conditions and criteria must be

defined so that they do not limit access to the market for existing and future service providers, nor impose conditions that are not justified, and thereby enable an equal legal position for all market participants.

Apart from the above, we also wish to indicate that the provision of Article 1, item 3) of the Draft Law stipulates the following: "the operator in charge of performing utility activities shall be a public company or a business established by a local self-government unit for the performance of one or more utility activities..."

In connection thereto, it should be noted that the Law on the Management of Business Companies Owned by the Republic of Serbia was adopted ("Official Gazette of the RS", no. 76/2023), which entered into force on September 15, 2023¹, which in Article 42 governs the change in the legal form of public companies, and when formulating the provisions of the Draft Law, the stated provision of this law should also be taken into account, which in paragraph 1 stipulates that a public company whose founder is the Republic of Serbia changes its legal form into a limited liability company or a joint stock company.

Also, please note that in the Draft Law, the aforementioned provision of Article 1, item 3) introduced the meaning of the term "the operator in charge of performing utility activities", which is not harmonized with the provision of Article 5, paragraph 1 of the Law on Utility Activities, which also prescribes who is in charge of performing utility activities.

Article 7 of the Draft Law, introduces the 9a provision which in paragraph 7 stipulates that for the performance of the utility activity of funeral services, the minister issues a decision on the fulfillment of the conditions for the performance of the utility activity of funeral services with a validity period of three years.

The Commission assesses that the three-year period in question is short and that it exposes the operators of the aforementioned utility activities to unnecessary costs, especially bearing in mind that in accordance with the provisions of Article 33, paragraph 1, item 3 of the Law, the Republic Inspector checks whether the utility activity in question is carried out in accordance with the law, which he/she can do at any point in time.

The provision of Article 10 of the Draft Law, in addition to the existing possibility of joint performance of utility activities, also introduces the possibility of "assignment" of performing tasks within the framework of a certain utility activity (to another unit of local self-government or to a public utility company founded by another unit of local self-government). In contrast to the joint performance of activities, which is defined in the Draft Law, assignment is not defined in detail, especially in terms of the manner and term in which the performance of utility activities is assigned, as well as the reasons for the assignment of performance of activities.

Also, the provision of Article 10 of the Draft Law, introduces a new Article 12a, which foresees the possibility of electing the National Utility Infrastructure Manager, who is elected by the Government of the RS, which is not provided for in Article 1 of the Draft Law. of the Draft Law. The comment regarding the assignment of work within the framework of a certain utility activity from Article 10 of the Draft Law regarding the deadline and reasons, is fully applicable in the case of transferring the authority to manage one or more utility activities to the Republic of Serbia, i.e. the Government.

¹ Article 51 of the of the Law on the Management of Business Companies Owned by the Republic of Serbia, sets forth that this law shall be applied following 12 months from the date of entry into force, save for the provisions of Article 12, paragraph 1, Article 24, paragraph 3, Article 33, Paragraph 1, Article 34, paragraph 2, Article 42, paragraph 4 and Article 50, paragraphs 3 and 4, which shall be applied from the date of entry into force of this law.

The Commission's assessment is that the said assignment, i.e. the transfer of authority to perform activities, should be regulated separately, first of all for the reason that this way directly affects the number of those performing utility activities.

Article 26a of the Draft Law introduces the methodology for determining the prices of utility services. Given that the subject Article states that the Government regulates more closely the methodology for determining the prices of utility services where the end user can be determined, and that the provider of utility activities is obliged to apply the said methodology, this Article of the Draft Law remained incomplete in terms of determining the price of utility services where the end user cannot be determined.

From the perspective of the competence of the Commission, the Council of the Commission has no other suggestions/proposals regarding the content of the Draft Law in question.

COUNCIL CHAIRMAN

Čedomir Radojčić, Council Member, duly

Addendum -

- Commission Opinion No. 9/0-02-472/2023-03 dated May 11, 2023.