



## FORMAL OPINION

On the draft of *Government Emergency Ordinance for the amendment and completion of the Law no.138/2004 on land reclamation, republished, with the subsequent amendments and completions*, submitted by the Ministry of Agriculture and Rural Development, by the address registered at the Competition Council with no. RG 6582/17.05.2013,

The draft of Government Emergency Ordinance for the amendment and completion of the Law no.138/2004 on land reclamation, republished, with the subsequent amendments and completions, provisions for the protection of the land reclamation infrastructure in the private domain of the state, so that it will be transmitted into the property of the land reclamation organizations only after a 5 year utilization period, under the condition of a correct use and of the provision of the infrastructure's integrity, but with the obligation that the land reclamation organizations shall constitute a guarantee, into the account of the National Agency for Land Reclamation, of 10% from the inventory value of the transmitted infrastructure.

By assessing the provisions of this draft of Government Emergency Ordinance for the amendment and completion of the Law no.138/2004 on land reclamation it is ascertained that it includes provisions that fall under the incidence of the Law on competition no. 21/1996, republished, with the subsequent amendments and completions<sup>1</sup>.

## COMPETITION COUNCIL

Based on art. 20 recital (4) letter c) and on art. 26 recital (1) letter l) of the *Competition Law no. 21/1996, republished* with the subsequent amendments and completions, during the Plenum meeting,

**Issues a favorable formal opinion** on the *draft Government Emergency Ordinance for the amendment and completion of the Law no.138/2004 on land reclamation, republished, with the subsequent amendments and completions*, with the following recommendations:

*In order to avoid the distort of the competition on the market of land reclamation services it is necessary that the Ministry of Agriculture and Rural Development takes into account, when regulating the legal status of the land reclamation organizations, also the national and Community provisions in the competition field regarding the undertakings.*

The activity -object of the land reclamation organizations, which perform services of land reclamation, are commercial services that can be carried out by any economic operator on the market.

<sup>1</sup> Government Emergency Order no. 75/2010, approved, with amendments and completions, by the Law no. 149/2011.

In accordance with art. 8 and 10 recital (1) and (2) of the Law no. 138/2004 and art. 5 recital (2) of the Methodological Norms on the application of the Law on land reclamation no. 138/2004, with the subsequent amendments and completions, for the services performed by the organizations, the persons which are not a member of those shall pay tariffs which cover the full cost of the exploitation, maintenance, repairs of the land reclamation infrastructure and amortization. In exchange, the members of the organizations may benefit of lower tariffs, where the general costs of administration or other costs alike, which are covered by the fees paid by them, may be eliminated or partially enclosed. This may represent a possible discrimination between the beneficiaries of land reclamation services.

In accordance with art.2 recital (2) of the Law on competition no. 21/1996, republished, with the subsequent amendments and completions, by “undertaking” it is understood any economic operator engaged in an activity consisting in offering goods or performing services on a certain market, regardless its legal status and its financing manner, as defined within the State aid European legislation.

Taking into consideration that the organizations obtain incomes from the activity of land reclamation and, therefore, can be considered undertakings according to the Law on competition, it is necessary that, when performing the land reclamation activities, the land reclamation organizations do not distort the competition on the market of land reclamation services and ensure the beneficiaries’ access at competitive tariffs and quality services.

In terms of the incidence of the Draft with the communautaire legislation in the State aid field, granting the free use of land reclamation infrastructure elements to the land reclamation organizations (acting as undertakings) is a measure susceptible to represent State aid in favor of these organizations; if so, it is necessary to meet the specific legislation. If the amounts to be granted in order to meet this objective do not exceed 200,000 Euro per beneficiary, during a period of three consecutive fiscal years, we recommend the set-up of a scheme, in accordance with the provisions of the *Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid*.

In order to avoid the buildup of a favorable competitive position for the organizations, on the market of land reclamation services and of a possible abuse when those set-up the tariffs for land reclamation services, it is necessary for the Ministry of Agriculture and Rural Development to take into account, when regulating the legal status of these organizations, the national and communautaire legislation in the field of competition regarding the undertakings, as well as any other measures that may lead to the opening and development of the markets of agricultural services and to the achievement of increased efficiency through a competitive functioning of those markets.