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AöW Comments to the Draft Interim Technical Report on TSIA-TTIP [EU registry No. 00481013843-28]

Dear Sir or Madam,

the AöW (Allianz der öffentlichen Wasserwirtschaft e.V.; engl. Alliance of Public Water Management) hereby submit her comments to the Draft Interim Technical Report on the Trade Sustainability Impact Assessment (TSIA) on the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the USA.

The AöW is the representation of interests of public water management in Germany. Our members come from all federal states. The AöW is an alliance of institutions governed by public law and companies of water supply, wastewater disposal as well as river basin management performing their service exclusively themselves or by means of independent institutions in organizational forms governed by public law.

Access to drinking water and sanitation is a human right. Our members enable not only the access; moreover, they provide it in the long-term for favourable prices, in good quality and safety. For that, providers in public hands at municipal level enjoy great trust for her performances.

The overwhelming support of the European Citizens' Initiative on "right2water" shows clearly their demands. They urged that: "[...] Water supply and management of water resources [should] not be subject to 'internal market rules' and that water services are excluded from liberalization." The European Parliament concluded regarding trade agreements very clearly followings:

"Recognises that, as stated in the WFD, water is not a commodity but a public good that is vital to human life and dignity, and reminds the Commission that treaty rules require the EU to remain neutral in relation to national decisions governing the ownership regime of water undertakings, therefore it should by no means promote the privatisation of water undertakings in the context of an economic adjustment programme or any other EU procedure of economic policy coordination; given that these are services of general interest and are thus mainly in the public interest, calls

on the Commission to permanently exclude water and sanitation and wastewater disposal from internal market rules and from any trade agreement, and to provide them at affordable prices, and calls on both the Commission and the Member States to ensure that they are managed technically, financially and administratively in an efficient, effective and transparent manner;" (Point 22, European Parliament, Recommendations on the follow-up to the European Citizens' Initiative Right2Water, 15 July 2015).

Although Malmström and Froman declared a joint statement on public services, "water supply" and "waste water treatment" are actually mentioned in a positive list for market access in the European Union's proposal for services, published on 31 July 2016 (http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153669.pdf, page 126 and p. 154). These services are not clearly excluded, moreover on the table of negotiations and the US-proposal is undisclosed. The report does not outline any new information and Europeans are still not able to clarify the contents of the free trade negotiations with this report. Therefore we will only give general comments.

Only for EU-side a reservation for drinking water exists ("EU: Unbound", page 126) and it is not clear why these services are mentioned in a positive list. In our view, this is not the technical way to exclude water supply permanently from the TTIP-negotiations. The technical report is on this point blind.

In the report there is also no mention of waste water services which are explicitly listed in the EU-proposal and no reservation for EU is proposed ("EU:none", page 154). It is not clear, if and how for Germany the public-structured waste water management sector can be excluded from TTIP and which internal market effects the market access for waste water services will have.

Another shortcoming of the report is the effect of the negative list for national treatment, which is foreseen within the so-called "hybrid-list" approach. In our view it will increase the pressure on public services in the EU, with the difference that than public services could be also a subject of special courts for investor protection (ISDS or ICS) attacked by exclusive rights from foreign TTIP-Investors (e.g. through fair and equitable treatment, legitimate expectations, umbrella clause, higher compensations and others).

Further aspect is regarding the fact, that water is a cross-sectional topic and for that, the whole water cycle has to be considered in a special chapter. A starting point could be the objectives of the Water Framework Directive and the different challenges with which the Member States and local levels are and will be faced. Instead, an EU-wide uniform perspective on the possible effects of TTIP on water is not suitable and not appropriate.

According to the EU Water Framework Directive (WFD) 2000/60/EC, "water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such". In the context of TTIP, it is not only relevant for environmental impacts on "water as a natural resource" (p. 188/189). Moreover it is important that the use of water resources which are determined by public/common interests don't change into commercialization as in CETA for "commercial use" as foreseen in Article 1.9 CETA and with the additional effect of investor protection.

Generally, the process of TTIP and TSIA-TTIP is not determined by transparency and participation. For our members it is not acceptable to read a technical paper of 394 pages in English and analyse the practical impacts on their work. We explicitly reserve the option to expand our views on the possible impacts of TTIP in later stages.



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