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**Proposal for a regulation on measures to reduce the cost of  
deploying high-speed electronic communications networks [COM(2013) 147 final,  
from 26.03.2013; 2013/0080 (COD)];  
Aspects of drinking water supply and wastewater disposal**

**[EU Registration Number: 0481013843-28]**

Dear Ms Herczog,

We are writing to you in regard to your position as rapporteur for the ITRE Committee for the above-mentioned Regulation. As Allianz der öffentlichen Wasserwirtschaft e.V. (AöW) [*translated: Public Water Management Alliance*], we would like to make some comments on the Regulation from the view of the German municipal drinking water suppliers and wastewater disposers.

We believe that the proposed Regulation should exclude the so called „free-riding“ and access obligation on physical infrastructure of drinking water, disposal or treatment of waste water and sewage [Article 2(1)]. In that context, a directly applicable EU regulation is not appropriate.

For the free-riding and access obligation in such areas aspects of hygiene, environment, security, liability, responsibility and technical feasibility must be clarified.

The "duty of care" principle in the water sector requires the elimination of even the likelihood of water pollution occurring. According to this principle, water supplier and waste water disposer have a wide scope of decision making for issues of

security of drinking water and waste water services. Therefore the mentioned proposal for regulation precludes the well-proven "duty of care" principle as only under certain conditions or restrictions – as mentioned in Article 3(3) of the proposal – the access can be refused.

According to the German Drinking Water Ordinance (Trinkwasserverordnung) drinking water must be provided in such a way that there are no concerns about damage to human health, especially by pathogens, by its consumption or use. This follows from the implication of the EU Drinking Water Directive; see also Article 1 (2) EU Drinking Water Directive. This requirement is in Germany fulfilled if the generally accepted codes of practice are observed, the microbiological requirements of the German Infection Protection Act are met as well as chemical substances and used materials does not exceed certain limit values. However, there are no technical regulations for the installation and the maintenance of electronic communication pipes into physical infrastructures of drinking water which prevent microbiological and chemical contamination. Therefore using such existing pipeline infrastructures requires a completely new evaluation and further investigations.

From current perspective a contamination of the drinking water, by for example biofilm formation that can affect the water quality, cannot be ruled out. The compatibility of the used materials of high-speed cables with the drinking water is as yet unexamined.

In the case of preparation of infrastructure atlases, there would be a higher risk for intentional contamination (e.g. terrorist attacks) of drinking water. Our members tell us, because of the higher risks such information may not be passed on. In theory, this would endanger health and hygiene conditions of the local population.

From the uncertainties, extensive liability issues arise for the involved water suppliers (private, administrative and criminal law liability). In particular, the water suppliers bear the responsibilities regarding to water quality and security of supply. Therefore, a comprehensive liberty to decide should be given to them.

For the public water supplier, it is also important that additional costs resulting from the access (e.g. resulting from their liability) should not be saddled on consumers or users.

For waste water lines, it should be taken into account that in Germany the waste water management is a sovereign task (public authority task). This authority task does not include to have responsibilities for electronic communications pipes in waste water lines. At least this question must be clarified only at the local level by democratically legitimized forces and not by a directly applicable EU regulation.

Wastewater disposal lines are closed systems that are for several decades subject to variety of conditions. A sharing of waste water lines for electronic communication lines means also impacts on waste water lines (service and refurbishment interval, different dynamic of technical development and adaptation periods etc.). And vice versa unforeseen events (e.g. intense rain, high water, user behaviour) can have negative impacts on communication lines. Whether and how the sensitive communication lines are capable with such events is not yet clarified. For instance, because of the demographic change or because of the constantly decreasing flow rate in some regions of Germany it is required to flush the pipes. Under these circumstances of different impacts on each other, new follow-up obligations for the involved parties arise, which are yet not clarified.

Regardless of the fault, liability and causation, the costs resulting from impacts of communication pipes cannot be saddled on the public fee payers. The entities responsible for the waste water task are restricted to charge only at cost recovery for secure and long-term waste water services. Costs arising from the "free riding" or access – e.g. monitoring, shorter inspection, service and refurbishment interval (follow-up obligations and maintenance responsibilities), damage costs – are contrary to the principle of cost coverage for the waste water task. At least this requires a democratic legitimated decision at local level case-by-case about new follow-up obligations, maintenance responsibilities, additional expenditure and their

importance as critical infrastructure. An EU action by a directly applicable EU regulation for this issue is not an appropriate way.

Hence, we ask you to take into account the aforementioned aspects on your report and exclude the so called „free-riding“ and access obligation on physical infrastructure of drinking water, disposal or treatment of waste water and sewage.

Yours faithfully



Christa Hecht  
Managing Director of AöW

The Allianz der öffentlichen Wasserwirtschaft e.V. (AöW) is the representation of interests of public water management in Germany. Founded in the year 2007, 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.