

Berlin, 14 May 2018

**AöW-Position
on the Economic Partnership Agreement between
the European Union and Japan
[EU registration number: 00481013843-28]**

Hereby the *Allianz der öffentlichen Wasserwirtschaft e.V. (AöW)* as representation of interests of the public water management in Germany comments the currently negotiated agreement between the EU and Japan and would like to highlight the concerns of public water management in Germany.

In AöW's view, public water management in Germany is not sufficiently secured in the so-called "new generation" of the free trade agreements as well as in the EU-Japan trade agreement. Regarding future trade agreements, the European Parliament had already called on the EU 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 [...]" (Resolution of the European Parliament of 8 Sept. 2015 on the follow-up to the European Citizens' Initiative Right2Water (2014/2239 (INI), No. 22).

Although there are a number of safeguarding provisions at national and EU level for municipal self-government and public water management as part of municipal services "Daseinsvorsorge", they are being more and more undermined by such trade agreements "through the back door" and being ratified by skipping local/regional decision-makers and regional authorities – in the EU-Japan agreement as "EU-only" even without decision of the federal states and even without the national parliament Bundestag.

According to the AöW, after the EU-Canada trade agreement (CETA) the trade agreement between the EU and Japan is a next step putting additional pressure towards privatization and liberalization.

The critical contents in the EU-Japan agreement in detail:

- **Negative list:** We reject the use of a negative list in the EU-Japan agreement. In our view, a negative list cannot equally safeguard public water management as a positive list. From our point of view, the existing horizontal reservation for public services (see "Annex II - Reservations on future measures - List of the European Union", Reserve No. 1) securing public water management (i.e. especially drinking water supply and sanitation) is incomplete when a negative list is used. There is always a risk that market access obligations will apply to certain services in the water sector and therefore these sectors as a whole have to expect market economy consequences, even though they do not pursue such interests.

The AöW calls for the use of a positive list in Annex II, in which the drinking water supply and waste water are not mentioned.

- **Market Access / Non-Discrimination in the Wastewater Sector:** There is no reservation for wastewater anymore (see "Annex II – Reservations for future measures – Schedule of the European Union", Reserve No. 15). Wastewater had in CETA at least for Germany been explicitly excluded as "Environmental

services"(see CETA Annex II – "Reservations applicable in Germany", sector: environmental services).

Because of this, safeguarding the wastewater sector now only depends on a legally unreliable horizontal reservation for public services. However, protecting the wastewater subsector only by a horizontal reservation in the EU-Japan agreement contradicts the special status of wastewater management within public services in Germany. While certain tasks of "Daseinsvorsorge" can also be provided by private hands, wastewater can only be disposed of by "legal persons under public law" (§ 56 p. 1 Wasserhaushaltsgesetz [German Federal Water Act]) and are not open to privatization. Thus, the EU-Japan agreement contradicts German law and the proven organization and structure of the German wastewater management.

The AöW demands an explicit reservation in Annex II, No. 15 for wastewater, as far as a positive list in the sense mentioned above is not applied.

- **Precautionary principle:** The precautionary principle is not only a fundamental principle for environmental, health and consumer protection in Germany, but also for public water management. We demand that this is explicitly and effectively secured in trade agreements. So far, this is not evident in the EU-Japan agreement.

The AöW calls for the explicit recognition of the EU precautionary principle for environmental, health and consumer protection in the EU-Japan agreement.

- **The EU-Japan agreement is lagging behind CETA:** The EU-Canada Agreement (CETA) has been called by representatives of the European Commission and the German Federal Ministry for Economic Affairs and Energy as the "gold standard" for future agreements. Unfortunately, we cannot find this requirement, especially with regard to the additional, allegedly binding statements (Joint Interpretative Instrument and Statements to the Council minutes). Nor is there any special article on water in the EU-Japan agreement (see Article 1.9 CETA). Finally, the section on "Domestic regulation" (Chapter 8, section E in the EU-Japan agreement) does not include any comparable exemption for water supplies, as the CETA agreement (Article 12.2 (2) (b) (ii) CETA agreement).

The AöW calls in the EU-Japan agreement for a special article on water, according to which water and its use is excluded from the EU-Japan agreement as a whole and in which it is made clear that water is not a commercial product like any other but, rather a heritage which must be protected, defended and treated as such.

- **Unclear impact of the Procurement Chapter:** In Chapter 10 (Public Procurement) it is not clear whether the Joint Committee may subsequently amend Annex 10 in such a way that it runs counter to the exemptions for public companies within the EU Procurement Regime.

The AöW calls for a clarification in the EU-Japan agreement in the Public Procurement chapter that the municipal policy options for public enterprises in the water sector are explicitly safeguarded as in accordance with the EU public procurement regime – also for the future.

- **Unclear impact of "Joint Committee" and Special Committees:** The EU-Japan agreement designs the establishment of a so-called "Joint Committee" and "Special Committees". At this stage it cannot be precluded whether their binding decisions (see Article 22.2 of the EU-Japan agreement) could also have negative impacts on municipal water management. Therefore, from our point of view, it appears even important to exclude water from the EU-Japan agreement as a whole.

We explicitly request your engagement for the concerns of municipal public water management and ask you to consider the above-mentioned points.



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The Allianz der öffentlichen Wasserwirtschaft e.V. (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. Alone through the Membership of German Alliance of Water Management Associations (DBWW) over 2000 water organizations are represented in the AöW.