

APE Comments to the TTIP SIA Draft Interim Technical Report

June 2016

Aqua Publica Europea, the European association of public water operators, would first of all like to thank the SIA consultants for the opportunity of commenting the Draft Interim Report for a Sustainability Impact Assessment (SIA) in support of negotiations of a comprehensive trade and investment agreement between the European Union and the United States of America (TTIP).

As an association of operators providing drinking water, sewage and other related services to over 80 million citizens, we are especially concerned about maintaining legislation that protects the freedom of public authorities to regulate and to manage the provision of public goods such as water, based on the principles of social justice and environmental sustainability.

In this sense, we would like to draw attention to a series of current shortcomings in the document published for consultation and, more largely, in the way stakeholders are being included in the drafting process of the SIA.

Concerning this last point, we would like to question the inclusiveness of the process as it has been carried out until now. Stakeholders have been able to comment on the consultant's work in different consultations organised in Brussels. In our opinion, this format, being the only one used until now, does not comply with the required transparency and participatory approach and may lead to a biased analysis. In addition, we would like to note that the current report, as it is presently drafted, is very difficult to understand for the non-specialised reader. **A brief explanation (and even translation) of the basic concepts, approaches used and conclusions reached could be a first step in the right direction towards effective transparency and stakeholder inclusion.**

Concerning the first point (shortcomings), you will find our comments regarding the text of the Draft Interim Report in the following pages.

General comments

The exact delimitation of the three different “impact channels” (economic, trade and rules-setting channel) used to assess the overall social and environmental impacts is difficult to seize. While it is quite clear that the “economic channel” assessment is based on two broad scenarios (ambitious and less ambitious), fed into the general equilibrium and E3MG models, it is less clear what the “trade” and “rules-setting” channels exactly include. This lack of clarity is recognised also by the consultants (for example on page 121). Taking this into account, **we would appreciate a clarification of the meaning and logic behind separating the “trade” and “rules-setting” channels altogether.**

We share the assessment that a quantitative analysis is not enough for evaluating the social and environmental impacts (as stated, for example, on page 112). However, **the above delimitation of “impact channels” is far from providing any clarity** to the analysis and instead seems to hide the lack of a thorough and structured assessment of different stakeholder inputs through surveys or other structured methods.

Specific comments

On the human right to water

Table 4.3., *Summary of human rights potentially affected by three pillars of TTIP* (page 155), states that the human right to water will be influenced by a) tariffs and market access and b) regulatory cooperation. As there is no further specific analysis of the impacts of TTIP on the human right to water as such, we will base our comments on the analysis of TTIP on an adequate standard of living.

The *Summary table of potential Impact of TTIP on human rights* (Table 4.14), implies a largely positive influence on the human right to an adequate standard of living due to an increase in household income. We agree that the household income is indeed an important factor influencing the access to water. Nevertheless, **we estimate that the overall positive assessment is too optimistic**, especially considering the actual foreseen increase in household income (+0,4 to +0,2 percent) and the lower tax revenues in the short term (loss of 0,04, page 159). In addition, we regret the absence of any analysis on the impact of TTIP on wages according to income distribution. The study only takes up the CEPR study classification between skilled and less skilled workers, which, in our view, is too simplistic: today, the issue of access to basic services should not be analysed in terms of worker’s level of education, but of global household revenue in order to also take into account those unemployed or out of employment.

Finally, even if household income might increase, one should not forget that this would need to be spread between the different rights included under the right to an adequate standard of living (water, housing, social security, food). Thus, our assessment is that the influence of TTIP on an adequate standard of living would be null at best.

On the influence of regulatory cooperation on human rights we would like to refer to the following statement (taken from page 152):

“If TTIP does not lead to a lowering of health and safety standards, does not threaten the state’s right to regulate, and does not negatively affect the right to a clean environment, then a potential negative effect of TTIP on human rights is very unlikely.”

These are a lot of “ifs”. In our opinion, the Commission statement used to come to this conclusion and the Sustainable Development chapter **do not guarantee that TTIP will not have any influence on the regulation of public services and the rights linked to them**. Concerning specifically the Sustainable Development chapter, it is indeed not yet clear whether it will be binding and enforceable.

On the “regulatory chill” and dispute settlement provisions

It is stated several times in the text that **fears exist that different provisions may lead to a “regulatory chill” that will put in danger the provision of public services and, consequently, human rights** (p. 153, 163, 191). **We do share these concerns**, especially in what concerns the past ISDS and the present Investment Court System (ICS).

In this context, we would like to refer to the section analyzing the “Potential impact of TTIP on public health services” (pages 142-144). In that section, the evaluators state that:

“[...] if not properly excluded from the Investor Protection articles, a form of Resolution of Investment Disputes could be the cause for ‘regulatory chill’ among governments. The risk of regulatory chill is mitigated by the new proposal on Investment protection/ ICS. If public health services are carved out from Investor Protection – i.e. investors cannot claim any compensation for public authorities’ decisions to carry out changes in public healthcare systems – then the risk for ‘regulatory chill’ would be further reduced, if not completely removed.”

We support this statement, and would like to recall that the same applies and should apply to water, sewage and all other public services. **Water and other essential public services should be excluded from any investor protection provisions**. As recognised in the report itself, not doing so could “have a direct effect on the ability of governments to meet their human rights obligations” (p. 163).

Finally, we support the evaluators’ suggestion of providing “a number of ‘mock-cases’ [...] through which it becomes apparent in what case/which circumstances a foreign investor is entitled to issue a claim against (environmental) legislative changes under the TTIP ICS investment protection clause”. This could, at least partly, dissipate the regulatory-chill effect.

On the environmental impact on “water as a natural resource”

Pages 188 and 189 analyse “other environmental impacts through the economic channel”. This section (5.3.5.) starts by mentioning the following example: “agricultural output can influence fuel use (as captured in the E3MG model), but also water use and land use, and indirectly ecosystems. Similarly, emissions to air can have an effect on water quality”.

However, in the sub-section on “water as a natural resource” it is simply stated that no “direct impacts” on water as a natural resource are expected. This assumption is based on declarations of Commissioner Malmström, stating that Member States remain free to regulate and organize their public services as they wish. The section then goes on to state the differences between EU and US legislators’ position on chemicals and concludes that “water quality standards will be upheld under TTIP, but that there will be a discrepancy between EU and US legislation”.

While it is recognised in the introduction that “this section will not provide an in-depth assessment” of impacts, **we regret the total absence of a comprehensive analysis of the indirect effects of TTIP on water** (some of which were nevertheless mentioned in the introduction quoted above). In addition, we would like to warn the consultants from adopting a too narrow angle of analysis –even if TTIP may not have any consequences on the provision of public services, it may have an influence on other sectors which, in turn, may have an impact on water. We are particularly thinking of the consequences of regulatory cooperation on the rules applied to chemicals and the chemical sector.

In this context, we would specifically like to express our criticism regarding the use of data provided by the industry in assessing that same industry’s impact on the environment (as it is done, for example, on page 258). Regarding water quality, it should be noted that pollutants are not measured in “tonnes released” but in concentrations (especially as chemical products become themselves more “concentrated”). We thus recommend that the consultants use Member State’s/Commission data in assessing environmental impacts.

In addition, we would also like to point out that the wording “water as a natural resource” is far from providing any clarity to the scope of the analysis. Does it only include water flowing in “lakes, rivers, reservoirs, aquifers and water basins” (as per CETA Art. 1.9), or also water supplied to consumers? If so, we wonder why the impacts on water provided to consumers (and thus, indirectly, the impacts on human health) should be excluded from the environmental assessment. Thus, even if TTIP would not have any direct effects on water quality and consumption “in its natural state”, **we urge the consultants to examine all the possible direct and indirect effect of TTIP on water and water-related legislation**, including the regulatory chill effect, regulatory cooperation in areas such as products in contact with drinking water and the effects of economic growth on water demand.

We are available for any further questions.



About APE

Aqua Publica Europea (APE) is the European Association of Public Water Operators. It brings together 100% publicly owned water and sanitation services, and their national and regional associations. Our mission is to promote public water-management at both European and international level.

Overall, APE members provide water and sanitation services to over 80 million Europeans, covering the rich and varied landscape of our continent - from the North Sea to the Mediterranean, and from capital cities to remote rural areas.

- APE is a platform, facilitating knowledge exchange and joint projects among members to improve performance.
- APE is a forum for public operators to meet and discuss water policy issues with the objective of contributing to international policy-making in the water sector.
- APE is a catalyst, supporting the development of the international water community by promoting a dialogue between public water operators, the business sector, the academic world, and public institutions.