Position Paper – Free Trade Agreements (CETA, TTIP, TiSA etc.)

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250 of Austria’s 2,102 municipalities are currently members of the “Österreichischer Städtebund” (“Austrian Association of Cities and Towns”). They account for about 55% of the total Austrian population. In addition to Vienna and the capital cities of Austria’s federal provinces, all local authorities with over 10,000 inhabitants are members of the Austrian Association Of Cities and Towns, and so are many smaller municipalities. The smallest member community has a population of just about 1,000. Membership is voluntary, and the Association is funded by member contributions.

Member communities of the Austrian Association of Cities and Towns are located in all of Austria’s nine federal provinces. The Austrian Association of Cities and Towns is committed to representing the political interests of urban areas. At the same time, we communicate information on Austrian cities to the public and provide a platform for exchange of experience and networking among our members. We also offer a wide range of services to our members:

• Interest representation at national and international level to policymakers, the media and the general public
• Exchange of experience in about 40 technical committees and working groups
• Surveys and documentation service
• Education and further training opportunities for the members
• Publication of guidelines and recommendations

Our cities and towns are open-minded towards international trade, they also hold democratic values and their right & obligation to local self-government in high esteem. Therefor we find the current way of negotiating and the so far published texts confusing and unsettling. TTIP et al go far beyond traditional FTAs. They seem to contain severe changes for the local level which may result in dramatic consequences for the public sector.
Our points of criticism on TTIP and CETA in detail

Intransparent negotiations, democratic deficit

The negotiations are held away from the public gaze. The European Parliament is not able to participate in the decision-making process during the negotiations. The European Parliament is involved once the Agreement has been adopted by the Trade Council. However, the European Parliament is only able to vote “in favour” or “against” the Agreement. Hence, the complete intransparency towards the public, in particular towards trade unions and other interest groups, civil society organisations as well as national Parliaments reveals an enormous democratic deficit.

Investment protection provisions and Investor-state dispute settlement

As in the past, investment regulations are highly controversial. Even the EU Commission is now concerned.

The introduction of investment protection in free trade agreements shall empower foreign corporations to sue a state for damages before private arbitration courts, if for example, from their point of view, new laws or rules “treat them unfairly” or “indirectly expropriate” them, thereby cutting their profits. Hence, in future, governments have to expect that they - because of improved social policy and economic measures for employees, health and consumers - will be sued for damages running into millions, which means that the taxpayer, thereby also employees, will be asked to pay up. Canada, the USA and the EU are democratic nations with a highly developed constitutionality and judicial culture. Hence, introducing a parallel private arbitration system is therefore not required. Apart from that, the practice has shown the inadequacies of this unacceptable system: it is marked by intransparency and inefficiency, inconsistency, unpredictability and a lack of independence due to the interest-oriented actions of law firms and investors.

The clarifications brought forwards so far in respect of individual provisions - for example in case of CETA - do - with regard to content - not alter the fact, that the contractual partners will have to face massive constraints, since an explicit exception for the “the right to regulate” does not exist. The current private arbitration system cannot be reformed and no further contracts may be concluded on this basis.
**Danger for services of general interest**

Public services such as water, education, health or transport are subject of the trade negotiations. Basically, all services are included, provided they have not been expressly exempt. This creates further liberalisation pressure. Apart from that, the European Commission itself demands market access in many public sectors from the negotiating partners.

Another danger for public services concerns provisions, according to which failed privatisations could never be revoked. If a privatisation went wrong, it would nevertheless remain in place and any re-municipalisation of services would be impossible. This would mean that a privatisation would be set in stone forever. ("Ratchet clause").

Equal treatment of nationals means that all private profit-oriented undertakings would also be entitled to public subsidies. So far, attempts to find a consistent and definitive formulation for the subsidy clause have not been successful. Hence, services in the public interest might come under pressure because private providers would be able to sue for benefits from the public purse. The health sector or the education system would for example be turned upside down as a consequence.

The right to offer services to municipalities and cities autonomously - hence as public services - as well as intercommunal cooperation and local community associations, can also be called into question through the backdoor. Furthermore, the procurement rules of the Agreement are also lacking an unequivocal enshrinement of provisions on compliance with collective agreements and other social and labour standards.

**Therefore: Changing the course of trade policy demanded**

Due to the way the already concluded Free Trade Agreement with Canada was negotiated and because of serious content-related reasons, CETA must be prevented - for the fact alone that CETA is always cited as an example for TTIP and all other trade agreements.

The ongoing negotiations on TTIP and TiSA - but also on free trade agreements with Japan or Singapore - in their current form must also be stopped.

The Austrian Association of Cities and Towns recognizes the significance of increased trade relations with a wide range of trading partners; however, we demand changing the course of trade policy, which has to be based on the following principles:
No investment protection provisions and Investor-state dispute settlement (ISDS)

Investment protection provisions and Investor-state dispute settlement (ISDS) are superfluous, and the states’ respective legal systems provide sufficient protection for investors. The current private arbitration system cannot be reformed; and no further agreement may be concluded on this basis.

Public services should not be included in a trade agreement

Services of general interest including public procurement and licenses must be unequivocally exempt from the scope of application. This concerns among other areas of public infrastructure (water, energy, transport), social security (social insurance, healthcare), communal services (waste disposal), education, culture and audio-visual services.

No secret negotiations

Transparency and comprehensive participation of Parliaments, trade unions and civil society in the negotiations are indispensable. The European Parliament must not solely have the possibility to vote on the negotiation result only after the negotiations are concluded and the Agreement has been signed by member states; it must also have the possibility to decide on the negotiation position of the European Union.

Conclusion

The current EU public procurement legal framework allows for special treatment for in-house companies, cooperation between local authorities, for the water sector as well as for emergency services. These exceptions need to be safeguarded. The Austrian Association Of Cities and Towns also highlights the risk of imbalance in relation to public procurement with currently 85% of public tenders in the EU open to US suppliers, while only 32% of US tenders are open to EU suppliers.

With regard to the notion of "public services" as mentioned in the negotiating mandate, the Austrian Association Of Cities and Towns opinion argues that a horizontal exemption from all obligations under the principle of market access and national treatment should not cover all services which are subject to specific regulatory regimes or obligations for the service providers at national, regional or local level in connection with the general interest. This should apply to services such as water and energy, waste and sewage, emergency services,
Public health and social services, public transport, housing, urban planning and development.

The Austrian Association Of Cities and Towns also rejects to open pre-school, school, higher, adult and continuing education services with mixed public-private financing further to competition, since the multilateral GATS agreement already contains numerous commitments to liberalisation in this sector.

Finally, the Austrian Association Of Cities and Towns argues that Member States and local and regional authorities must still be able to take any regulatory or financial measure necessary to promote cultural diversity, freedom and pluralism of the media and to preserve or develop audio-visual and other similar services in order to meet the democratic, social and cultural needs of each society, irrespective of which technology or distribution platform is used.

Best regards,

Mag. Dr. Thomas Weninger, MLS
General Secretary