

On the letterhead AS TALLINNA VESI

Environment Committee of the Riigikogu
Mr Erki Nool, Chairman of the Committee
Lossi plats 1a, 15165 Tallinn

12 February 2014, 6/1407613

Draft Act Amending the Public Water Supply and Sewerage Act 569 SE I

Dear Environment Committee,

AS Tallinna Vesi (ASTV) hereby addresses you in connection with the draft Act Amending the Public Water Supply and Sewerage Act 569 SE I (**Draft**) currently in the legislative proceeding of the Riigikogu, the leading committee of which is the Environment Committee.

We propose to consider supplementing the Draft in a way that would enable to find a solution to the court dispute between AS Tallinna Vesi and the Competition Authority. During the court dispute the parties have discussed the possibility of a compromise. However, finding a solution is hindered by the Competition Authority's assessment that the PWSSA currently in force does not enable them due to juridical reasons to conclude a compromise. ASTV's proposal is directed at addressing exactly this question.

The Environment Committee of the Riigikogu is probably aware that ASTV and the Competition Authority have had a dispute in the Tallinn Administrative Court since June 2011 regarding the prices for water services applicable in Tallinn and Saue. The Competition Authority has refused to allow changes in prices for water services for 2011-2013 which were guaranteed to ASTV by the Services Agreement annexed to the privatisation agreement concluded in 2001 and valid until 2020. The court dispute has not yet reached a court decision.

However, a final decision, i.e. a decision without a channel of appeal, has entered into force in the appeal proceedings against a court ruling by which the tariff part of the Services Agreement annexed to the privatisation agreement has been confirmed to be an administrative agreement. This position (that the tariff part of the Services Agreement is an administrative agreement) is inconsistent with the state's positions at the time of Competition Authority's decision to refuse from approving the 2011 prices for water services. Public authorities may not disregard obligations arising from an administrative agreement. As the tariffs part of the Services Agreement is a public law contract, and that the CA has now replaced the City of Tallinn as the price regulator, then ASTV is firmly of the opinion that the Competition Authority has this possibility to take into account this public law contract through the application of laws currently in force.

Nevertheless, the Competition Authority has still expressed its position that despite the legal qualification of the Services Agreement confirmed in the court dispute, the PWSSA does not allow the Competition Authority to make a decision different from the decision made in 2011 nor find a solution. This belief by the CA has become an obstacle in discussions. If it is possible to amending the wording of PWSSA to provide greater certainty for the CA, or by concluding that no change of law is necessary, then it would be reasonable to do so in order to remove one legal obstacle to achieving a suitable solution.

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Taking the above into account, we propose to consider incorporating such an amendment in the Draft which would give the Competition Authority security for agreeing on and implementing a solution that proves to be suitable on the substance. There are different options for achieving this goal (e.g. giving the Competition Authority a special authorisation for solving this specific dispute, prescribing an express possibility for taking into account administrative agreements).

Drafting a suitable solution is possible only in cooperation of the Riigikogu and all relevant authorities (in particular the Competition Authority). For this reason, ASTV is not offering a specific amendment proposal because it could result in focusing on technical details. We deem it important to achieve a joint understanding regarding the necessity and possibility of changing the law. Thereafter it is possible to solve the question of a specific wording.

We hope that making this proposal creates a correct framework for consulting all relevant authorities (in particular the Competition Authority) and finding a solution which would enable the parties to achieve and enforce a solution which is in the opinion of the parties reasonable on the substance.

We hope that you will consider this proposal in detail and will find it possible to help eliminate the arisen lack of legal clarity and breach of legal certainty. If needed, we are prepared to explain our position in more detail both in writing as well as at meetings.

Legal disclaimer: By sending this letter ASTV does not waive and reserves all rights to use international and national legal remedies in all on-going and potential future proceedings and disputes.

Yours faithfully,

/signature/

Bob Gallienne
Chairman of the Supervisory Board

/signature/

Ian John Alexander Plenderleith
Chairman of the Management Board