

# The regulation of local public services in Europe and the Italian case

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# Services of general economic interest in European Treaty

- The Treaty on European Union (2010) includes the general principles about the services of general economic interest : **art 14, art 106 and the Protocol number 26.**
- Services of general economic interest are important like **shared values of the Union and for their role in promoting social and territorial cohesion.**
- When providing of services has the character of monopoly they shall be subject to the rules contained in the Treaties, in particular to the **rules on competition.**
- It is essential the role and the **wide discretion of national, regional and local authorities** in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users.

# Services of general economic interest in European Treaty

## **Article 14 (ex Article 16 TEC)**

- Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the **shared values of the Union as well as their role in promoting social and territorial cohesion**, the Union and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, **shall establish these principles** and set these conditions without prejudice to the competence of Member.

# Services of general economic interest in European Treaty

## Article 106 (ex Article 86 TEC)

- 1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109. EN C 83/90 Official Journal of the European Union 30.3.2010
- 2. Undertakings entrusted with the operation of **services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition**, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.
- 3. The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address **appropriate directives or decisions** to Member States.

# Services of general economic interest in European Treaty

## **PROTOCOL (No 26) ON SERVICES OF GENERAL INTEREST**

### *Article 1*

The shared values of the Union in respect of services of general economic interest within the meaning of Article 14 of the Treaty on the Functioning of the European Union include in particular:

- the essential role and the **wide discretion** of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users;
- **the diversity between various services of general economic interest** and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;
- a high level of quality, safety and affordability, equal treatment and the promotion of **universal access** and of user rights.

### *Article 2*

The provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise **non-economic** services of general interest.

## The new “Directive on Concessions”

- European Commission has adopted the new “Directive on Concession” which is under discussion in European Parliament - COM(2011) 897.ù
- It is the first time that European Union vote a Directive about Concession, after the Directive on Public Procurement already voted.
- The Directive rules about tender, in house contract and PPP and maybe doesn't include water services concessions.
- The Directive has been «stopped» by the European Parliament.

# Water and Municipal Waste Services in Europe

1. Markets structure
2. Local and National Authority (demand side)
3. Horizontal and vertical integration
4. Services providers (supply side)
5. Tariffs

# Markets structure

- No “liberalization” Directive has ever been adopted in Europe about Municipal Waste and Water Services, as well as about energy, transport and communication markets.
- Usually Waste collection and Water services are “natural or legal monopoly”, provided without “competition in the market”. Public monopoly regulation has different forms, in the single countries.
- In some regions of Finland Municipal Waste Services is provided by “competition in the market”.
- In England and Wales authorities and operators have discussed about “Water competition”.

# Local and National Authority (demand side)

- The Authorities providing water and waste service are usually local institutions (Municipalities...). Only in England and Wales water service is a National service.
- Usually in water and waste services National Authorities are not existing and operating, and local authorities are the only level of regulation (contract regulation). In England and Wales “Ofwat” a national Authority on water services exists. In Portugal a “Waste and Water” Authority is operating. In Italy water services are regulated by Energy (gas and electricity) National Authority.

# Horizontal and vertical integration

- Horizontal market integration (economies of scale) is made usually by voluntary instruments (demand and supply side).
- Vertical market integration changes in different countries: in many of them water supply services are not integrated with sewage and dirty water treatment plants. In many countries waste collection services are not integrated with treatment and material and energy recovery plants.
- Waste treatment plants and recovery activities are sometimes operating in free markets (competition in the market)

# Services providers (supply side)

- Providers of water and waste services (monopolists) operate in Europe following the European legal framework, which allows:
  - Tender for concessions (direct competition for the market)
  - Public Private Partnership (competition for the market through competition for shares)
  - In house providing contracts (not competition)
- Each country uses the different kinds of contracts in different shares.
- European Laws and Court of Justice decisions establish the specific technicalities of any single kind of contract
  - Tender for concessions (general rules on tender for public procurements)
  - Public Private Partnership (Communication of the Commission on PPP)
  - In house providing contracts (European Court of Justice decisions)
- Sometimes the existing contracts in many countries (like Italy) don't respect the European legal framework.
- A different case: in England and Wales water services providers are Private Monopolists, regulated by a national Office, listed on the Stock Exchange.

# Tariffs: waste management

- European Directives on Waste don't include rules about tariffs for the Municipal Waste activities, but include only general principles as “Polluter pays” (so, tariffs...) and “Extended producer responsibility”
- Each country use specific payment systems: specific waste tax, general local tax which include waste service financing, tariffs with parametric base, and unit pricing tariffs (pay as you throw).
- In every country producers and users of “packaging wastes” pay with different systems the costs of packaging wastes management.
- Most of european countries use a landfill environmental tax, as a disincentive instrument.
- Many countries use “energy tariff incentives” to promote use of waste (landfill biogas, waste to energy plants) to produce eneregy (electricity, heat)
- Taxation incentives to promote the reuse and recycle of materials from wastes are unusual in Europe.

# Tariffs: water services – Frame Directive

## Water Framework Directive” (2000/60/EC)

- The supply of water is a **service of general interest** as defined in the Commission communication on services of general interest in Europe
- The use of economic instruments by Member States may be appropriate as part of a programme of measures. The principle of **recovery of the costs** of water services, including environmental and resource costs associated with damage or negative impact on the aquatic environment should be taken into account in accordance with, in particular, the **polluter-pays principle**. An economic analysis of water services based on long-term forecasts of supply and demand for water in the river basin district will be necessary for this purpose.

### Article 9: Recovery of costs for water services

- 1. Member States shall take account of the principle of recovery of the costs of water services, including environmental and resource costs, having regard to the economic analysis conducted according to Annex III, and in accordance in particular with the **polluter pays principle**.
- Member States shall ensure by 2010 that water-pricing policies provide adequate incentives for users to use water resources efficiently, and thereby contribute to the environmental objectives of this Directive, an adequate contribution of the different water uses, disaggregated into at least industry, households and agriculture, to the recovery of the costs of water services, based on the economic analysis conducted according to Annex III and taking account of the polluter pays principle. Member States may in so doing have regard to the social, environmental and economic effects of the recovery as well as the geographic and climatic conditions of the region or regions affected.
- 2. Member States shall report in the river basin management plans on the planned steps towards implementing paragraph 1 which will contribute to achieving the environmental objectives of this Directive and on the contribution made by the various water uses to the recovery of the costs of water services.
- 3. Nothing in this Article shall prevent the funding of particular preventive or remedial measures in order to achieve the objectives of this Directive.
- 4. Member States shall not be in breach of this Directive if they decide in accordance with established practices not to apply the provisions of paragraph 1, second sentence, and for that purpose the relevant provisions of paragraph 2, for a given water-use activity, where this does not compromise the purposes and the achievement of the objectives of this Directive. Member States shall report the reasons for not fully applying paragraph 1, second sentence, in the river basin management plans.

# Tariffs: water services – Communication from the Commission

- Pricing policies are included in the Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee “Pricing policies for enhancing the sustainability of water resources” COM(2000) 477 (art. 9)
- To play an effective role in enhancing the sustainability of water resources, water pricing policies need to reflect different cost types:
  - (1) **Financial costs** of water services, that include the costs of providing and administering these services. They include all operation and maintenance costs, and capital costs (principal and interest payment, and return on equity where appropriate).
  - (2) **Environmental costs**, that represent the costs of damage that water uses impose on the environment and ecosystems and those who use the environment (e.g. a reduction in the ecological quality of aquatic ecosystems or the salinisation and degradation of productive soils).
  - (3) **Resource costs**, that represent the costs of foregone opportunities which other uses suffer due to the depletion of the resource beyond its natural rate of recharge or recovery (e.g. linked to the over-abstraction of groundwater).
- Overall, each user should pay for the costs resulting from its use of water resources, including environmental and resource costs. Moreover, prices should be directly linked to the water quantity used or the pollution produced<sup>5</sup>. This ensures that prices have a clear incentive function for users to improve water use efficiency and reduce pollution.

# Water and Municipal Waste Services in Italy

1. Market structure
2. Local and National Authority (demand side)
3. Horizontal and vertical market integration
4. Services providers (supply side)
5. Tariffs

## Markets structure

- In Italy the “integrated water services” are a “natural monopoly” (one grid, economy of scale).
- In Italy “the integrated municipal waste management” is a “legal monopoly” (externalities, free riding risks).

## Local and National Authority (demand side)

- In Italy water and waste services are organized by Local Authorities called “ATO” (Autorità di Ambito), which are compulsory Municipalities Consortia.
- There are about 100 ATOs in Italy, and 8.000 Municipalities.
- National Authority for Energy (gas and electricity) is the regulator for water services, which decides about water tariffs since the beginning of 2012.
- There is no Authorities for waste services

# Horizontal and vertical market integration

- In water services the same operator provides to supply water services and dirty water services, in a large area (ATO). Customers are obliged to be served by that operator.
- The same operator, usually, provides waste collection and treatment plants activities, in a large area (ATO). Customers are obliged to be served by that operator. Part of the treatment activities are regulated by “competition in the market” (recycling, waste to energy plants).

# Services providers (supply side)

- On June 12-13 th 2011 in Italy people voted for a “Referendum” against “compulsory privatization” of water services and other local services.
- Now the legal framework is very confused: after the Referendum the Parliament voted a new law on local services, but recently the Constitutional Court has cancelled this law.
- Anyway in Italy we are obliged to follow the European legal framework:
  - Tender for concessions (direct competition for the market)
  - Public Private Partnership (competition for the market through competition for shares)
  - In house providing contracts (not competition)

# Services providers (supply side)

- According to the European Legal Framework ATOs have three “legal” possibilities for contracting out of local services :
  - The franchise bidding (competition for the market)
  - The establishment of a mixed ownership enterprise (MOE) in which the private partner has to be selected through competitive bidding procedures (PPP, Communication from the Commission 2007).
  - The establishment of a completely public enterprise in which public authorities exercise over it a control which is similar to that which they exercise over own departments and, at the same time, the enterprise carries out the essential part of its activities with the controlling authorities (in house providing – IHP) - (par. 5 c).
- The companies listed on the stock exchange within October 2003 are considered “legal”.
- All the other contracts are considered “illegal” and must be cancelled (concessions without tender, mixed company without tender for the partner, all-public company without “in house” standard).

# Tariffs: waste management

- Italian law established in 1999 the transition from “Municipal waste tax” to “Municipal waste Tariff”
- From 1990 to 2012 about 50 % of Municipalities adopt “Municipal Waste Tariff (TIA).
- Tariffs are regulated by a law approved in 1999.
- The tariff usually is based on “parametric” estimation of the waste produced by the customer. In some area a “pay as you throw” system is adopted.
- In the last two years Italian Government decided to come back to the tax.

## Tariffs : water services

- Tariff for water service was defined in a Law adopted in 1996.
- Since 2012 the National Energy Authority has the power to approve the water tariff method
- Now we are using the «transitory method» (2012-2013) and we are discussing about the new one (from 2014) .

## New tariff : water services

- One “ambito” one tariff
- Investment costs in tariff after the end of asset construction
- Operating costs regulated by “standard costs”
- New method for financial costs in tariff (only interests and fiscal costs).

# How to «Regulate»

- Regulation of local public services means:
  - Good quality and fair prices for customers
  - Sustainable investments for operators and fair profitable business
- How to «design» regulations
  - First step: free market where possible (light regulations on the market)
  - Regulated markets in case of monopoly (strong regulation simulating the market)

# Is the free market possible in waste and water services ?

- Water: very hard to separate grid and services like in the gas and electricity market. England and Wales tried to discuss on it.
- Waste: it is possible in «single parts of the service»:
  - Plants (waste to energy, landfills)
  - Recycling plants (packaging, compost)
  - Maybe (recycling material collection)
  - Hard in street cleaning and refuse collection

# Different ways

	Competition "IN" in the market	Competition "FOR" the market	Public Private Partnership	In house providing
Competition effects	HIGH	MEDIUM	LOW	ANY
Regulatory needs	LOW	LOW	MEDIUM	HIGH
Customers rights and prices control	MEDIUM	MEDIUM	MEDIUM	HIGH
Politics control	LOW	LOW	MEDIUM	HIGH
Public control and qualty	LOW	LOW	MEDIUM	HIGH
Investments and financial problems	MEDIUM	LOW	LOW	HIGH
Workers rights	MEDIUM	MEDIUM	HIGH	HIGH

# How to provide local services

	Competition		Monopoly		
	<i>Competition "IN" in the market</i>		<i>Competition "FOR" the market</i>	<i>Public Private Partnership</i>	<i>In house providing</i>
<b>Electricity</b>	Contracts to customers		Electricity grid	Electricity grid	
<b>Gas</b>	Contracts to customers		Gas grid	Gas grid	Gas grid
<b>Water</b>	Some "experiments" in water competition in England		Service (integrated or not)	Service (integrated or not)	Service (integrated or not)
<b>Waste</b>	Recycling service and plants management - some experiment for the full services		Service (collection)	Service (collection)	Service (collection)
<b>Transport</b>	Some services (train, some local connections, taxi)		Service (bus,	Service (bus,	Service (bus,

# Regulation institutions

- In case of Monopolies should not mean anything the model of management (in house, PPP, tenders).
- The same rules must be used for any operator, doesn't matter the kind of contract. Firstly the same «rules» on tariffs and services quality.
- The same Regulation Authority must control any operator doesn't matter the kind of contract.
- In case of «local services» is very important to have a «national» regulation independent Authority, to avoid «conflicts of interest» in case of local companies, owned by municipalities.

# Tender for concession

- Good results for customers if many operators are in the market (incumbent often wins).
- Good economical results for the first years, problems for long terms effects (often in water and waste services contracts are for 10-30 years)
- «Open contracts» problems, contracts too long and too large (many aspects). Need of regulation after the tender.
- Transfer of risks and financial problems on operator (public administration only regulate).
- Operator which win can be private, public, or mixed.

# Public Private Partnership

- Sharing of risks and financial problems for investments, between public body and private operator.
- Internal public control and private efficiency, the best qualities of both.
- Good choice in case of former existence of public company (soft privatization).
- A third way: no concession, no in house.
- The nature of private partner: industrial or financial one ? The stock exchange opportunity.

# In house providing

- In case of efficient public administration or public body
- In case of public administrations or public bodies without financial problems (possibility of equity).
- In case of a low needs of investments or investement financed by taxes.
- Risks of inefficiency or political interferences (labour side) – needs of regulations
- Public control, no «business oriented» (public goods as water services).

# Private monopoly regulated

- Another form of regulation is the «private monopoly regulated».
- As in England and Wales, the provider of water service is a private company (fully listed in stock exchange), regulated by strong, independent, national Authority (ofwat) which decides tariffs and quality of services.
- The company is the owner of infrastructures and is the provider for ever (no term of concession).
- The competition is on the shareholders (takeovers).

# Some questions for the future

1. Is it useful an European Directive on Services of general economic interest ti reduces the difference in the internal market ?
2. Is it possible and useful to promote “liberalization” in water and municipal waste market (competition in the market)?
3. Is it useful to promote more competition (for the market, tenders) inside the “monopoly markets” like water and municipal waste services, and reduce by law “in house providing” contracts?
4. Do we have in Europe “too many” public enterprises ?
5. Is it useful to promote national authorities in each country, to regulate water and waste activities ?
6. Is it useful to have some tariffs in Europe for water and municipal waste services ?

# Thank you

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