

Public Services in European Countries
Between Public/Municipal and Private Sector Provision – and reverse?

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1.0. *Issue and aim of the paper*¹

In addressing the provision of public services the paper focuses on the development of the organisational forms of service provision (between public sector and private sector) and of the underlying operational principles (between a „political“ and „economic“ logic). The UK, France, Italy and Germany and the service sectors of water and energy provision are selected for a cross-country and cross-policy comparison. Pursuing a developmental (“over time”) approach it is hypothesized that the early beginnings at the local government level, the subsequent rise of the public sector centred welfare state (climaxing in the 1970s), the following private sector committed “neo-liberal” policy shift (since the late 1970s) and the apparent recent reappraisal of public sector provision significantly shaped and impacted on the respective organisational form and operational logics of service delivery. The guiding question of the paper is whether, to which degree and why development of public service provision has shown divergence or convergence in a cross-country and cross-policy perspective..

1.1. *Definitional and conceptual frame*

“Public services” generally encompass water supply, sewage, waste management public transport and energy provision. In Anglo-Saxon terminology they are usually called “public utilities” while they are labelled *services publics industriels* in French, *servizi pubblici* or *servizi di pubblica utilità* in Italian and *Daseinsvorsorge* (services for the public) in German. In European Union (EU) policy the term *services of general economic interest* has been introduced (see Wollmann/ Marcou 2010b).

For analysing and discussing the delivery of public services two conceptual axes will be employed in this article, to wit, its *organisational form* and its *operational logic*.

a) The *organisational form* ranges between *public (state/municipal) sector* and *private sector*..

- If carried out by the public (state/municipal) sector the public service may be rendered either *directly* by state/municipal administration and its personnel

¹ This is a revision of the paper that was presented to the IGU Conference held on in Lisbon. For other references see also Wollmann 2011 and Wollmann/Marcou 2010c

(“*in house*”, *en régie*) or *indirectly* through units which, while remaining in state/municipal ownership, stand organisationally (and often also financially) separate from the “core” administration. In the latter variant one also speaks of *formally* (or *organisationally* privatized (or *corporatised*) organization (see Grossi et al. 2010, Kuhlmann/Fedele 2010: 40). Of this in Germany so called “Stadtwerke” (“city/municipal works”) and in Italy the so called “municipalizzate” are exemplary. As they often carry out more than one function and service they take the organisational form of “multi-utilities”...

- *Functional* privatization means the transfer (“delegation”, “outsourcing”) of the delivery of public services to an outside actor who, as an (as a rule, private sector) provider -, typically by way of a time-limited contract (concession).
- *Material* (or *asset*) privatization signifies that the ownership of the facility concerned changes, as rule by way of sale, from public (state/municipal) to private ownership, be it completely or only partially. In the latter variant “*mixed*” (or *hybrid*) companies or, in recently prevalent terminology, *public private partnerships*(PPP) are formed in which public and private financial and other resources are combined. In fact, in some countries such “mixed” companies have a long tradition in the delivery of public services.

Against this background the term *remunicipalization* (or *recommunalization*) refers to the “reverse” process when functionally privatized (“outsourced”) functions and services are turned back into public/municipal operation or materially (asset) privatized facilities are “purchased back” and return to public/municipal ownership, be it entirely or partially (see Röber 2009, Wollmann/Marcou 2010c, Wollmann 2011, Kuhlmann/Wollmann 2014)..

b) Regarding the *operational principle or logic* which guides the process, performance and output of service delivery a significant distinction can be made between an *economic* logic or rationale and a *political* one.

- The *economic* logic and rationale is (ideal typically) directed primarily at economic efficiency in terms of maximising economic benefits/profit and of minimising costs (by possibly “externalising” social, ecological etc. costs). The economic logic is typical of the private sector actor whose prime leitmotif is “profit-seeking” and “private-regarding” and whose spatial frame of reference is the (as it were, “borderless”) capitalist market.

- By contrast, the *political* logic pertains (ideal-typically) to a wide range of goals and effects among which political, social, ecological etc. objectives (“welfare effects”, Mühlkamp 2012: 22, 2013: 3) are prone, in the case of goal conflicts, to be given priority over (strictly) economic ones. Such *political* logic and rationale is characteristically adopted by politically elected and accountable decision-makers in national parliaments or local councils who ideally are “public-regarding” and geared to the “common good” and “best interest” of, say, the “local community”..

1.3. Comparative approach

In its comparative intent the paper pursues a threefold dimension.

- In a *cross-country* perspective it addresses (four) European countries, to wit, the U.K./England, Germany, France and Italy
- In a *cross-policy* view it focuses on energy and water provision as two “network” (grid)-based public utilities.

In a *historical (longitudinal, (over time))* perspective different phases are discerned of which it is assumed that each of them has specifically shaped the organisational form and operational logic of service delivery in order. For the purpose of this paper five such stages are (hypothetically) identified, that is, first, the emergence of local government based (in the 19th century), second, the public sector-centred delivery of the advanced welfare state (until the 1970s), third, the neo-liberal policy/ New Public Management (NPM) driven promotion of private sector delivery (since the late 1970s), fourth, a “post-neo-liberal” /post-NPM comeback of public/municipal delivery (since the late 1990s) and fifth, a new privatization push in the wake of recent budgetary (“sovereign” debt) crisis (for the concept of different historical phases see Millward 2005, Röber 2009, Wollmann/Marcou 2010b, 2010c, Clifton et al. 2011).

1.5.. *Analytical framework*

While the development of the organisational form and operational logic of service delivery will be regarded, methodologically speaking, as dependent variables, the explanatory scheme will be significantly inspired by the “(neo-)institutionalist debate” (see Peters 1995, Wollmann/Marcou 2010b).

- In line with the historical (over time) perspective the *historical* variant of institutionalism will be writ large which highlights the “structural” impact that institutional, political as well as, cultural traditions, through ensuing “path-dependencies”(see Pierson 2000), may have on the further course of “institution building” and “institutional choice”.
- By contrast the *actor-centred* variant (see Scharpf 1997) emphasises the “voluntarist” influence which the decisions and interests, political “will and skill” of the relevant political and economic actors may exercise on the future institutional course. Under certain conditions (particularly in the case of regime shifts or government shifts), this may amount to a deviation and rupture from a “path-dependently” staked out trajectory.
- Moreover, *discursive* institutionalism (see V. Schmidt 2008) accentuates the (political, ideological etc.) discourses whose constitutive beliefs and concepts set the stage for shaping and legitimising decision-making in the national as well as international policy arenas..

1.6. *Guiding question: convergence or divergence?*

The guiding question of the following comparative account and analysis will be whether (and why) the development of the organisational and the operational logic of public service delivery has shown convergence or divergence. Due to the limited space of this paper the arguments are bound to remain quite sketchy, if not fragmentary where the complex subject matter would call for more substantiated treatment.

2. *19th century: Emergence of local government based public service provision*

In the course of the 19th Century, during a period of rampant industrialisation and urbanisation in which Britain was a European frontrunner and Germany followed suit in Continental Europe, the provision of public utilities (water, sewage, waste, public transport, energy), in its initial basic form was deemed mainly a responsibility of the local authorities. After the early engagement of private sector entrepreneurs largely

ended in bankruptcy local authorities saw themselves compelled to take over their facilities. For the provision of public services the local authorities often created municipal companies (called *Stadtwerke* in Germany and *municipalizzate* in Italy) which, in often rendering more than one service, operated as “multi-utilities”. A sort of (“embryonic”) “local welfare state” took shape which, while derided by contemporary conservatives and “Manchester” liberals as “municipal socialism” (see Wollmann 2011), responded to a broad range of socio-economic needs and interests of the respective local community and its stakeholders. Being embedded in local level decision-making the operational logic of this early regime of local government based service delivery may be interpreted as reflecting “political rationality”.

3. *Public service provision under the advancing and climaxing the welfare state*

With the expansion of the national welfare state which unfolded since the early 20th century and climaxed during the 1960s and early 1970s, the provision of public utilities was regarded as a key responsibility of the public sector. This development was rooted in the (as it were “social democratic”) belief that the conduct of the public services in the “best interest” of the citizens was ensured by having them rendered by the public sector, be it state or municipal and its public personnel directly. Hence, in its *organisational form* the provision of public services was marked by a quasi-monopoly of the public sector, while, in its *operational* logic, it was shaped by a “*political rationality*” which, being embedded in political decision-making and political control, would be, geared, first of all, to the “general good” and in the “best public interest”.

In the following the development will be sketched in singling out the energy and water sectors as cases in point.

After 1945, the under the incoming Labour Government, the *U.K.* came to virtually but epitomize the public sector-centred (post-war) welfare state. In 1946 the energy sector which historically was largely in the hands of the local authorities was “nationalized” by turning the existing local companies over to public authorities under the control of the central government. (see McEldowney 2007). The local authorities were left with some all but minor functions (district heating). In 1973, the water

sector which was historically operated by a thousand local water undertakings was nationalized as well by establishing ten public (central government-controlled) Regional Water Authorities (see McEldowney/McEldowney 2010).

Similarly in post-war *France* in April 1947 the energy sector was “nationalized” by incorporating the existing private energy companies into two state-owned (monopolist) energy corporations, *Electricité de France* (EdF) and *Gaz de France* (GdF). Although the municipalities retained the ownership of the local grids, only 5 percent of them chose to operate the grids themselves (*en régie*), while, in line with the century-old practice of the country’s municipalities of “functionally privatizing” or “contracting out” (*gestion déléguée*) service provision, most of them “outsourced” energy provision by way of long term *concession* contracts to EdF and GdF. Only a minority of some 230 small municipal energy corporations (*entreprises locales de distribution d’électricité*, ELD) were exempted from nationalisation and continued their local operations - particularly in hydro-powered generation of electricity (see Allemand 2007: 31). Thus, the State-owned companies came to dominate the local markets and were poised to become national, if not international “champions” in the energy sector..

In the water sector, too, following the traditional practice of “gestion déléguée”, most municipalities “delegated” (“outsourced”) the water services to private water companies (see Bordonneau et al. 2010: 134)². As a result, France’s water sector has arrived to be dominated by the “Big Three” water companies (Veolia, Suez and SAUR) that serve some 70 percent of the households³ and have become “national champions” and even “global players” in the water sector.

² With the exception, for instance, of the Cities of Paris and Grenoble where the water services continued to be provided „en régie” or through municipal companies

³ *Veolia Environnement* (known officially as *Compagnie Générale des Eaux* in France) provided drinking water to 24.6 million people and wastewater services to 16.7 million people in partnership with more than 8,000 municipalities including Lyon.

Suez (known as *Compagnie Lyonnaise des Eaux* in France) provided 12 million people with water services in 5,000 municipalities and 9 million with wastewater services in 2,600 municipalities.

SAUR provided water and sanitation services to 5.5 million people in more than 6,700 municipalities and municipal associations, mainly in rural and peri-urban areas.

In *Italy*, too, in 1962 the energy sector was largely “nationalized” by integrating most of the existing (some 1270) regional and local energy companies in State-owned company (ENEL - *Ente nazionale per l’energia elettrica*). Only a small number of municipal corporations (*municipalizzate*) were exempted from nationalization and have continued in small-scale generation and distribution of electricity (see Prontera/Citroni 2007).

Italy’s water sector was traditionally serviced by small municipal water companies whose great number reflected the high degree of territorial fragmentation of the country’s municipalities.

In post-war (West) Germany, in stark contrast with the U.K., France and Italy, the energy sector did not undergo any nationalization since the country’s post-war reconstruction was directed by a conservative-bourgeois coalition government which rejected nationalization as a “socialist” measure (with the – “Socialist” - German Democratic Republic, at the other side of the Iron Curtain, perceived as an political and ideological deterrent) and, instead, embarked upon an ambitious privatization programme, including the State-owned Volkswagen factory.

Against this background, the (West) Germany’s post-war energy sector showed an “asymmetrical duality” of energy providers. On the one hand, it was dominated by a handful of major (regional) energy companies which, operating as private law listed stock companies, were owned by a spectrum of private investors and, to a minor degree⁴ also by municipalities. On the other hand, municipalities held a significant position in the energy sector, particularly in the transmission, distribution and (to minor degree also) generation of electricity, mainly in the traditional organisational form of the multi-utility *Stadtwerke* (*city/municipal work*). Being legally restricted to their respective local territory the *Stadtwerke* have often tended to establish “protected” local markets, if not “local monopolies” (see Ude 2006). The operational logic of the municipalities and of their *Stadtwerke* in their engagement in the local energy provision can be interpreted as mirroring a *political rationality* as, embedded in local political decision-making and control, their activities are prone to respond to

⁴ Such as RWE

specific local (social, ecological etc.) needs and interests of the local community, possibly at the detriment of (strictly) economic criteria, as mandated by “economic rationality”. A case in point is using profits made in energy provision to cross-subsidize deficit-ridden local services, such as public transport. Another important example of “non-economic”

Germany's water sector has as well been traditionally characterized by a myriad of small municipal water companies in the organisational form of multi-utility city works (*Stadtwerke*).

4. The “neo-liberal” shift: From public sector-based to private sector-based service provision

Since the 1980s, the public sector-centred organisational form and the *political* rather than *economic* operational logic of public service provision have encountered mounting criticism.

For one, the public sector-centred service organisational form of public service provision in the advanced (“social democratic”) welfare state has been attacked by the advocates of neo-liberal beliefs and New Public Management maxims for being basically and structurally inefficient. Remedy for this alleged “public sector failure” was seen in dismantling the (quasi-monopolist) public sector by way of “privatizing” the provision of services – be it by functional privatization, that is “outsourcing” to outside (first of all private sector) providers. or be “material” (asset) privatization, that is, transfer to private ownership (see Grossi et al. 2010).

Another thrust of criticism was directed at the prevalence of an operational logic which, in a “political rationality”, tends to give priority to social, ecological etc. goals, while neglecting or putting last “economic” efficiency, that is, “economic rationality”.. Redress was seen in the “marketization” (market liberalization, “compulsory/obligatory tendering”) of service provision.

The neo-liberal shift received its initial powerful political and discursive thrust in the U.K. after 1979 under Margaret Thatcher's conservative regime whence it spread first to other Anglophone and subsequently to Continental European countries. Since the mid-1980s it has been further propelled by the European Union's market liberalization drive to create a "single" European market by 1992 for goods, services and capital. Market liberalization has been targeted, not least, at the provision of public utilities which in EU terminology has been labelled "services of general economic interest" (see Wollmann/Marcou 2010b). As, in the past, such services were typically rendered in *territorially* defined and often somewhat "protected" national and local markets coming close to a virtual national or local monopolies, they were bound to become a prime target of EU's market liberalisation drive which aims at breaking up such territorially and locally secluded and "protected" markets and at paving the ground for "single market"-wide, in a way "de-territorialized" competition.

In the following the energy and water sectors will again be singled out as cases in point in order to identify the impacts of this neo-liberal policy shift.

Energy sector

In order to promote market liberalization in specific policy sectors, such as the energy sector, the EU has issued so-called *directives* to oblige member states to translate ("transpose") them into binding national legislation. In the water sector the impact has been through directives addressing the purity of (drinking) water.

Energy sector

In the *U.K.*, in anticipating (and, in fact, serving as model for) the EU's market liberalization intervention in the energy sector, the Conservative government under Margret Thatcher proceeded, through the Electricity Act of 1989, to privatize the country's electricity sector which had been nationalized in 1949. At first 14 regional private sector companies were established. Later on their number was reduced to five as a result of mergers. International energy companies, such as France's EdF

and Germany's RWE and E.on entered the British energy market by becoming (minority) shareholders of the British private companies (see Drews 2008: 51). Along with the privatization legislation the government "revolutionized" energy service provision by creating a National Grid Company to operate the transmission grids and by establishing a governmental regulatory agency to serve in a "watchdog" function. At the local level, on an all but marginal scale, local government-related companies continued to operate heat and power combining facilities mostly in connection with district heating. They were restricted to cater only to local consumption needs but could sell and feed electricity into the national grid.

The EU has started, since the early 1990s, to intervene in the electricity sector by issuing so called *directives* which, in the EU's norm setting hierarchy, oblige the EU member States to translate ("transpose") them into binding national legislation.. After the (first) Directive 92/92 of December 19, 1996 largely failed to deregulate the electricity market, the EU followed up with the so-called Acceleration Directive (2003/54 of June 26th 2003) which introduced two particular instruments. For one, in distinguishing between generation, transmission and distribution/supply as three key functions of energy provision, the EU Directive aimed at organisationally "unbundling" these three functions. The basic idea was that, in order to ensure price competition in the interest of the consumer, non-discriminatory access to the transmission grid/network should be guaranteed to all providers. Second, the directive obliged each member state to put in place a national regulatory agency in a watchdog function.

In *France*, during the 1990s the national government at first showed little inclination to implement the EU's market liberalisation drive, probably because such implementation would have impaired the market-dominating quasi-monopolist position of State-owned EdF. In fact, in pursuing a distinctly protectionist industrial policy, the government promoted EdF as a "national champion" to expand into international markets (see Beckmann 2008: 246). Furthermore, nuclear power generated electricity makes up to 75 percent of France's entire electricity production which resulted in comparatively low energy prices so that little need was in the public discussion to call for privatization as an incentive of price competition.. Consequently,

there has been little incentive in France to evoke a public discussion on the need of having more price competition.

Finally in 2004, in responding to the EU Acceleration Directive of 2003, France moved to *formally* privatise EdF by transforming it into a private law stock company to be listed on the stock market. However, private (institutional or individual) ownership has been legally limited to 30 percent of shares of EdF. Consequently, as of 2010 up to 84.8 percent of shares of EdF are still held by the French state.. However, in reaction to the unbundling, EdF has meanwhile set up an organisationally independent grid company (see Marcou 2007, 21 f.).

In the shadow of the quasi-monopolist position of the still largely state-owned EdF the marginal role the some 230 municipal energy companies that were exempted from nationalisation in 1946 has not been noticeably boosted; they continue to provide just 5 percent of the country's entire energy supply.

In *Italy*, In reaction to the EU Directive 96/92 the Italian government at first, in 1999, *formally* privatized the (quasi-monopolist) State-owned energy company ENEL by transforming it into a private law stock market-listed company. Subsequently ENEL was obliged to sell significant shares of its stocks to private (institutional and individual) investors, including Italian as well as foreign competitors (such as France's EdF and Germany's RWE and E.on). As a result, state ownership in ENEL has been reduced to some 30 percent. Furthermore, in .1999, the EU's debundling imperative was put into practice by legally obliging ENEL to set up independent grid companies and to sell some of them to the municipal companies (*municipalizzate*) of major cities. Moreover in 1997 an independent "watchdog" regulatory agency (*autorità per l'energia elettrica ed il gas*) was created.

At the same time, the municipal companies (*municipalizzate*) that had been exempted from nationalisation in 1962 continued to play a noticeable role particularly in the generation of renewable energy (see Prontera/Citroni 2007).

In this context it should be added that In a reaction to Tchernobyl nuclear catastrophe of April 26, 1986, the construction of nuclear power plants in Italy was overwhelmingly rejected by a country-wide referendum held on November 8, 1987⁵. In *Germany*, as a reaction to the EU directive 96/92/EC, the Federal Energy Act of 1998 was adopted which aimed at liberalising Germany's energy market. In the first phase, the legislation had the somewhat paradoxical effect of triggering a "downright wave of mergers" (Deckwirth 2008: 82) which resulted in the emergence of E.on, RWE, EnBW and (Sweden's State-owned) Vattenfall as the "Big Four" dominant players on Germany's energy market. At the same time, faced with the competitive pressure by the Big Four and with a mounting budgetary plight, many municipalities saw themselves compelled to sell local grids and shares of their *Stadtwerke* to the Big Four. In a development which, by some, was seen as foreboding the "demise of the *Stadtwerke*" ("*Stadtwerkesterben*") (see Wollmann 2002, Wollmann, Baldersheim et al. 2010).

Water

Different from the energy sector, with regard to the water sector the EU does not have the competence to intervene by way of sector-specific deregulation. However, it has influenced the provision of drinking water and waste water treatment by directives concerning the respective water quality⁶. Insofar as in some countries national legislation has regulated water provision they fell in line with the general "neo-liberal" policy trend without explicit EU obligation.

In the *U.K.*, in further pursuing its neo-liberal policy drive the Conservative government, in 1989, effected the (*material/ asset*) *privatization* of the country's water sector by selling the (ten) public regional water authorities to private sector water companies. At the same time a regulatory agency (OFWAT) was created following the model of the infrastructure regulatory agency set up in other sectors such as telecommunications and energy. As a result some 25 private sector water companies emerged which formed regional monopolies. Subsequently most of them have been

⁵ The ban on nuclear power stations was confirmed by the national referendum held on June 13, 2011

⁶ This applies particularly to the Urban Waste Water Treatment Directive (91/271/EEC) of 21 May 1991 and the Drinking Water Directive (98/83/EC) of 3 November 1998 concerning potable water quality

taken over by private-equity funds, half of them foreign (see Bakker 2003: 369 ff, Hall/Lobina 2007: 23 ff.) which turned out highly profitable for them (Drews 2008: 53).

In Scotland and Northern Ireland, water supply has not been (asset) privatised and is still operated in public ownership. In England and Wales, under the privatised regime, the water tariffs for private households are double compared to those in Scotland's public regime (see Hall/Lobina 2001: 22).

In *France* where, during the 1970s, water provision has been increasingly dominated by the "big three" private sector water companies (Veolia, Suez and SAUR)⁷ (see Bondonneau et al. 2010: 134), an additional privatization impulse came in the wake of the municipal elections of 1983 when right wing council majorities and "neo-liberal" minded mayors were elected who pushed for "outsourcing" ("functional privatization) of water provision. (to one of the "Big Three"). Conspicuous privatization cases were the cities of Paris and Grenoble which until then had retained municipal operation ("en régie") (see Hall/Lobina 2001b).

In *Italy*, well into the 1990s, water provision was operated by some 9.000 small municipally owned facilities (Armeni 2008). Because of the small size and the lack of adequate capital investment, water provision has been costly with wide-spread leakage in the pipe systems aggravating the waste of water. In 1994 the Law Galli aimed at significantly reorganising the country's water services by reducing the existing organisational fragmentation. A new institutional inter-municipal structure called *Ambiti territoriali ottimali*, ATO,⁸ was introduced which was designed to introduce competition into local water provision and to possibly involve also private sector companies, including foreign ones, in the water services (for details see Ascquer 2013).

Subsequently, in 2009, the *Ronchi Decree*⁹ was adopted in 2009 under the right wing Berlusconi government. It was destined to break the legal ground for the further privatization of the water services particularly by the provision that the share in water

⁷ See above footnote 3

⁸ Translated: Optimal Territorial Areas

⁹ named after Andrea Ronchi who was minister in the recent right wing Berlusconi government

companies held by the municipalities themselves must not exceed 30 percent while making 70 percent available for private investors.. However, the implementation of this legislation has been halted, due to the outcome of the national referendum held on June 8, 2011 that ruled out the privatization of water..

In *Germany*, while the water services have been traditionally operated mostly by the municipalities themselves (*in house*) or by (about 7.000) *Stadtwerke* (see Citroni 2007, VKU 2010: 13), private sector water companies have entered the water market since the 1980s and 1990s by acquiring minority share positions in *Stadtwerke*. This applies to almost half of the country's 109 largest cities (see Deckwirth 2008: 85). Among these private water companies, the French service giants Veolia and Suez and their German counterparts RWE and E.on feature most prominently. In the perhaps most conspicuous case Veolia and RWE, in 1999, acquired a total of 49.9 percent of the shares of Berlin's Water Works, Germany's largest water company¹⁰.

5. Is the pendulum swinging back to public/municipal sector- based service provision?

Since the late 1990s the conceptual and political context has, internationally, nationally and locally, moved into a "post-neo-liberal" and "post-NPM" direction that fosters a "comeback" of the public/municipal sector as a provider of public services.

"Post neo liberal" shift in conceptual frame and discourse

Since the late 1990s it has become more and more evident that the (high flying) neo-liberal promises that (material or functional) privatization would usher in better quality of services at lower prices has not materialized. On the contrary private service providers have often made use of the next possible opportunity to raise prices and tariffs while at the same time deteriorating the working conditions of their employees. This conceptual and political disillusionment observable on the local level ties in with a corresponding shift in the national and international discourse in which, in the

¹⁰ For the example of the city of Stuttgart see Libbe et al. 2011b: 9).

wake of the world wide finance crisis that was triggered by the bankruptcy of Lehman Brothers on September 15, 2008, the relation between “the State” and the Private Sector has been critically reappraised and the crucial role of the State to redress “private sector failures” and “market failures” has been rediscovered (to the point of private business, not least banks, conspicuously for being “bailed out”) and has politically, ideologically and institutionally brought “the state back in”.

The disenchantment with private sector service provision has come strikingly to the fore in a survey which was conducted in 2010 by the Association for Public Service Excellence (ASPE)¹¹ among 140 local authorities in England, Scotland and Wales. While 60 percent of the responding local authorities indicated that they have begun or were preparing or planning to take previously “outsourced” services back (“insource”) into their own operation (see ASPE 2011; 11), in their responses “a need to improve efficiency and reduce service costs was the most cited reason for insourcing” (see APSE 2011: 11). The assessment that in providing public utilities public enterprises are, as a rule (at least) on a par with private sector providers comes out in most available studies (see the broad overview in Mühlenkamp 2013: 18)¹². The balance sheet becomes even more favourable for public/municipal provision if the “transaction costs” of the “outsourcing” of services (costs of monitoring, contract management etc.) are taken into account¹³, not to speak of the negative “welfare effects” of “privatized” service provision and the positive ones (social, ecological etc.) ones of public/municipal provision (see Florio2004: 341¹⁴, see also Mühlenkamp 2012:42. 2013:18).

Renewed self-confidence and action orientation of local government

¹¹ See ASPE’s website www.apse.org.uk

¹² See Mühlenkamp 2013: 18 “Research does not support the conclusion that privately owned firms are more efficient than otherwise-comparable state-owned firms”. See also Bel et al. 2010, who, on the basis of numerous studies on water and waste services, summarize, that “our analysis provides empirical evidence that private production of local services is not systematically less costly than that of public”. See also Bel/Warner 2008: 1341

¹³ On this see also APSE 2011: 11

¹⁴ Florio 2004;341: “The main conclusion of my study is that privatization had more modest effects on efficiency than the theory or property rights and other orthodox privatization theories may have expected. On the other hand, privatization did have substantive regressive effects on the distribution of incomes and wealth in the United Kingdom”.

Hence, not surprisingly, the local authorities, for one, have “rediscovered” the provision of public utilities under their own responsibility and in their own operation, operation as a strategy to generate revenues (that is “profit”) instead of leaving this to private sector providers. (In a recent survey conducted among German municipalities 74 percent of the respondents indicated that a prime reason for “remunicipalization” was to achieve additional revenues, see Lenk et al. 2011, Reichard/Röber 2012). Moreover, they seek and use this an opportunity to regain political control over the quality and price-setting of service provision and to pursue social, ecological etc. objectives (“welfare effects”), for instance by way of “cross-subsidizing” structurally and chronically deficient service sectors (such as public transport). In doing so, they act upon and play out a “political rationality” which (ideally) is oriented on the “common good” and “best interest” of the “local community”.

Value changet in the political culture and popular perception

This reassessment of the merits of public sector-based service provision is also reflected and supported in a growing popular perception and sentiment which tends to value public sector service provision higher than private sector one. This trend is evidenced by a growing number of local referendums in which the privatization of public services and facilities is rejected or their remunicipalization is demanded (for German examples see Mehr Demokratie 2012: 42 ff., Kuhlmann/Wollmann 2013). On the national level a striking pertinent event was the national referendum held in Italy on June 8, 2011 in which the privatization of water provision was overwhelmingly rejected. The international, if not global dimension and perspective of this development shows in the emergence and actions of social and political movements of which *Attac*¹⁵ is exemplary.

Reassessment of the local government level in the intergovernmental setting

¹⁵ <http://www.attac.org/node/3727>

The readiness and motivation of local authorities to engage themselves and their municipal companies in the provision of public utilities has recently been fostered by remarkable changes in their intergovernmental setting.

For one, in the EU (and concomitantly in the national) contexts the status and function of the local government level has recently been strengthened as in the Treaty of Lisbon of December 2009 “local government” has been explicitly recognized - for the first time ever in EU constitutional law¹⁶. Furthermore, and particularly relevant for the delivery of “services of general economic interest”, in a protocol to the Treaty of Lisbon (which has the same legal status as the Treaty itself) it has been stipulated that regarding these “services of general interest” the EU explicitly recognizes “the essential role and the **wide discretion** of national, regional and **local authorities** (bold letters added, H.W.) in providing, commissioning and organizing services of general economic interest as closely as possible to the needs of the users” as well as “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”. This means that the EU has significantly mitigated its programmatic “single market” mandate and claim by virtually allowing local exceptions and possibly even “local markets”..

Furthermore, in certain policy fields, the local government level has been recognised as an important actor both by the EU and by the national governments. This applies prominently to environmental protection and energy saving. So, at their summit held in March 2007 the European heads of State agreed on an Energy Policy for Europe which called for a 20 percent increase in energy efficiency, a 20 percent reduction of greenhouse gas (GHG) emissions and a 20 percent share of renewable energy sources in overall EU energy consumption by 2020 (see Praetorius/ Bolay 2009). For achieving these energy and climate preserving policies the local authorities have been recognized as crucial actors.

Grid-specific “window of opportunity”

¹⁶ Art- 3a section 2 of the Treaty of Lisbon: “The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and **local self-government**” (bold letters added, H.W.)

Finally, as in the field of grid-based services, such as energy and water, the municipalities in most countries have the right to grant (time-limited) concessions to the enterprises that want to establish and use such grids, and as currently many of these concessions contracts expire, a “window of opportunity” is opening for the municipalities to renegotiate the concessions contracts and to possibly remunicipalize the services.

On this backdrop it will be briefly discussed in the following whether and why such remunicipalization has taken place. Hereby the energy and water sectors will again be singled out as cases in point.

4.1. Energy

In the *U.K.*, since the (asset) privatization of the energy sector in 1989, the country’s energy market has been dominated by private energy companies, while the local authorities were left with a all but marginal role, for instance, in the operation of district heating services (see McEldowny 2007). However in a recent conspicuous policy turn, the conservative-liberal coalition government has explicitly encouraged the local authorities to resume a responsibility in the energy sector particularly by engaging in the generation and utilisation of energy saving and renewable energy generation technologies¹⁷. The national goal has been set to supply 15 percent of the country’s energy consumption from renewable energy by 2020. Enabling legislation has followed suit. In the meantime a considerable number of local authorities have initiated local projects, particularly pertaining to power and heat coupling (in conjunction with district heating) and in solar energy. Sheffield, Leeds and Bradford are leading the UK in renewable energy installations¹⁸.(see McEldowney 2013).

¹⁷ On August 28, 2010, Chris Huhne, Secretary of State for Energy and Climate Change wrote in a letter to all local authorities that “for too long, Whitehall’s dogmatic reliance on ‘big’ energy has stood in the way of the vast potential role of local authorities in the UK’s green energy revolution” <http://www.decc.gov.uk/publications/basket.aspx?FilePath=News%2f376-unlocking-local-power-huhne-letter.pdf&filetype=4#basket>

¹⁸ <http://www.energyefficiencynews.com/i/4462/>, For an updated list (“league table”) of the UK’s local authorities most active in renewable energy generation see <http://www.aeat.com/cms/assets/MediaRelease/2011-press-releases/Microgeneration-Index-Press-Release-11th-March-2011.pdf>

However, the local level initiatives appear to have recently slackened. “The climate change work has narrowed, is very weak or absent in 65 percent of local authorities” (Scott 2011).

In *France*, the electricity market continues to be dominated by EdF which is still in 80 percent State ownership, generates 75 percent of the country’s energy production from its 24 nuclear power stations and is encouraged by government policy to be a “champion” on the national as well as international energy markets.

Some 230 municipal energy companies which were exempted in 1946 from nationalisation continue to provide energy services to not more than 5 percent of the households. Their generation of electricity is, to a considerable degree, based on renewable (particularly hydro) sources. So far, notwithstanding their potential in renewable energy, the role of the municipal companies has apparently remained limited also because they continue to be legally restrained to only serve their respective local market (see Allemand 2007: 40)¹⁹.

While ENEL (which is in 30 percent State ownership) and other institutional and individual (largely private sector) currently play a major role in Italy’s energy market, the municipal energy companies (*municipalizzate*) which, in 1962, were exempted from the nationalisation continue to hold a fairly strong position in the energy sector (see Prontera/Citroni 2007). This applies particularly to big cities. In 2008 the municipal companies of Milano (1.2 million inhabitants) and Brescia (190.000 inhabitants) merged to form a consortium-type stock company called A2A which is listed on the stock market and generates 3.9 percent of the country’s electricity, while a multitude of other small municipal companies generates another 10 percent (see AEEG 2011: 51). As Italy has politically and legally committed herself to do without nuclear power, the municipal energy companies whose power generation traditionally has a strong alternative and renewable (hydro) energy component (see AEEG 2001: 52) appear to be poised for an expanding role in the country’s energy sector. (see Prontera 2013)

¹⁹ This may however change as a result of the upcoming presidential and parliamentary elections scheduled for April 22 and May 6, 2012 if the Socialist *François Hollande* is elected President (with a left wing majority in Parliament) who advocates a (however moderate) reduction of the country’s hitherto 75 percent dependence on nuclear power generation and a stronger emphasis on renewable energy. In such a case, the municipal companies are likely to be headed for a significant expansion.

Whereas, well into the late 1990s, the Big Four private sector energy companies made significant advances on Germany's energy market, recently the *Stadtwerke* have significantly regained ground for a number of reasons (see Wollmann/Baldersheim et al. 2010, Libbe et al. 2011b: 6 ff.).

For one, as the EC Acceleration Directive 2003/54 exempted energy companies with less than 100.000 consumer households from applying the "unbundling" requirement most *Stadtwerke* do not fall under the "unbundling" requirement. It should be noted that the exemption was written into the Directive upon demands made by the German federal government explicitly on behalf of the German municipalities which claimed that the unlimited application of the unbundling mandate would jeopardise the operational and economic survival of their *Stadtwerke*.

Moreover, since the *Stadtwerke* have traditionally focused on energy-saving technologies (such as heat and power coupling, HPC), they have become crucial local actors in the eyes of the federal government all the more as the latter, in a dramatic policy turnaround in reaction to the nuclear disaster in Fukushima, decided, in June 2011, to terminate the country's nuclear power generation by 2022.

At the same time, the European Commission, in recognising the competitive potential that the local energy companies have in the local and regional energy markets, it proceeded to strengthen their competitive "muscle" by exerting pressure on the "Big Four" (E.on, RWE, EnBW, Vattenfall) to sell local grids and give up previously acquired minority shares in *Stadtwerke*.

Furthermore,, the *Stadtwerke* have learned how to cope with the new competitive environment by improving their entrepreneurial skills and their operational base (for instance by promoting inter-municipal cooperation, by involving private investors etc.).

Moreover the municipalities have (re-)discovered the potential of their *Stadtwerke* to achieve much needed local revenue and to satisfy specific (social etc.) needs and interests of the local community, and to, thus, practise "political rationality", for instance by "cross-subsidizing" deficit-ridden local public transport services.

Finally, this recent push coincided with the expiration of an increasing number of concession contracts on local grids²⁰.

Hence, many municipalities have turned to repurchase local grids and shares of the *Stadtwerke*. The dynamics of this development is evidenced also by a growing number of newly founded *Stadtwerke*²¹. A conspicuous recent example is “Thüga”, a subsidiary of E.on (one of the Big Four energy giants) which was purchased in summer 2009 by a consortium of some 100 *Stadtwerke* for the amount of 3 billion Euro²²; it now holds about 6 percent of the country’s electricity market.

As of 2010, 700 *Stadtwerke* out of a total of 1.372 municipal companies²³ are engaged in the energy sector, with one third of them in power generation. Of the locally generated electricity, 84 percent stems from heating and power coupling (HPC) and 16 percent from other, particularly renewable, energy sources. The locally generated electricity amounts to 10.4 percent of Germany’s entire power generation (see VKU 2009).

4.2. Water

Although the privatized water services in *England* and *Wales* have become severely criticized (not least for high tariffs and high operating profits)²⁴, a politically relevant discussion about turning the water services back to public (State or local) operation has so far not materialized..

While, *in France*, well into the early 1990s, the privatisation of water services, by the traditional modality of “outsourcing” (*gestion déléguée*, to one of the “Big Three”), has further advanced, a process of remunicipalizing water services has gained momentum since the late 1990s. First of all steep price and tariff hikes have increasingly discredited the privatization of water provision. When left-wing council

²⁰ between 2000 and 2001 some 3.000 out of a total of 20.000 concession contracts, see Libbe et al. 2011b: 6

²¹ see Libbe et al. 2011b: 8 for an (incomplete) list of some 30 newly founded *Stadtwerke*.

²² See for instance Euroforum, October 28, 1998, “*Stadtwerke* and municipalities reconquer the energy market”, <http://www.blogspan.net/presse/stadtwerke-und-kommunen-erobern-energieversorgung-zuruck/mitteilung/122972/>

²³ with 241.535 employees which is about one tenth of the entire local government personnel - see VKU 2010: 9

²⁴ The tariffs increased by 46 percent in real terms between 1990-2000, while the operating profits rose by 142 percent in eight years, according to Hall/Lobina 2001.

majorities and mayors regained power, they sought to undo the privatisation effected by their right-wing predecessors and to make use of the expiration of concession contracts in order to remunicipalize water services. The pertinent decisions made in Grenoble and in Paris (in 1989 and in 2000 respectively) are cases in point (see Let Strat 2010 for these and other examples)²⁵.²⁶

It should be kept in mind, however, that the pace of remunicipalisation has remained hampered by the high compensation payments liable to be made to private investors and by the lack of skilled local government personnel (see Bordonneau et al. 2010: 136). Moreover, experience shows that the three large private water companies find themselves in a powerful negotiation position which often amounts to what has been critically labeled a “regulatory capture” of the municipalities (see Varin 2010). Thus, about 90 percent of contracts tend to be renewed with the same concessionaires. On the top of it, many municipalities, including large ones, do not have the capacity to monitor and control the concession contracts, particularly regarding increases of water tariffs (see Cour de Comptes 2003).

In *Italy*, the large-scale privatisation of Italy’s water sector at which the Ronchi Decree of 2009 targeted was conspicuously stopped by the national referendum held on June 11, 2011 in which the Ronchi Decree was rejected by a 96 percent majority. The political mobilisation against water privatisation was largely carried by the (left leaning) *Forum Italiano dei Movimenti per l’Acqua*²⁷ which was founded in 2006 and was composed of some 150 municipalities and political organisations²⁸...

While In *Germany*, well into the early 2000s, private water companies, including major players such as Veolia, Suez, RWE and E.on made significant advances in the (still municipally dominated) water sector, recently a counter-trend has apparently set, as municipalities make use of upcoming expiration of concession contracts to renegotiate the contracts and to regain control over the local water services. This development has been prompted not least by demands of the local citizens, as expressed in a growing number of binding local referendums.. Thus, in the City of

²⁵ As a result, the percentage of water services rendered by the municipalities themselves rose from some 18 percent of the country’s population in 1970 to 28 percent in 2008 (see table in Bordonneau et al. 2010: 134).

²⁶ In the case of Grenoble the mayor was convicted of corruption and sentenced to prison. The concession contract concerned was cancelled, see Hall/Labina 2001

²⁷ translated: Italian Forum of Water Movement

²⁸ <http://www.fame2012.org/index.php?id=52>

Stuttgart where, in 2003, water provision was completely sold to a large German provider (EnBW), the city council, in responding to a pertinent local referendum, decided in June 2010 to repurchase the water work, once, in 2013, the concession contract expires²⁹. (for other examples see Kuhlmann/Wollmann 2013).

4.4. “Remunicipalization” in a wider country and sector perspective?

Varying in rate and intensity processes of remunicipalization can be also observed in other service sectors, such as waste management, public transport, as well as in other countries (see Hall 2012, Dreyfus et al. 2010). An intriguing example of the dynamics of a local “multi-utilities” operation is offered by the German city of Bergkamen (50.000 inhabitants) which, under the innovative leadership of a committed mayor, has become a pilot in remunicipalizing public services in a broad multi-utility mix that includes energy, waste management and public transport) (see Schäfer 2008, for other examples see Kuhlmann/Wollmann 2013).

5. *New wave of privatization triggered by the recent budgetary crisis?*

In the most recent development there are indications that again the “pendulum may be swinging back” again towards stepped up privatization in the public utilities sector.

For one, this may pertain to the EU countries in general as the European Commission has, in late 2012, proposed a Directive on the award of concessions contracts which would pertain to all types of “services of general economic interest” and thus also including water services. It would mean that whenever a concession on these grid-based services elapses and comes up for prolongation the municipalities would be obliged to put it out to tender. On January 29, 2013 the draft directive was approved by the respective Committee of the European Parliament. The draft directive has evoked great alarm and concern particularly among the German municipalities and their *Stadtwerke*. They perceived and rejected the draft Directive as contradicting and virtually nullifying the “wide discretion” that the Lisbon Treaty of December 2009 recognized and accorded to the local authorities in their decision

²⁹ http://www.wasser-in-buergerhand.de/nachrichten/2010/stgt_fuer_rekommunalisierung_wasser.htm

on how to locally organize service provision³⁰. At this writing, the issue of the draft Directive is still pending as it still needs to be finally adopted and, if adopted, to be transposed into national legislation.

A new wave of (large-scale) privatization in the public services sector (and beyond) appears to be triggered in the budgetary crisis-ridden South European countries which face increasing demands by the European Commission, the European Central Bank and the International Monetary Fund, embodied in the so called Troika, to sell public assets, including not least municipal public service providing facilities and companies in order to reduce the public (“sovereign”) debts³¹.

6. *Summary, perspective*

In conclusion the paper will resume the initially formulated guiding question whether, and why the organisational form (*public/municipal* or *private*) of public service delivery as well as its operational logic (*political* or *economic*) shows convergence or divergence over time in the countries and service sectors under consideration..

Our analysis and account suggest that the each of the five developmental phases that were hypothetically discerned shows common as well as varied features. The explanation of such commonality as well as variance may be, in drawing on the afore-mentioned conceptual variants of “institutionalism”, sought, first of all, in “path-dependent” structures, political etc. decisions and “discourses”.

A pronounced organisationally convergent development can be detected in the historical origins of local level service provision since the second half of the 19th century. The local authorities were engaged in the provision of (then still elementary) public services in what conservative and Manchester liberal opponents of the time mockingly called “municipal socialism”. Thus, for some services and some countries an all but “path-dependent” tradition of local government based delivery, be it “in house” or through municipal companies (such as “Stadtwerke” in Germany), has caught roots. An early deviation from this pattern emerged in France where the

³⁰ See for instance, <http://www.right2water.eu/de/news/how-concessions-directive-new-piece-longer-struggle-privatise-water-and-make-money-out-water>

³¹ Regarding the pressure of the European Union on Greece, Portugal and Spain to privatize water <http://www.tni.org/pressrelease/eu-commission-forces-crisis-hit-countries-privatise-water>

municipalities tended to “outsource” service provision to outside (mostly private sector) providers which has become a France-specific “path-.dependent” feature of service provision and has turned out the launching pad for private sector service companies to come to dominate the national and international markets.

Reflecting the political/ideological disposition of the advancing and advanced (national) welfare state to rely on public sector-centred service provision it was after 1945, in a largely convergent development, politically decided in the U.K. (under the incoming Labour Party with a “socialist” connotation), in France (under DeGaulle with a “modernist” connotation) and later in Italy, to “nationalize” the energy sector, that is, to turn it over to State-owned companies (in France: EdF. In Italy: ENEL) or agencies. By contrast, in (West) Germany the energy sector continued to be left to the existing plurality of (largely) private sector companies as any “nationalization” was politically and ideologically alien to the conservative (post-war) federal government. The hitherto existing local energy companies were more or less marginalized,..

With regard to water provision (and to other public services) the local authorities, in line with their “path-dependent” tradition, continued to render such services, in Germany and Italy particularly through municipal companies (*Stadtwerke*, *municipalizzate*), In France in the traditional form of “outsourcing” (*gestion déléguée*), An exception, in the U.K the water sector was also “nationalized” which added to make the U.K. appear the epitome of the post-war (“social democratic”) advanced public sector-centred welfare state.

Under the impact of the neo-liberal policy shift (and later of the EU’s market liberalization drive) the U.K. was first and went furthest to entirely (asset) privatize the hitherto State owned energy sector as well as subsequently the publicly operated water sector. Italy and France followed suit in privatizing ENEL respectively EdF whereby in Italy the State retained 30 percent and in France as many as 80 percent of the shares – the latter hinting at France’s determined protectionist industrial policy. In Germany, the deregulation of the energy sector led, in a seeming paradox, to mergers and market concentration of the “Big Four” private sector providers, In Germany the municipally owned energy companies (*Stadtwerke*) foreboded to be

r squeezed out (“*Stadtwerkesterben*”).

Since the late 1990s, as the neo-liberal policy and discourse dominance has faded and given way to the perception of the shortcomings and drawbacks of private sector-based service provision along with the reappraisal of the capacity and potential of the public/municipal sector, in the field of energy provision the municipalities and their companies have returned to or have stepped up their activities particularly, herein encouraged by national and EU policies, in renewable energy and energy saving measures – with the German *Stadtwerke* figuring prominently. In water provision, too, the municipalities and their companies have begun to regain ground which they recently lost to private sector providers. Thus the pendulum that, under the neo-liberal shibboleth swung to the private sector predominance has started to oscillate back to public, particularly municipal sector provision. In a historical long term perspective the organisational form appears to have run “full cycle”, from local government to local government provision,.

Most recently, however, in the budgetary (“sovereign debt”) crisis – ridden South European countries, under the external international pressure, embodied by the so called Troika, a new wave of privatization has been unleashed which is targeted, through the sale of public, not least municipal assets, to reduce and relieve the public indebtedness.

Regarding the *operational logic* of public service provision, in the historical long-term perspective the local government based delivery in the early 19th century phase can be seen as guided by a “political rationality” in the sense of taking a wide range of local (social, infrastructural etc.) needs and interests of the “local community into account possibly at the detriment of strictly economic goals. In the further development of the advancing and advanced national welfare state and its public sector dominance of service provision again “political rationality” can be interpreted as given priority to the wide spectrum of social, ecological etc. goals (“welfare effects”) at the risk of neglecting or putting last narrowly understood economic concerns. In reaction to this alleged disregard of economic efficiency the neo-liberal market-liberalization phase gave prime importance to “economic rationality” at the possible price of ignoring non-economic (social, ecological, “welfare” etc.) concerns.

At last, the “remunicipalization” of service delivery arguably holds the promise and harbours the potential of combining the “political” and the “economic” rationalities. Being politically embedded in the local community, its demands and accountability the provision of public services is prone to respond to and heed the gamut of needs and interests in what is captured in the term and concept of “political rationality”. At the same time however, facing the challenges by private sector competitors, the municipalities and their companies have been compelled and have learned to adopt and pursue “economic rationality” as well. Put it somewhat pointedly and ideally, the “remunicipalization” of public services has the potential to combine and achieve the “best of the two worlds”.

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