

Commentary on the European Commission's “Study on Water Services in Selected Member States”

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The Public Services International Research Unit (PSIRU) investigates the impact of privatisation and liberalisation on public services, with a specific focus on water, energy, waste management, health and social care sectors. Other research topics include the function and structure of public services, the strategies of multinational companies and influence of international finance institutions on public services. PSIRU is based in the Business Faculty, University of Greenwich, London, UK. Researchers: Prof. Steve Thomas, Dr. Jane Lethbridge (Director), Dr. Emanuele Lobina, Prof. David Hall, Dr. Jeff Powell, Sandra Van Niekerk, Dr. Vera Wegmann, Dr. Yuliya Yurchenko.

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1 Introduction

In July 2015, the consultancy Ramboll carried out a “Study on water services in selected Member States” for the European Commission (henceforth, the Study).¹ The Study addresses the relative performance of public and private operations and the relative impact of public procurement rules in the water sector, by reviewing the literature on seven EU Member States (UK, France, Germany, Spain, Poland, Hungary, and Sweden) and interviewing selected stakeholders from these countries. The Study finds no correlation between: a) the price and quality outcomes of water service provision and the public or private ownership of the providers; b) the institutional and regulatory frameworks adopted and consumer benefit; c) the procedures adopted for awarding the rights to provide water/wastewater services and consumer benefit; and, d) the price and quality outcomes of water service provision and the award of rights to provide water/wastewater services without resorting to competitive tendering. The European Commission asked Ramboll to carry out the Study with a view to assessing the economic effects on the internal market of the exclusion of water/wastewater concessions from the application of the 2014 European Directive on the award of concessions. Therefore, the policy implications of the Study deserve full attention.

This Commentary, commissioned by the European Federation of Public Service Unions (EPSU), considers the policy implications of the Study in light of its limitations. The authors of the Study acknowledge some of these limitations; namely, the limited number of countries selected for comparison and the limited comparability of data across the selected countries. Other, and more serious, limitations include: i) a failure to discuss characteristics of the water sector (e.g. high transaction costs) that have important consequences for the policy implications of the Study; ii) the limited scope of the literature reviewed for the purposes of the Study, which leaves out important contributions to the debate; iii) the selective range of stakeholders interviewed for certain countries, that skews the balance of the Study on a number of key questions; iv) the categorical errors made in defining the social factors discussed (including factors as diverse as corruption, irregularities, service quality and remunicipalisation), and/or inferring their significance from the data observed; and, v) the narrow view on the ultimate goal of water service provision, that neglects the significance of social factors beyond the technical indicators used in benchmarking exercises.

In light of the limitations of the Study, this Commentary identifies a number of policy implications broadly falling under three main headings: 1) the transaction costs of water liberalisation and privatisation represent a social deadweight loss; 2) the social costs of water liberalisation and privatisation are underestimated and must be tackled; and, 3) what people want is public water and the human right to water - not liberalisation, privatisation or technocratic regulation. The Commentary ends with concluding remarks, emphasising that it is time for the European Commission to abandon its obsession with water liberalisation, privatisation and technocratic regulation and to create instead an institutional environment where the human right to water can prosper. Such an institutional environment could be created by adopting legislation that promotes meaningful public participation in decision making on water service provision, combats excessive costs to water users and fosters intra-European Public-Public Partnerships (PUPs) for capacity development in the water sector, in addition to international, North-South and South-South PUPs.

2 The transaction costs of water liberalisation, privatisation and technocratic regulation represent a social deadweight loss

The Study does not elaborate on the policy implications of its four key findings – i.e. that there is no correlation between price and quality outcomes and, respectively, organisational ownership, the institutional frameworks and award procedures adopted, and the non-competitive award of rights to provide services. Neither does it discuss a characteristic of the water sector like the presence of high transaction costs that, combined with these findings, has major policy implications.

Transaction costs are the costs borne by private companies for structuring infrastructure projects (like allocating political and commercial risks), and borne by governments and/or consumers for reforming the sector and monitoring operations after reform, including the costs of organising tenders in case of liberalisation, writing contracts with private operators, setting up and running regulatory agencies, revising unsatisfactory contracts, and the costs associated with legal and extra-legal conflicts that might arise with the operator.² There is a lack of detailed measurements of the transaction costs associated with different ownership arrangements, for example under public or private sector provision.³ Also, a definitive quantitative comparison of regulatory transaction costs between different institutional arrangements has not been carried out to date.⁴

However, transaction costs are not insignificant and may vary considerably depending on the institutional setting. For example, Ofwat - the economic regulator of the water sector in England and Wales - is financed by license fees recovered from the privatised water companies. Ofwat's budget for 2017-18 exceeds £25 million⁵ and it spent over £29 million in 2014-15.⁶ In 1997, the Inter-American Development Bank lent US\$40 million to Ecuador, of which US\$20.2 million were earmarked for financing the transaction costs related to the award of a 30-year water and sanitation concession in the city of Guayaquil. These included the costs of preparing bid specifications and undertaking technical, legal and financial studies. Despite the availability of resources, only a single bid was submitted to the conceding authorities who thus awarded the contract to the sole bidder.⁷

A policy implication of the claim that there is no price or quality differential between diverse institutional arrangements and award mechanisms – including between competitive and non-competitive awards, is that the transaction costs associated with organising, implementing and monitoring competitive procedures for the award of concession contracts as well as regulating liberalised and privatised water services amount to a social deadweight loss. Similarly, if there is no price or quality differential between public and private service provision, and between different regulatory frameworks, the transaction costs associated with water liberalisation, privatisation and technocratic regulation represent a social deadweight loss. In other words, in all these cases the transaction costs are paid for by taxpayers and/or consumers without them benefiting from sectoral reform. Those who benefit include the agencies and consultants tasked with monitoring the process and the private companies that have been awarded the operating contract. Conversely, for taxpayers and/or consumers the transaction costs of water liberalisation, privatisation and technocratic regulation are a net loss. The upshot is that taxpayers and consumers would be better off in the absence of water liberalisation and privatisation (i.e. under public sector provision) and in the absence of technocratic regulation (e.g. in the presence of in-house regulation).

3 The social costs of water liberalisation and privatisation are underestimated and must be tackled

The Study deserves praise for addressing important issues like corruption that are too often neglected in similar studies. However, its selective discussion of technical indicators, desk reviews and stakeholder interviews misrepresents the reality of water service reform. As a result of its skewed approach, the Study paints a rosier picture of the outcome of liberalised and privatised water operations than is justified by real-world experience and does not render justice to the merits of public service provision.

Box 1. Selective interviews of UK stakeholders

The authors of the Study use interviews with selected stakeholders to integrate the literature review on each country. The selection of interviewees appears to reflect a balance between stakeholders, e.g. between public and private operators, for some countries more than others. For example, the five interviewees selected for the UK include a representative of a private company, a representative of a water association dominated by the private sector, two regulators for England and Wales - both of whom are staunch supporters of privatisation, and a regulator for Northern Ireland. No representative of public water operators was interviewed for the purposes of the Study, nor any representative of trade unions and civic associations. The imbalanced composition of interests represented by the interviewees might explain the relatively benign assessment of privatisation in England and Wales, as discussed below.

A more balanced analysis of the evidence on comparative efficiency and productivity, detected irregularities, and operational implications on welfare distribution would have shown the urgency of tackling the social costs of water liberalisation and privatisation. These include the social opportunity costs of water liberalisation and privatisation, primarily consisting in the costs of missing out on the potential of the public sector for promoting the human right to water. This right, recognised by the United Nations, requires that water and sanitation services be available, accessible, safe, acceptable and affordable for all without discrimination.⁸

3.1 A partial discussion of comparative efficiency and productivity

The Study reviews only part of the large body of literature on the relative efficiency of public and private operations, so that it overestimates the significance of publications that find in favour of private efficiency while downplaying the significance of publications that fail to find evidence of superior private efficiency. The Study's skewed treatment of comparative efficiency and productivity is particularly evident in relation to the two countries that are widely regarded as the main models of private sector participation in water supply and sanitation: France and the UK.

As regards France, the Study gives particular prominence to a recent econometric analysis of 177 French water utilities, which finds no significant difference in terms of efficiency between public and private management.⁹ The Study, however, does not discuss a previous comparative analysis of 5000 French water utilities that finds evidence of superior public efficiency.¹⁰

As regards the UK, the Study gives particular prominence to the claim that the English and Welsh private water companies outperform public companies in Scotland and Northern Ireland in terms of quality of water supply, and that the average price charged by the English and Welsh private water companies is only 3.8% higher than the average price charged by public companies in Scotland and Northern Ireland. No consideration is given to the fact that the difference between the population densities of England (413 people per square km),

Wales (149 people per sq km), Northern Ireland (135 people per sq km), and Scotland (68 people per sq km) might bias the comparability of the data.¹¹ On the one hand, greater population density facilitates efficiency because the capital and operational costs of serving users decrease. On the other hand, lower population density hampers performance on some of the quality indicators used in the Study. For example, utilities serving large and sparsely populated areas have a comparative disadvantage on indicators like unbroken supply due to higher maintenance and intervention costs in isolated rural areas. The upshot is that considering differentials in population density would strengthen the case for the comparative advantage of Scottish and Northern Irish public providers in relation to English and Welsh private providers.

Also, the Study claims that the 1989 water privatisation has led to improvements in service quality thanks to increased infrastructure investment. However, the Study fails to review the literature on comparative efficiency and productivity in England and Wales – something that would have enabled the authors to qualify that claim. In particular, a 2007 article finds that “while technical change improved after privatization, productivity growth did not improve.”¹² The lack of evidence on improvements in Total Factor Productivity growth after privatisation is confirmed by a number of other analyses.¹³ Also, a 2008 paper shows that maintaining the investment levels and growth rates achieved under public ownership between 1985 and 1989 would have allowed for far greater investments than those delivered since privatisation.¹⁴

3.2 A partial discussion of irregularities

The Study broadens the definition of corruption from the mainstream focus on public actors, and their involvement in the abuse of public office for private gain, to include the dishonest and fraudulent conduct by any stakeholder resulting in an economic loss for another stakeholder. This approach to defining corruption is welcome as it encompasses all forms of abuse of power beyond bribery and irrespective of whether the public sector, the private sector or the voluntary sector are involved in wrongdoing. Consistently with this definition, the Study treats as corruption the “misreporting” of data by some private providers in England and Wales that fraudulently influenced the regulatory process and enhanced corporate profitability. For more detail on these cases, see a 2008 PSIRU Report.¹⁵

However, the Study’s assessment that corruption in the French water sector is scarce, especially after the 1993 anti-corruption law, appears optimistic for a number of reasons. First, because there have been more corruption scandals in France than the single case acknowledged by the study – a case where the mayor of Grenoble and a Lyonnaise des Eaux (now Suez) executive received prison sentences.¹⁶ For example, there have been corruption scandals in Angoulême and Réunion.¹⁷ Second, because corruption and bribery are crimes notoriously difficult to detect.¹⁸ Third, because French water multinational Veolia has been involved in corruption scandals in other countries, including Italy and the USA (see Box 2) and, as recently as June 2017, was implicated in the investigation of the allegedly corrupt practices of its Romanian subsidiary Apa Nova.¹⁹ Fourth, because a 2013 study by PricewaterhouseCoopers and ECORYS, cited in a 2014 anti-corruption report by the European Commission,²⁰ estimated that in 2010 the overall direct costs of corruption in public procurement for water and waste, as well as road and rail, urban/utility construction, training, and research and development, in France, Hungary, Poland, Spain, Italy, Lithuania, Netherlands, and Romania ranged from €1.4 billion up to €2.2 billion. The upshot is that any assessment of the extent of corruption, and its association with water liberalisation and privatisation, should be made with prudence. The concern shown by EU institutions for the extent and implications of corruption in public procurement – see for example the European Parliament’s 2011 resolution on the modernisation of public procurement,²¹ and the European Commission’s 2014 anti-corruption report²² - points to the need for continued vigilance in this area.

Box 2. Corruption scandals in Italy and the USA

In July 2001, Milan court magistrates convicted Alain Maetz, a senior manager in Veolia's water division, and former president of Milan city council Massimo De Carolis, for bribery in connection with the award of the tender for the construction and operation of a wastewater treatment plant in South Milan. The case first erupted in March 2000 when daily La Repubblica exposed that Mr. Maetz planned to bribe politicians in both the majority and opposition parties on Milan's city council in order to win the contract. Mr. Maetz planned to pay a total of €2 million in bribes to secure a contract worth over €100 million.²³

In June 2001, two close associates of Joseph P. Ganim, mayor of Bridgeport, USA, pleaded guilty to charges of bribery, fraud and tax evasion in connection with bribes totalling US\$ 700,000 allegedly paid by PSG – a subsidiary of Vivendi (now Veolia) since March 1999 - "in order to obtain a contract to operate the city's wastewater treatment plant".²⁴

The Study's discussion of other irregularities like excessive pricing is no less partial than that of corruption. By overlooking notable cases of excessive pricing in France and the UK, the Study downplays the connection between water liberalisation and privatisation, on the one hand and irregularities, on the other hand. For example, overlooked cases of excessive pricing include those where – due to less than transparent accounts - private operators in Bagnol-Savary, Nice and Avignon, France charged consumers for investments that had not been made.²⁵

In the UK, the House of Commons Public Accounts Committee stated in 2016 that: "Ofwat, like other economic regulators, has repeatedly overestimated the cost of finance in successive price reviews. ... As a result, water companies made windfall gains of at least £1.2 billion between 2010 and 2015 from bills being higher than necessary".²⁶ While this report was released after the completion of the Study in July 2015, the practice condemned by the Public Accounts Committee, also known as "gaming", is not new. This gaming happens around the price caps set by OFWAT in the price reviews, which effectively set the level of water prices in England 5 years in advance. The companies submit their projections of expenditure and claim that they need to increase prices to cover this spending. OFWAT then has to try and make its own assessment of the accuracy of these forecasts, and then set the prices. The companies have every incentive to mislead the regulator, by exaggerating the capital expenditure necessary – then they get allowed to charge higher prices, but the real expenditure is lower, and so they can pocket the difference as increased profit. The whole process is in effect a game between the regulator and the companies. A 2008 PSIRU Report shows that this process has been persistent and that, from 1995-96 to 2005-06, the private companies' capital underspend has fuelled dividends to the tune of £4.3 billion.²⁷

3.3 No discussion of the impact of water liberalisation and privatisation on regressive redistribution

Reflecting the concerns of the European Commission, the Study adopts a narrow definition of service quality - limited to technical indicators concerning continuity of supply, pressure, billing and metering among others. Due to its limitation in scope, the Study fails to address a number of issues that are central to the enhancement of the human right to water. For example, the Study does not consider the effects of ownership on affordability and welfare distribution, although these are important aspects of water service provision and public service delivery more generally.²⁸ Other issues, like public participation in decision making, are discussed in the following sections.

While the quantitative literature fails to find consistent evidence of superior private efficiency,²⁹ analyses of productivity changes induced by the liberalisation and privatisation of public services point to reduced labour costs as the source of productivity gains and profits. The EU-funded research project PIQUE finds that in the electricity, gas, post and telecoms sectors of Austria, Belgium, Germany, Poland, Sweden and the UK, the main driver of labour productivity increases after liberalisation and privatisation was a relative employment decrease.³⁰ On the other hand, a World Bank study comparing the performance of more than 1,200 water and energy utilities in 71 developing and transition economies does not find conclusive evidence of superior private sector efficiency. The observed operational efficiency gains under private operations are linked to staff reductions and not accompanied by reduced prices and increased investments, suggesting that “the private operator reaps all the gains through profits”.³¹

Private sector delivery does not only result in regressive redistribution by means of a transfer of welfare from labour to shareholders, but also from consumers to shareholders. This is particularly concerning when corporate profit-seeking undermines affordability and the ability of poor and vulnerable consumers to access water services. In England and Wales, the profit-seeking practices of private providers – including the fraudulent “misreporting” of data and the “gaming” process discussed in section 2.2 – exert an upward pressure on prices and represent a key determinant of an alarming increase in water poverty.³² In 2009/10, an estimated 23.6% of households in England and Wales were spending more than 3% of their income on water and sewerage (11.5% were spending over 5% of their income).³³ Otherwise put, water bills represented around 2.3% of average household spending in 2013, rising to more than 5% for the poorest 10% of households.³⁴ As a result, arrears in water charges are a contributing factor of destitution in the UK.³⁵

The transaction costs of exiting controversial private contracts are such that regressive redistribution and the other social costs of water liberalisation and privatisation tend to become long term liabilities. In England and Wales, not only has Ofwat failed to take action against increasing water poverty – despite its statutory responsibility for protecting the interests of all consumers.³⁶ It also acted to protect the private companies’ interests by extending the minimum notice period of termination from 10 to 25 years, thus considerably lengthening the process of an eventual renationalisation.³⁷ In Szeged, Hungary, the municipal government abandoned plans to exit an unsatisfactory contract after a Veolia subsidiary resorted to international arbitration.³⁸ In Grenoble, France, the corrupt contract discussed in section 2.2 was terminated three years after a court ruled that the interests of local consumers had been damaged, a delay due in part to legal reasons but also to the municipal administration’s attempts to avoid paying Suez compensation in case of unilateral termination.³⁹ The upshot is that far too often water liberalisation and privatisation lock communities in a downward spiral of greed and profiteering, which constitute an obstacle to the realisation of the human right to water and from which remunicipalisation and renationalisation offer an escape route.

3.4 No discussion of the social opportunity costs of water liberalisation and privatisation

The social costs of water liberalisation and privatisation go beyond those discussed in the previous sections. In fact, liberalising or privatising water services means missing out on the opportunity to mobilise the potential of the public sector for promoting the human right to water. This missed opportunity gives rise to the social opportunity costs of liberalisation and privatisation and it is important to appreciate the nature of these costs to allow for a more balanced discussion of water service reform, including the return to public ownership that follows remunicipalisation. Regrettably, the Study falls short of providing such balanced treatment as it remains largely silent on the social benefits of water remunicipalisation and offers a partial analysis of its causes.

A fundamental difference between the private and the public sector is that, while the private sector is subject to the profit maximisation imperative, the public sector is not. Therefore, private water operators typically seek to transfer as much post-tax profits as possible to shareholders in the form of dividends or other direct and indirect payments. Conversely, public water operators have the possibility of re-investing 100% of post-tax profits for service quality improvements and the development of the local system. In other words, this fundamental difference underpins the possibility of greater efficiency, effectiveness, inclusivity and democratic oversight under public sector operations. This is because more resources can be made available for achieving technical and social objectives, from reducing leakage to expanding service access, while maintaining relatively lower charges. Also, the absence of a profit maximisation imperative means that public operations can accommodate advanced forms of transparency, accountability and public participation in decision making that the private sector cannot tolerate because these would go against the pursuit of its commercial objectives.⁴⁰

The few detailed accounts of the policy outcome of water remunicipalisation produced before the publication of the Study show that the comparative advantage of the public sector for the realisation of the human right to water is not only theoretical. In Paris, France, water supply was remunicipalised in January 2010. In the first year of operations the new municipal operator Eau de Paris made efficiency savings of €35 million, which allowed for an 8% reduction in tariffs. This contrasted with a 260% tariff increase under private operation from 1985 to 2008. Eau de Paris also increased its financial contributions to poor households to the tune of over €3 million per year, launched a water-saving campaign resulting in social houses saving an average of €50 per year, and refrained from cutting off water supply in squats. Transparency, accountability and public participation in decision-making were considerably strengthened. While 11 members of the Board of Directors of Eau de Paris were city councillors, the other members were two workers' representatives and five civil society representatives. In addition, two civic organizations sat as observers on the Board of Directors.⁴¹

In Grenoble, water supply was remunicipalised in January 2001. Prices had increased by 30% under private management and were then reduced by over 11% under public-private operations, as part of the transition to full public management. In the four years following remunicipalisation, tariffs remained relatively stable while there was a threefold increase in infrastructure renewal. Public participation was strengthened as the Board of Directors of the new public operator was composed of 12 members, of which eight city councillors and four civil society representatives appointed by the city council.⁴² This contrasted with lower levels of transparency, accountability and participation under private and public-private management. For example, the annual reports on the private operator's finances often consisted of no more than one page and were criticised for being totally inadequate to allow the city council and consumers to control the concessionaire. The annual reports produced by the public-private operator until 1997 were also criticised for being vague and inadequately detailed. Two consumer representatives were allowed to participate in the meetings of the semi-privatised operator's Board of Directors, but without voting power and under an obligation not to reveal any information gathered in that capacity.⁴³

In Berlin, Germany, water supply and sanitation services were part-privatised in 1999 after a competitive tender. The part-privatisation proved highly controversial as it led to 'severe under-investment' and the explosion of prices – for example, water prices rose by 21% from 2003 to 2006. Also, the private contracts were commercially confidential so that the favourable treatment of private sector interests – including a guaranteed return on equity of 8% - could not be challenged by public opinion.⁴⁴ Remunicipalisation took place in 2013, when the city of Berlin completed the acquisition of the shares held by private multinationals RWE and Veolia paying over €1.2 billion in total, an amount that would have to be paid for through higher water bills over the following 30 years.⁴⁵ However, it should be noted that, from June 2012 to May 2014, Germany's Federal antitrust agency tackled the excessive water prices charged by Berlin's water utility BWB between 2009 and 2011, before BWB was remunicipalised. As a result, BWB had to reduce water prices by an average of 17%

throughout the period 2012-2018, as compared to 2011. The price reduction would correspond to savings of more than €440 million for Berlin water users in the same period, showing the extent to which water prices had been inflated by the semi-privatised utility. In its investigations, the Federal antitrust agency compared water prices in Berlin with those in Hamburg, Munich and Cologne – where water is supplied by utilities operating under similar technical conditions to those in Berlin – and found that there was no justification for the high prices in Berlin.⁴⁶

While the Study's Appendix on Germany discusses the price cut imposed by the antitrust agency – mentioning that water prices in Berlin increased “by over a third above inflation” from the 1999 part-privatisation to 2011, and acknowledging that prices in Potsdam increased by around 50% after privatisation, the same Appendix comes to the conclusion that “[a]fter re-municipalisation charges remain at the same level as prices were before”.⁴⁷ The Appendix refers to the responses of “several stakeholders” to corroborate this claim, without however elaborating further on other German cases of water remunicipalisation. The claim is reiterated in the Final Report, where the case of Berlin is discussed without mentioning the overpricing associated with privatisation.⁴⁸ Therefore, documentary evidence of price reductions following remunicipalisation in Berlin is neglected while, surprisingly, unspecified evidence of no difference in prices in other cases is given much prominence.

As regards the policy process of remunicipalisation, the Study's conclusions mischaracterise the growing phenomenon of remunicipalisation as the exclusive result of the policy preferences of actors like politicians and social movements. This is due to the underrepresentation of the recorded views of the Spanish and Hungarian stakeholders, and the uncritical discussion of the policy process of remunicipalisation in France and Germany. In fact, reviewing the literature on the policy process allows for identifying political factors among the determinants of remunicipalisation (e.g. the preference of civic organisations for public ownership as a way to promote the human right to water, the preference of local governments for public ownership as a way to reassert public control over public service management and respond to the democratic demands of citizens), together with factors associated with contractual performance and the economic sustainability of water liberalisation and privatisation.⁴⁹

It is often the case that remunicipalisation occurs as the joint result of social mobilisation, collective dissatisfaction with contractual performance and/or various irregularities. For example, in the case of Grenoble, democratic demands for remunicipalisation were motivated by the corruption and excessive pricing associated with private management.⁵⁰ In Paris, the decision of the municipal government to remunicipalise was not only of political nature but was seen as a way to put an end to the lack of financial transparency and accountability which had been repeatedly criticised by public auditors.⁵¹ In Berlin, social mobilisation for remunicipalisation was motivated by the lack of transparency and excessive pricing associated with part-privatisation. The main grassroots campaign advocating for remunicipalisation in Berlin structured its arguments around the human right to water as well as economic considerations derived from the concrete experience with liberalisation and privatisation.⁵²

The upshot is that the policy process and policy outcome of remunicipalisation expose the limitations of the European Commission's approach to water service governance. The Commission's policy preference for water liberalisation, privatisation and technocratic regulation goes in fact against the possibility of using the comparative advantage of the public sector to promote the human right to water. This is not only because water liberalisation and privatisation by and in themselves restrict opportunities for public management and democratic governance. Also, realising the human right to water requires more than enhancing efficiency and effectiveness; it requires a reprioritisation of goals, rules and resources that puts community development ahead of market development.⁵³ And this is something that technocratic regulation, simply, cannot deliver.

4 What people want is public water and the human right to water - not liberalisation, privatisation or technocratic regulation

Social demands for public water services are widespread across countries and can take the form of diffuse public opinion or social mobilisation. An example of the former is represented by opinion polls persistently favourable to the return of water services to public ownership in England and Wales. In June 2006, 17 years after the 1989 privatisation, 56% of people in an opinion poll believed that the country “would have fewer problems with water supplies if the industry was renationalised and the private companies replaced with a government-owned water board”, while 38% disagreed. The results were consistent across all age groups and regions.⁵⁴ In May 2012, a similar poll found that 71% of people wanted the renationalisation of water services.⁵⁵ Another opinion poll in 2017 found that 83% of the British public favoured public ownership of water services.⁵⁶ Examples of social campaigns against water privatisation that have accompanied demands for public ownership to demands for the human right to water include - in addition to the case of Berlin - campaigns in Italy, Greece, Portugal, and at EU-level.⁵⁷

The popular association of the human right to water with the public ownership of water services is not surprising. In fact, water produces cross-cultural meanings associated with life and death, and with social and spiritual identity,⁵⁸ which explains why communities across countries prefer public to private ownership beyond any consideration of relative efficiency. They instinctively see public ownership and control of water services as an integral component of community preservation and development. Social resistance against water privatisation and commodification is therefore seen as a moral imperative across continents, not only in Europe,⁵⁹ and part of the construction of a more progressive society.⁶⁰ The cases of the Italian referendum on water and the first successful European Citizens’ Initiative illustrate this point.

In 2011, 27.6 million citizens – that is, 96% of Italian voters – voted in a national referendum against water liberalisation, privatisation and technocratic regulation.⁶¹ More precisely, in addition to provisions for the adoption of compulsory competitive tendering in the water sector, the electorate voted to abolish national legislation providing for a guaranteed rate of return in tariff formulas. The referendum campaign revolved around ideas of water as a human right, a commons, and a central component of democracy. In turn, campaigners argued that these ideas were antithetic to liberalisation, privatisation and technocratic regulation.⁶²

In 2013, nearly 1.9 million European citizens across 28 European Union Member States signed to support the European Citizens’ Initiative, “Water and sanitation are a human right! Water is a public good, not a commodity!” The European Citizens’ Initiative invited the European Commission to propose legislation implementing the human right to water and sanitation as recognised by the United Nations, promoting the provision of water and sanitation as essential public services for all – thus making water service management not subject to internal market rules on liberalisation, promoting community participation, promoting Public-Public Partnerships (PUPs), and promoting universal access to water and sanitation.⁶³ In March 2014 the European Commission published its response to the European Citizens’ Initiative. In its response, the European Commission pledged to support North-South and South-South PUPs through its water programs and to seek to identify new partnership opportunities. It also committed itself to developing new initiatives to improve transparency for citizens in relation to access to information.⁶⁴

In September 2015, the European Parliament issued a Resolution on the follow-up to the European Citizens’ Initiative Right2Water, where it regretted that the European Commission’s response “lacks ambition, does not meet the specific demands made in the ECI and limits itself to reiterating existing commitments; stresses that the response given by the Commission to the Right2WaterECI is insufficient, as it does not make any fresh contribution and does not introduce all the measures that might help to achieve the goals”.⁶⁵

Also, the 17 November 2017 declaration on the European pillar of social rights signed in Gothenburg by the Presidents of the European Parliament, European Council and European Commission, includes the principle of “*Access to essential services*. Everyone has the right to access essential services of good quality, including water, sanitation, energy, transport, financial services and digital communications. Support for access to such services shall be available for those in need.”⁶⁶ In view of the 2015 resolution, considering the consistent and unequivocal message that European citizens have sent the European Commission – namely, that water services must be recognised and treated as a human right both in European and national law, and in view of the Gothenburg declaration – which implies that the implementation of the human right to water takes priority over the benchmarking of indicators that, like billing and metering, are insufficient to make progressive change happen, it is important to identify possible initiatives that the European Commission could take to respect, protect and fulfil such right.

5 Time for the European Commission to create an institutional environment where the human right to water can prosper

This Commentary discusses evidence supporting the view that the European Commission should abandon its policy preference for water liberalisation, privatisation, and technocratic regulation. First, because the transaction costs of water liberalisation, privatisation and technocratic regulation represent a social deadweight loss. Second, because the social costs of liberalisation, privatisation, and technocratic regulation – from the absence of efficiency gains to frequent irregularities and a negative impact on regressive redistribution – are severely underestimated and must be urgently tackled. Third, because these costs include the social opportunity costs of water liberalisation and privatisation – that is the impossibility of using the comparative advantage of the public sector to promote the human right to water. Fourth, because millions of European citizens demand the recognition of water as a human right both in European and national law, and that the public ownership and democratic control of water services be at the centre of policies for the promotion of this right. Hence, the following recommendations are made on how the European Commission can respect, protect and fulfil the human right to water.

Recommendation 1. The European Commission must avoid creating an institutional environment that undermines the human right to water. In particular, the European Parliament resolution of September 2015 calls on the Commission to “permanently exclude water and sanitation and wastewater disposal from internal market rules and from any trade agreement”.⁶⁷ It is therefore important that the European Commission should cease considering, as suggested by the rationale for the Study, the hypothesis of extending the application of the Concessions Directive to the water sector. Also, the European Parliament resolution calls on the Commission to refrain from promoting “the privatisation of water undertakings in the context of an economic adjustment programme or any other EU procedure of economic policy coordination”.⁶⁸ The European Commission should therefore avoid acting on a recently commissioned study that - as revealed by Corporate Europe Observatory⁶⁹ – focuses on the operational and fiscal challenges that state-owned enterprises place on the public purse, without first commissioning a comparable study on the challenges posed by liberalisation and privatisation for the implementation of the human right to water and for taxpayers, consumers and all citizens in the water sector and other essential public services.

Recommendation 2. The European Commission should create an institutional environment where the human right to water can prosper, by adopting legislation that promotes meaningful public participation in the water sector. Such legislation should promote advanced forms of public participation in decision making on water service provision, and robust mechanisms to strengthen accountability. The proposal to promote benchmarking - contained in the European Commission’s 2014 response to the European Citizens’ Initiative⁷⁰, is inadequate to fulfil the human right to water because, albeit necessary, access

to information is a rudimentary and insufficient form of participation.⁷¹ Such legislation would heed the calls of the European Parliament's 2015 resolution for "active participation" in the water sector and for "the Commission to develop transparency, accountability and participation criteria as a means to improving the performance, sustainability and cost-effectiveness of water services".⁷²

Recommendation 3. The European Commission should promote the human right to water by adopting legislation against excessive costs to water users. Such legislation should promote financial transparency and deter excess profits. The European Commission's proposal of February 2018 for a recast Drinking Water Directive – adopted in response to the European Citizens' Initiative Right2Water - contains an obligation for all EU Member States to "take all necessary measures to improve access for all to water intended for human consumption", but no specific provision on ensuring financial affordability.⁷³ The proposal thus ignores important lessons on fighting water poverty and promoting the human right to water. One such lesson is that reducing the overall cost of water provision is more equitable than providing social welfare to the water poor while allowing excessive costs to be imposed on all users. Another lesson is that because excess profits and prices have a negative impact on affordability, failing to tackle them risks fuelling water poverty and undermining the human right to water.⁷⁴

Recommendation 4. The European Commission should promote the human right to water by enabling and supporting intra-European Public-Public Partnerships (PUPs). Thanks to their not-for-profit character which enables trust and facilitates knowledge transfer, Public-Public Partnerships (PUPs) have been instrumental to the successful institutional reform and capacity development of public water operators in Baltic countries prior to EU accession.⁷⁵ A facilitating environment could support the mobilisation of PUPs for the fulfilment of the human right to water in EU Member Countries. This should not exclude the possibility of supporting international, North-South and South-South PUPs for the fulfilment of the human right to water in ACP countries in view of their track record in promoting capacity development in the global South.⁷⁶

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