

Water services are the bridgehead for a return to public utilities in Europe

Pisa, 3 June 2015



Definition of public utility

- **Public utility** as synonyme of *service public*

Or

- **Utility** as service of general economic interest
- **Public utility** as service carried out by State or local government owned undertakings



DIRECTIVE 2000/60/EC

of 23 October 2000

establishing a framework for Community action in the field of water policy

Recital (1)

Water is not a commercial product like any other but, rather, a **heritage** which must be protected, defended and treated as such.



Debate on remunicipalization

In France

« la remunicipalisation des services publics est au coeur de l'actualité »

S. SAUNIER, 2014

In Germany

« a public debate about the remunicipalization of water supply has recently been gaining momentum »

H. WOLLMAN, 2010



Italy

12 and 13 June 2011

«Referenda on public water»

I. Water privatisation

Choice	Votes	%
Yes	25,935,372	95.35
No	1,265,495	4.65
Blank	437,078	1.58
Total	27,637,945	100

II. Profit on Water

Choice	Votes	%
Yes	26,130,637	95.8
No	1,146,639	4.2
Blank	365,181	1.32
Total	27,642,457	100



Italy/2

I. Water privatisation

Repealed

Article 23 bis Legge n. 133/2008

On awarding of local services of general economic interest

- Compulsory competitive tendering
- In house providing only after cost benefit analysis approved by Antitrust authority



Italy/3

Current regulatory framework

- No specific National regulation
- Direct applicability of EU regulations (case law)
 - In house providing
 - IPPP
 - Concession contracts



France

Paris

- Local public body -
Etablissement public local
a caractere industriel et
commercial
- Régie personnalisé



France/2

Grenoble

- Council owned undertaking - *Société publique locale*



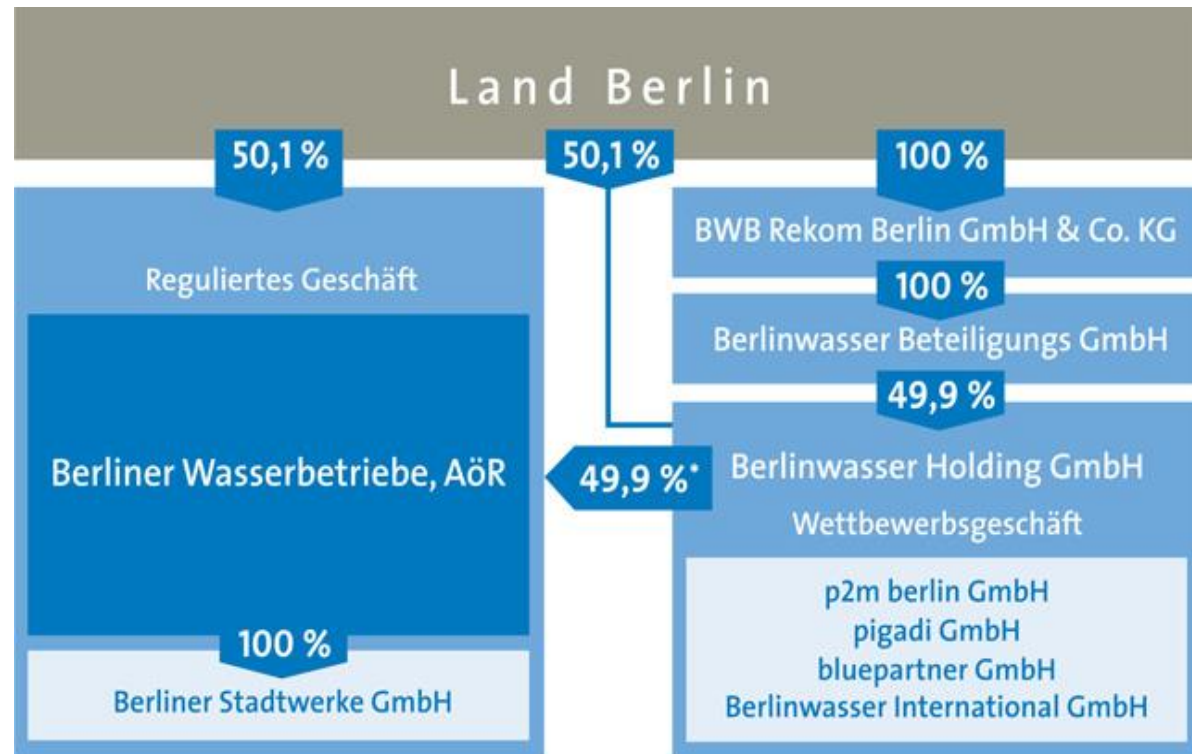
Germany

Referendum february
2011

Berlin



At the end of October 2012, the State of Berlin acquired the shares held by RWE-Veolia-Beteiligungsgesellschaft mbH and in November 2013 it acquired the shares held by Veolia. **The State of Berlin increased its share in the Berlinwasser Group from 50.1 % to 100 %.**



Germany/2

Potsdam

SALE

December 17th 1997,
49% of the shares to
Eurawasser,

BUYBACK

1st administrative
decision
2nd buyback contract
clause

Cause

Tariff level increase



**Energie und Wasser
Potsdam**

**STADTWERKE
POTSDAM**



DIRECTIVE 2014/23/EU

of 26 February 2014

on the award of concession contracts

Recital (40)

Concessions in the water sector are often subject to specific and complex arrangements which require a particular consideration given the importance of water as a public good of fundamental value to all Union citizens. The special features of those arrangements justify exclusions in the field of water from the scope of this Directive.



Article 12

Specific exclusions in the field of water

1. This Directive shall not apply to concessions awarded to:
 - (a) **provide or operate fixed networks** intended to provide a service to the public in connection with the production, transport or distribution of drinking water;
 - (b) **supply drinking water** to such networks.
2. This Directive shall also not apply to concessions with one, or both of the following subject-matters when they are connected with an activity referred to in paragraph 1:
 - (a) **hydraulic engineering projects**, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations; or
 - (b) **the disposal or treatment of sewage.**



Article 17

Concessions between entities within the public sector

1. A concession awarded by a contracting authority [...] to a legal person governed by private or public law shall fall outside the scope of this Directive where all of the following conditions are fulfilled:

- a) the contracting authority [...] exercises over the legal person concerned a **control** which is similar to that which it exercises over its own departments;
- b) **more than 80 % of the activities** of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or contracting entity or by other legal persons controlled by that contracting authority or contracting entity;
- c) there is **no direct private capital** participation in the controlled legal person with the **exception of non-controlling and non-blocking forms of private capital participation** required by national legislative provisions, in conformity with the Treaties, **which do not exert a decisive influence on the controlled legal person.**



How MS should set the water service regulatory scheme?

1. Award of water services consistent with the general principles found in Dir. 2014/23/EU and Court of Justice case law:

Principle of free administration (high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights in public services)

Principle of environmental sustainability

Principles of economy, efficiency, effectiveness



2. Awarding of concessions to entities within the public sector only if and insofar it is fully consistent with the aforementioned principles
 - Economic public body
 - Public owned undertakings

3. Direct implication on industrial dimension and field of activity of public entities:
 - From local government approach to area approach



Thank you

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