

## Chapter four

# Turning the page on water privatisation in France

By Christophe Lime

France is home to the leading water multinationals and is one of the few countries in the world to have given private companies a predominant role in managing water and sanitation services. Its particular type of concession and lease contracts (*délégation de service public*) has been both promoted by the private sector as a model to replicate across the world, and reviled by others as the epitome of water privatisation and its ills. Recently, however, there have been several large-scale cases of remunicipalisation of water services in France, including in Paris in 2010. This shift back to public management is a significant breakthrough in a landscape that was once largely dominated by the private sector. France Eau Publique is a national network of public water operators created to foster the sharing of experiences and expertise and to promote public water management to counter the lobbying of private water companies.

## A fragmented landscape

In France, water supply and sanitation services fall under the jurisdiction of city councils, which can either provide these services themselves (25 per cent provide water services and over 40 per cent, sanitation) or transfer them to an inter-communal body. Such bodies are growing in importance. There are some large water services that serve large populations of more than 1 million people, such as Eau de Paris, the Interdepartmental Syndicate for Sanitation of Greater Paris (SIAAP), the Water Syndicate of Île-de-France (SEDIF), Grand Lyon, Marseille Provence Métropole and Lille Métropole Europe. However,

for the most part, water and sanitation services in France remain very small: 9,500 water and 13,500 sanitation providers (mainly municipal) serve less than 2,000 inhabitants; only 75 water and 100 sanitation providers serve more than 100,000 inhabitants.

## Local authorities choose between public and private management

When it comes to public services, under French law water and sanitation services are considered of an “industrial and commercial nature” and the competent local authority may choose between:

- Managing the service directly through a “*régie*”, which is either financially autonomous and legally integrated with the local council or financially *and* legally autonomous, operating at arm’s length from the council.
- Delegating management to an external company, usually private under a fixed-term contract called *délégation de service public* (DSP, “public service delegation”). This is not exactly a “privatisation” in the narrow sense of selling publicly owned assets, since the water system remains the property of the council, which may also decide to modify or terminate the contract unilaterally before its term (but usually not without paying hefty compensation, as illustrated below).

Since 2010, a new law gives councils another option: Local Public Companies (*sociétés publiques locales*, SPL). These are public limited companies governed by private law, but whose shareholders are two local councils or more. They must operate for the sole benefit of the shareholding councils; as such they can be considered a form of public management.

## Opposition to outsourcing water services

There was a marked increase in delegation contracts and outsourcing to private companies during the 1970s and 1980s in France, as well as substantial consolidation among private companies providing water and sanitation services. This consolidation led to the constitution of three major private groups,

with stakes in other local services (waste management, heating, parking, food services) and in the construction sector: Veolia (formerly Générale des Eaux, Vivendi), Suez Environment (formerly Lyonnaise des Eaux) and SAUR. The proportion of the French population served by a private operator eventually peaked at the turn of the millennium at more than 70 per cent for water supply and about 55 per cent for sanitation.

Delegation contracts became the dominant management model in the absence of competition requirements and because of the widespread practice of enticing councils with “entry fees” (large sums paid at the onset of private contracts) – and in some cases because of outright corruption. The associated tariff increases and high profit margins (often hidden in unspent “provisions” or “guarantees” for network renewal) highlighted by council-commissioned audits, auditors’ courts and citizen groups, and several cases of proven or alleged corruption led French lawmakers to introduce new regulations in 1993. Law No. 93-122 on the prevention of corruption and transparency in economic life and public procedures – the so-called “*loi Sapin*” updated several times since – required competitive awarding of contracts, prohibited “entry fees” and any form of payment or service provision outside the contract’s purpose, capped the duration of contracts to 20 years (with exceptions), limited the use of “additional clauses” and set reporting obligations, among others.

Twenty years on, the rate of contract renewal for private providers remains high and stable (87 per cent on average, with a 0.3 per cent drop per year since 1998, excluding remunicipalisations). For long, competition among private providers was virtually inexistent, its sole engines being a small number of independent companies that survived consolidation in the water sector and the “threat” of remunicipalisation. However, since 2009-2010, there are signs of increased competition between the large private operators, but it largely focuses on prices and takes the form of extensive internal restructuring to achieve a “low cost” service, resulting in a decline in service quality. This change can be partly explained by the trend towards greater control of water and sanitation services by local councils, whether they choose to renew the outgoing provider or not.

Despite these positive developments, asymmetry of information remains part and parcel of service outsourcing. There is little transparency particularly when it comes to financial reporting, with private providers drafting their annual reports based on allocation assumptions unrelated to actual expenses. At the same time, in the long history of outsourcing, small and medium-sized councils have too often lost the in-house expertise necessary to monitor and control the proper implementation of contracts (a role that cannot be replaced by external auditors).

Lastly, delegation-type contracts are characterised by a lack of flexibility and adaptability to changes in the scope and organisation of water and sanitation services (particularly in relation to the development of inter-communal management bodies). Even if the average duration of such contracts has been significantly reduced (11 years on average since 1998), it still amounts to nearly two local electoral mandates.

Amendments to the original contracts are usually possible, but local councils rarely have the higher hand when it comes to negotiating such amendments, while unilateral modification or termination can prove extremely costly because it usually involves compensating the private providers for the unamortised portion of investments incurred and sometimes even for “lost profits”. The latter compensation scenario is highly questionable, especially when providers have been reporting budget deficits for years and suddenly claim that they will lose profits if their contract is terminated...

## Return to public management

Over the last 20 years, all of these factors have led a growing number of councils in France to challenge the very principle of “public service delegation” and to choose a return to public management, the first cases being the Tursan Water Syndicate in 1995, SIVOM Durance Luberon in 1997, and Grenoble in 2000 against the backdrop of criminal prosecutions and strong media attention. But given the “contractual inertia” mentioned above, actual remunicipalisation has often been delayed (unilateral terminations are rare).

It is only since the mid-2000s that there has been a significant trend towards a return of water and sanitation services to public management. Public water management has been “gaining” about 1 per cent on average every year since 2008 (in terms of population covered). Water remunicipalisation in Paris, initiated in 2003 but not completed until 2010, was a flagship case in this regard and has inspired other policy-makers.

Today the remunicipalisation movement brings together councils of all sizes, from “small” towns of a few thousand inhabitants (such as Neufchâteau, Venelles, Varages, Embrun and Digne-les-Bains) to large cities or syndicates (such as Brest Métropole Océane, the agglomeration of Aubagne-Pays de l'Étoile, Rennes). Remunicipalisation took effect at the beginning of 2015 in Nice Côte d'Azur and should be a reality in Montpellier Méditerranée Métropole in 2016.

It should be noted that the very term “remunicipalisation” of water and sanitation services is not always entirely appropriate. On the one hand, an increasing number of services are no longer managed at the municipal level, having been taken on at the inter-communal level. On the other hand, some cities have never had public water management, such as Rennes whose water services have been privately managed since the late 19th century or Nice where Veolia has been providing water for 151 years.

Furthermore, with the rise in inter-communal cooperation and the resulting reorganisation of water and sanitation services, all remunicipalisations do not result in the creation of a new *régie* (or SPL). Several inter-communal bodies have expanded their service area upon the expiry of smaller delegation contracts, as the Urban Community of Cherbourg did (approximately 35,000 new users in 2002) and the Metropolitan Rouen Normandie (about 100,000 new users since 2011). And let us not forget that large, predominantly rural *régies* have been expanding their service area for 50 years by integrating already existing *régies* or councils, which had previously outsourced their services. Primarily rural services such as Noréade in the North of France, the Alsace-Moselle SDEA and the Vienne Water Syndicate are among the largest public water services in France today.

## Key issues and challenges

The experience of dozens of successful remunicipalisations of water and/or sanitation services in France demonstrates that returning to public management is both desirable and feasible, including for small councils. There are important lessons and recommendations that can be drawn:

- The need for political “champions” is absolutely essential: by definition, public management involves stronger accountability by officials and employees; the active involvement of politicians is therefore critical.
- Remunicipalisation can create legitimate concerns and hurdles (especially when councils no longer have strong in-house expertise), and the active support of peers (officials or managers) from other councils that have already returned to public management – or from long-standing *régies* – is an undeniable advantage.
- Anticipation and preparation are important. Although some new *régies* were created quickly after contract termination (e.g. Castres established a special team to create its *régie* and take over the management of water and sanitation services in less than six months), experience shows that there is a lot of benefit in initiating preliminary studies at least two years before contract expiry (or even longer for larger services), and in separating the issue of contract liquidation (which is often insufficiently addressed in the drafting of contracts) from that of setting up a new public operator, because they require a different set of skills and expertise. It can also be difficult to choose one or more consultants for project management assistance that are sufficiently competent and independent; feedback from other councils is an important contribution in this regard.
- Integrating employees of the former private provider requires great care. As their knowledge of the water network and service is comprehensive, it is critical to attract them to the new public provider and, if possible, to involve them in the remunicipalisation project. Maintaining existing wage conditions is now standard practice, although it may be necessary to simplify and streamline the various employment conditions accumulated over the years. We have found that employees (if not top

executives) are generally willing to join remunicipalised operators. They tend to appreciate the fact that their work becomes more focused on public service values and the common good, which are often undermined by private operators' fixation with profitability and market competition. The main difficulty lies in establishing the list of employees to be transferred in such a way that the new entity can take over the service without being encumbered by surplus staff or employees with unsuitable profiles. To achieve this, a process of social negotiation is recommended, involving elected councillors, labour representatives and managers, in order to agree on a framework agreement as soon as possible.

- Lastly, given that information and communication technologies are becoming increasingly sophisticated and indispensable, the transfer of data and information systems (supervision of works, client management, asset management, etc.) should be as high a priority as transferring equipment.

While each situation is unique and one council's experience is never identical to another's, exchanges are always positive and contribute to managing change better. This is why France Eau Publique offers local authorities wishing to return to public management a "sponsorship" programme that brings them support from one or several councils that share the same characteristics and have already gone through a remunicipalisation process.

Beyond remunicipalisation, councils and their public operators must constantly seek to improve their performance. Committed to the twin principles of cooperation and solidarity – versus commercial competition – the members of France Eau Publique can pool their knowledge, expertise and best practices, develop synergies and share tools to serve the common good and build sustainable water services.

Lastly, the cause of public water management needs to be promoted and defended against the powerful lobbying of private operators. Policy-makers need to hear that outsourcing water services to private operators does not guarantee better performance, neither from an operational (technical, service

quality, etc.) nor an economic point of view. Most public providers can offer quality water, safe services and environmentally friendly orientations.



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***France Eau Publique*** brings together councils and public operators that are members of the National Federation of Contracting Councils and Régies (FNCCR in its French acronym) and that wish to share knowledge and experience, seek mutual support and promote public water management. France Eau Publique is an extension of FNCCR's earlier "*conseil d'orientation des régies*" and of the work conducted within the Aqua Publica Europea network.

For the members of France Eau Publique, the performance imperatives of public water management must serve the public good, not private interests. Members consider public water management as the sole guarantor of transparent, sustainable and civic-minded services, of public assets, and of water resources.

France Eau Publique has four main objectives:

- \* ***Develop synergies*** and exchange good practices and contacts between experts and representatives of public operators;
- \* ***Foster mutual emulation***, to demonstrate the excellence of public management;
- \* ***Support emerging public operators*** by providing ongoing assistance, helping them to succeed and strengthening the collective momentum;
- \* ***Gradually constitute a counterweight*** to the lobbying of the large private corporations, in order to promote public management and its values.