

THE REGULATION OF WATER PUBLIC SERVICES IN FRANCE

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INTRODUCTION

In France, the debate on regulation of public services often spares carefully the water sector. Indeed, it is one of the few sectors that are not concerned by the post-war nationalisation process. If water challenges the analysts given its flowing nature, it is first of all because of its decentralised character: the responsibility for its quality and price is placed on the communes which number is great in France. The multiplicity of contracts fits in with the great diversity of local situations. Otherwise, water is the subject of health and environment policies, that resort a lot to economic instruments and intervene consequently on the market.

Today, there is a strong social demand in favour of a better regulation of the sector, notably following the political and financial scandals of the 1990s. This contribution draws from the study of the French case some reflections about the regulation of water and purification services.

THE ORGANISATION OF THE FRENCH SYSTEM : A RECORD *A PRIORI* UNFAVOURABLE TO REGULATION

AT THE LOCAL LEVEL : A PATCHY PUBLIC SERVICE

In France, municipalities are responsible for both water services, the production and supply of drinking water, and the sewage and treatment of wastewater. Whatever the chosen organisation of the service, the Mayor is accountable for the quality of the services and for the tariffs applied to users. This liability is conferred on him personally and from a few years judicial risks are added to political risks. Indeed, the Mayor can personally incur penal condemnation in case of default in the management of water services.

An ancient regulation, reinforced by the 1992 Water Act, makes it compulsory for the water services to have an organisational and financial autonomy (Accounting Directive M 49). It is generally prohibited (there are dispensations for small communities) to organise financial transfers between the general budget of the municipality and the budget of the water and sanitation services. The manager of the service can rely only on the resources brought by the consumers payments and on some subsidies

specifically dedicated to water. He is not at liberty either to benefit by financing by local taxpayers or to organise cross funding with other urban services, as the German *Stadtwerke* do it.

Following the principle of free organisation of the service by local communities, the municipalities can gather in associations, (either rural or urban) local joint authorities, etc. In this case, a deliberative assembly, formed with the elected representatives of the member municipalities, takes the place of the local council. Finally the elected representatives can decide upon the delegation of the service to a private firm.

These choices of organisation — gathering, delegation — can be made independently for drinking water production, drinking water supply, waste water collection, waste water treatment. Several distinct structures — up to 4 or 5 —, that might have varied status and serve different areas, may be concerned by the service of each customer.

The public service of water in France is then ensured by a wealth of local services, with various organisations and economic sizes. This plasticity undoubtedly allows a fine adjustment to local geographic contexts that are quite diversified in France. It is offset by a certain degree of heterogeneity in the tariffs and in the level of the services, frequently denounced by the media and the consumer associations.

A POWERFUL OLIGOPOLY

The major water companies survived the municipal socialism

The private offer facing local communities is constituted by an oligopoly, that is a small number of very big companies — three in this case — and a huge number of very small structures they endeavour to take over as soon as they reach a critical size.

The history of these groups merges with that of delegated management and hence with that of decentralization. Their birth during the nineteenth century — 1853 for La Compagnie Générale des Eaux, 1880 for La Lyonnaise des Eaux— was aroused by a centralist and authoritarian power, constrained to resort to the private sector to finance its ambitious town planning operations.

Few of the companies that appeared in that time were still surviving at the beginning of the twentieth century. The development of municipal autonomy and of the interventions of local communities in the social and economic life of the country got the better of most of them, even if the wave of 'municipal socialism' that was then surging all over Europe, eventually influenced France to a lesser degree than England or Germany.

After the 2nd World War a boom arose in the municipal facilities requirements. Municipalities were endowed with relatively important funds from the reconstruction through the growth of the 'Thirty Glorious Years'. Accordingly, they appealed massively to urban services companies. The philosophy of the system underwent meanwhile a deep change : the issue was no longer to have the private sector finance facilities and help itself to the exploitation of the work by way of repayment (this vision of delegated

management came back nowadays at international level and is largely influencing the European regulations on that theme). The problem was rather to associate the technical skills of the private sector with the task of the community regarding public services. Leasing developed and the established prices became indexed on the cost of living. The "French way for delegated management" was born, leading with it to the issue of regulation.

Lyon stands as a good example of such an evolution : after prompting the creation of the Compagnie Générale des Eaux in 1853, the town council under Herriot, an eulogist of municipal socialism in France, took up again the service under the control of local authorities and drove back the CGE to suburbs. The latter has resumed a large part of the service ever since.

The French water companies on the international stage.

What is the situation today ? The French market seems to be close to saturation point : the great majority of the towns delegate the management of the service to the private sector. As for them, the French majors have undertaken a broad diversification in extending their activities first to other urban services - disposal collection, transport, parking, funeral, school catering, etc. - and then to communication in a broad sense. All three majors own a television channel.

This redefinition has been paralleled by a spectacular development of the international activities, notably in the field of water. Though they have long offered a commercial base for the diversification of the companies in urban services, the national contracts appear nowadays at best as showcases used by these groups for the development of their export activities.

These fast transformations have brought massive increase of registered capital and structural changes within the groups: mergers, changes in the staff and in the shareholding.

The three groups of the oligopoly have distinct backgrounds and variously attach importance to water: it plays a minor part for the building and real-estate business company Bouygues, it is still important for both Vivendi Waters and Suez-Lyonnaise des Eaux (more than 20% of the turnover) despite their diversification, as attested by the free-for-all on the American market. Suez-Lyonnaise des Eaux put emphasis on being first an engineering group, acting in the sectors of energy, water and waste and aiming at the world leadership in the water sector. it is. Vivendi appears closer to the financial circles and far more diversified though it does not neglect to have its patrimony yield profit in the water sector.

Anyhow, it clearly appears that the French market is nothing more nowadays than a stake in public image participating to a global strategy. This deeply alters how the companies policy. Local autonomy of the contracts is necessary. The burden to take on the responsibility of the service to the delegating elected representative falls to the managers of the local services. However, the three groups still keep relationships with local representatives. Since the laws on the funding of political parties, the contributions of the companies have been published in the Official Journal: it

can be noticed that the water sector finances all the eligible parties, with a careful arithmetic.

Box #1: The Structure of the Oligopoly

Vivendi is the leader of the water market in France, with 25 million people supplied with drinking water and 19 million provided with water treatment. The water activities are concentrated in Vivendi Waters. There is a trend towards a simplification of the organisation chart.

Water represents 21% of the global turnover of the group (_ 6.8 billion); it comes after the building trade and the real-estate business (11.8) and almost equals communication activities.

Water is also an expanding sector at the international level, with 80 million people supplied. Vivendi has thus recently bought the American firm US Filter.

Suez-Lyonnaise des Eaux is ranked second on the French market with 14 million people supplied with drinking water and 9 million people provided with sanitation. But this group and Vivendi are evenly matched on the world market with 77 million people supplied in 1998 and more than 100 million people in mid-2000, not counting the purchase of United Water Resources, ranking second of the municipal market of water in the United States.

Water represents 24% of the turnover of the group (_ 5.12 billion), which is the same as the cleaning pole but comes a long way behind the energy sector (_ 11 billion).

Bouygues is first a building sector company, since water represents only 9% of its turnover. SAUR, its specialised subsidiary, supplies 6 million people in France and 23 million people in the world. It represents a turnover of _ 1.35 billion.

SAUR is a serious competitor for export, all the more as it forms an association with EDF International that holds 14% of its capital. The company is present in China, Canada, Latin America, and in Africa, which is its traditional market.

A NATIONAL LEVEL DEVOTED TO ENVIRONMENTAL REGULATION AND ECONOMICAL INTERVENTION BY THE BASIN WATER AGENCIES

In France, the interventions of the national community - regulation, monitoring, public engineering services - seem to take place outside the field of economy. It is not actually the case, but the economic intervention of the public authorities is made in the name of environmental regulation and not in that of economic or social equity.

To ensure the consistency of the whole at the level of each large watershed and to make an environmental policy possible, specific institutions have been set up following the 1964 Water Act : the six Basin Water Agencies. The Water Agencies are state bodies, with autonomous budgets, managed under the control of an assembly of water users : elected representatives, industrialists, farmers, associations... in which the State is in the minority. The Water Agency levies fees on water consumers and polluters. These fees are tuned according to technical concerns : the polluting burden, the ecological sensitivity of the area, etc. For the domestic use, the water supplying services collect the fees in the name of the Water Agency for administrative cost cutting down. The amounts collected are redistributed as subsidies to the stakeholders, to support their investment projects and, to a lesser degree, the exploitation of their works. This financial circulation represents about _ 2.3 billion per year¹.

The financing of the water sector comes thus from the consumers, both directly through their invoice for three quarters and through a financial circulation that though more global stays inside the water sector for the remainder. Except a slight percentage of the global financing of the sector, which is supplied by the districts councils, the money for water is derived from water and from its consumers, not from the taxpayers.

In managing the circulation of about 20% of the turnover of the water sector, the authorities play a decisive role in the organisation of the water market. Despite of this, the French debate on regulation is generally truncated and neglects the existence of a substantial capacity of economic intervention on the water market.

THE CONSUMERS

The French water drinker just begins to carry some weight and influence on the economic aspects of the contract between local authorities and the delegated companies.

Though it might be difficult to assess except in an indirect way, it clearly appears that water has become a mean of pressure for voters on their elected representatives : politically the latter have nothing to gain by water but it can prove quite costly. Many articles on water, featured by a *fin de millénaire* pessimism appear in the media.

In entering the judicial arena, the associations play an increasing role. In spite of its age - nearly a century -, the French associative movement is far from being as much developed as in Northern Europe, in both areas of

¹ Another financial circulation coexists with that of Water Agencies: the Ministry of the Agriculture manages a fund originally dedicated to water supply in rural areas and recently extended to other operations in favour of water management. The modest amount at stake - _ 140 million per year - is half drawn out from taxing the water invoices and half levied through a taxation bearing no relation to water sector. These subsidies are allocated to communities through the district authorities, that double their amount from their own budget and possibly from European environmental subsidies.

environmental protection and consumers defence. However, a strengthening of their role has been observed as they resort more and more often to lawsuits, that appear otherwise as one of their means to raise funds and favour their reception by the media, their proximity to the Ministry of the Environment and the presence of some of their representatives in the Basin Committees. The main consequence of this development is the emergence of actual technical skills in the associations on the issues related to water quality. As they are more inured than technicians to dialogue with lay persons, the associations, if not demagogic, might offer mediation between the specialists of the sector and the general public.

The polls display the severe lack of information of the general public concerning water issues, either environmental stakes, technical realities or practical organisation. The water invoice, which is the main source of information for the consumer does not invite to cast a critical look at the management of the public services in question.

The charge for water depends on the consumed volume and on fixed charges (for the subscription). The fixed charges are well short of the actual economic costs. They are however a subject of claims by consumer associations that would like to have them cut. Their fixing falls within the exclusive competence of the managing community and significant differences have been observed that may be justified in areas with tourist attractions.

Many consumers do not see their water invoice : this is the case of the occupants of most collective buildings, whose payments for water are included in the service charges of the buildings and are divided into two parts : cold water and warm water. In public sector housing, water represents 18% of the costs. There are increasing pressures for the retrocession of water management in the buildings to the public manager or his or her delegate as with electricity.

The water invoice is issued by the body in charge with the supply of drinking water, that passes on the corresponding amounts to the other institutions sharing in the invoice : the managers of the other services of the water cycle, possibly distinct from each other, either public or private, communal or dependent on associations. The invoice also includes taxes and fees, especially those of the Water Agencies that are the heaviest.

For some years, the part of the invoice related to drinking water has declined, while fees and treatment have increased. Moreover, if fees are allocated to the services they finance, it appears that water treatment is on top.

The 1992 Water Act offered the opportunity to reframe the water invoice in making the breakdown of the headings and the mention of their beneficiaries compulsory. The headings must be classified by subject matters : supply of drinking water, services to the environment and taxes and fees for public organisations. This improved communication meets an obvious social demand and most big suppliers have seized the opportunity to revise their

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invoices in terms of design (on the pattern of the electricity invoice) as well as in terms of content (mentioning the consumption, messages, etc.).

Despite these efforts, the water invoice of French people is still complicated. The consumers are asking for more transparency, and a detailed explanation of the differences of tariffs between the various public services.

Box #2: The Diversity of Water Prices

A survey on the price of water in 1999 has been carried out by the Seine-Normandy Water Agency on the watershed of the Seine and its tributaries and in Normandy (representing about a third of the French population).

Water services are charged $_ 2.7$ per m^3 on average, that is to say an invoice of $_ 325$ per year for an average household consuming $120 m^3$ per year. The great majority of people pays between $_ 2$ and $_ 4$ but 5% of people pay less than $_ 2$ and 10 % more than $_ 4$ per m^3 .

Drinking water service represents $_ 1.14$ per m^3 , i.e. 42% of the invoice with a great variability as well.

Sewage and waste water treatment represent $_ 0.91$ per m^3 , i.e. 34% of the invoice.

The fees amount to $_ 0.53$ per m^3 , that is 20% of the invoice. The fees in question are basically those collected by the Water Agency, a public body in charge of the co-ordination and financing of works that redistributes the levied sums in the form of subsidies to the services of water and treatment.

Finally, the invoice is subjected to a value added tax that amounts to $_ 0.13$ per m^3 .

The surveys reveal that the delegated services are about 25% more expensive but also that they correspond to services implying a higher degree of complexity : with the available data a comparison for similar services has been possible.

WATER, A LOCAL PUBLIC SERVICE : THE REGULATION OF CONTRACTS

PRACTICES AND STAKES OF THE DELEGATED MANAGEMENT

Today, private companies supply more than 75% of French people with water. The ratio is lower for sanitation services, which are more recent: probably about 60%.

The annual turnover of the delegated services of water and treatment can be assessed to _ 5.3 billion for the sole market of domestic use and _ 3.5 billion for the market of firms. These are only rough estimates: it is still impossible today to put forward a global accounting of the sector, despite the recent efforts of the Ifen³ and the Water Agencies under the aegis of the Accounting Commission for the Environment, a government commission created in 1998 to stimulate and co-ordinate these works.

The very small municipalities are little concerned with delegated management. It might explain how France can display simultaneously a majority of communes with a management directly under local authorities control and a water market largely dominated by private societies, depending on whether it referred to the number of municipalities or the supplied volume and the number of consumers served.

A GREAT DIVERSITY OF CONTRACTS

A certain diversity of contracts is covered under the term of delegated management. The existing classifications are inherited from the French great legal tradition and they insist on the ideal types such as concession or leasing, according to the participation of the delegate in the financing of the works. In reality, these types are often mixed up, as testified by the expressions commonly used to describe the mixed arrangements, like 'concessive leasing', 'concessive clauses', and 'concessive cores'...

This malleability results from the very essence of the delegation contract, which is always drafted *intuitu personae*, that is after a negotiation *in camera* between the delegate and the authority, whatever the process of competition has been implemented beforehand. The main work can then be leased, provided that the delegate builds any extension that will be in turn conceded. Such provisions can be included in the initial contract or they can form the subject of endorsements and settlements during the contract if some works prove necessary. The contracts are therefore driven to evolve on the occasion of investments and according to the financial capacity of the authorities.

In any case, the contracts are the key to the evolution of the tariffs : the basic price, the updating rules and the review clauses. The price updating includes a fixed term and several terms corresponding to the main components of the cost, indexed on official indices. Classically, the formula includes a term relating to the salaries, that often represents more than 50% and other terms relating to electricity, reagents, etc.

WHAT CONTRACTS ARE REPROACHED FOR ...

There is no question here of weighing up the pros and cons of delegated management or of propounding elements to assist the local authorities in decision making on the subject. Our purpose rather lies in drawing up a

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³ The national statistical body specialised in the environment.

schedule of conditions for regulation from the reproaches the most frequently levelled at delegated management.

Informational asymmetry

The standard reproaches stem from the obvious structural asymmetry that spoils the negotiation and the execution of the contracts. This asymmetry results from the economic, technical and human superiority of the delegated company over the local authorities, which are often deprived of the means - or does not resort to them -, notably the human ones, to master the economic and technical parameters of the service.

It is true that most municipalities are far from taking all possible steps to attain a balanced relationship with their delegate, especially because the management horizons of the partners are not the same. When the management of water services was a strictly technical stake rather than a political one, delegation was often deemed to be a way out by the elected representatives facing technical requirements that they held to be beyond their reach. The peace of mind of the authorities in charge was well worth this slight loss of sovereignty.

The limited predictability of the tariffs offered to consumers for the conceding authorities testifies to this information asymmetry. Indeed, the contracts are settled for relatively long periods, during which the price-updating rule applies. The delegated company holds undoubtedly more elements on the tariff evolution than the local authority. In particular, the big companies justify the charges related to their head offices in return of unquestionable savings by scale effects. But the amount of these effects, transferred to a local level, prove quite difficult to be analysed.

Reversibility

The main reproach levelled at the contracts concerns their difficult reversibility. There is undeniably a strong inertia in the choice of the delegate; this inertia checks the reversion of the service to public control and its delegation to another company. Otherwise, the Compagnie Générale des Eaux (now Vivendi Waters) points out in its 1998 report of activity that it has won 100 contracts out of the 111 to which it was a contracting party and that had been reopened to competition in 1998. The figures at our disposal confirm this orientation : only a small percentage of the procedures reopened to competition leads to a noticeable change in the management of the service. The few services that nowadays reverted to local authorities control are probably far more a matter of interest for the media than relevant. At the end of a contract, the community has often lost its competent staff as well as the memory of its technical heritage.

It is difficult to make allowances in this inertia for the trading experience of the firm - accumulated trust, human contacts - and for the asymmetry in information that confers on the delegate who is already on the inside a deciding economic advantage. As he or she holds an information stock acquired during the exploitation of the service, the outgoing person is in a better position to assess the risks than his or her competitor, who has to build up much more information. Not to mention that the new firm will

often have to buy out to the former the remote control system, consumers' data files or other technical elements under copyright protection.

Weaknesses in the control

The low watchfulness of the local authorities encourages the delegate not to be on his or her guard and not to take all possible steps to ensure the reliability of the exploitation. All the more since the possible economic sanctions provided for by the contract are seldom applied.

Everything seems to take shape around the issue of staff management. Modern technologies make it possible for the delegate to exploit the facilities with a minimum of employees. That is rather the reliability of the service than its quality that is showing the effect. The 'staff' item is known to be one of the weightiest and private firms obviously have a stricter staff management than the municipalities. The reduction of staff can be one of the purposes of a transition to service delegation.

Finally, the issue of the maintenance of the facilities is crucial: as the date of the end of the contract is known, the delegate is in no way incited to ensure with the same care the maintenance of the facilities when the deadline is drawing near. Of course, he or she can - quite rightfully, as we have seen it - hope for a renewal of the contract. This renewal appears however commonly as an opportunity to 'sell' to the authority some upgrading works that would have been prevented or postponed by a proper upkeep. The elected representatives will agree all the more easily since investments are often more easily subsidised than standard expenses. The wishes of the technicians are then closely akin to those of the financiers.

Postponing the works that are required is also a good way to meet the demand of some elected representatives to have water price drop. They will stand as candidates at the next election with the feeling to have made a good bargain for their service. The mayor who reduces the water price is doubly popular: as an honest politician (if the price goes down, there is no sharp practices), and as courageous champion of the citizens. Nobody checks if there is a counterpart of these small short-term benefits by reducing some of the maintenance standards.

Financial or technical control ?

There are two ways for the authority to be sure that the delegate sees to the durability of the patrimony: either to supervise the state of the patrimony at regular intervals or to monitor the financial flows devoted to its replacement.

The second solution is especially enticing : the savings made by the delegate by not using completely the interim payment for maintenance at the end of the contract generally do not benefit to the town. The contract might provide for a certain amount of annual expenses for the renewal, but as it is well known, it is quite difficult to put an exact figure to the needed amounts. From a more pragmatic viewpoint some people suggest to put these amounts into a public account and to have them distributed *in fine* in a transparent way.

However, the first solution is undoubtedly more consonant with the spirit of the service delegation, according to which the contract concerns only the fulfilment of the service and never the means implemented by the delegate. The profit made is offset by the risks related to the exploitation of the service, and this is legitimate so long as the state of the facilities is actually satisfactory. One of the stakes of delegated management seems precisely to be the re-introduction of the risks into the management of the services. It remains to clear the impediment of the characterisation of the state of the facilities, especially of the networks, that are by nature difficult to visit. It could be achieved thanks to indicators which monitoring should be provided for in the contract. Some research is in progress on that point and should soon lead to experimentation.

THE FRAMING OF DELEGATED MANAGEMENT BY THE LAW

The Organisation of Competition

In 1993, the jurists seized the obligation to update French Law in relation to Community Law as an opportunity to meet the social demand for regulation. A law known as the Sapin Law⁴, after the Minister who has propounded it, was then promulgated to limit the duration of service delegation, to make competition compulsory and to organise publicity.

It is of course difficult to assess a law which effects are not immediately perceptible. Nevertheless, the first assessments, made by the management research centre of ENGREF⁵ at the request of the Water Agencies have produced figures that speak for themselves.

The study concerned the year 1998, in which 582 procedures occurred, representing about 4% of the water market. 333 of them have been thoroughly analysed. A palpable decrease in the price of the services can be noticed: 8% for drinking water and 12% for treatment on average and respectively 13 and 22% for the towns of more than 20 000 inhabitants.

This decrease was accompanied with an opening of the market, the big groups slightly losing ground. Their part for the concerned cases fall from 98% to 93% of the private market through the procedures led in 1998. This opening benefited to small independent local firms. Neither penetration of foreign groups nor return to direct local authority control was observed.

But most 'Sapin procedures' still lie before us, notably concerning big towns, all the more since the law has also the effect to shorten the average duration of the contracts, which dropped from 17 to 11 years according to our study. A peak is forecast in 2003-2004 and it might induce a clear change in the face of the French market.

The Control of the Contracts

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⁴ Law of 29 January 1993.

⁵ National College of Rural Engineering, Water resources and Forests.

Like all municipal decisions, delegation contracts are subject to the legality control of the prefectural administration and possibly to inquiries led by the regional revenue courts.

The Prefects receive some documents relating to the contracts for examination and stamping. They must reach a decision on the legality of the procedures rather than on the economic aspects of the contracts, an aspect that their services, modest and endowed with few means as they are, are not in charge to study. The suspicious cases are handed over to the administrative tribunal or entrusted to the MIEM (interdepartmental mission of inquiry) for a preliminary inquiry.

The controls of the regional revenue courts consist of thorough inquiries into the procedures and the economic balances. These courts are not referred to but they exert directly their vigilance over all the communities, at least over the biggest ones. They intervene sometimes on situations that have been brought to their attention by the media. As they study alternately parts of large regions, their intervention in a given community is rather rare but the threat of it is permanent so that it might have a deterrent effect.

At the national level, the revenue court is still farther from the vagaries of the real world. Its controls are to be threatened only in big towns but it exerts an undeniable political authority: its annual report is an important moment, inevitably followed by political reactions. It is sometimes supplemented by a specific report, as it has been the case with a report on water in 1996.

The Organisation of Transparency

The 1992 Water Act gave rise to two instruments that could be connected with an approach in terms of regulation: the Barnier Report, also known as the report of the Mayor, and the Mazeaud Report, known as the report of the delegate. These are annual compulsory publications, which contents are determined by statutory orders.

The Mazeaud report must be handed in by the delegate to the community that he or she provides with a service. It includes technical and financial information about the course of the contract and aims at providing the community with control means and at stimulating the exercise of this control.

The Barnier report is issued by the Mayor for the population and supplies information about the state of the service, its technical constraints and performances and its financial situation. Adopted by the town council, it must be made public. It is also passed on to the Prefect.

In fact, the latter report sometimes does not exist or is of poor quality. It is seldom released. Both reports are often mixed and written by the delegates. The Prefects complain about this seasonal delivery which is of little use to them and the associations complain about the lack of assiduity shown by the local elected representatives.

A part of the fault is incumbent on the legal text fixing the contents of the report, indeed it rather displays the vision of a centralised control of the

services than it aims to provoke debates with the population. The whole is completed by the lack of advice on the field.

INNOVATIONS FOR LOCAL REGULATION

The time when it was considered that the system was self-regulating and that the eagerness of the firms to keep up their good name would prevent abuse is over. Today, the social demand is clearly in favour of a more visible regulation, as if it had proven necessary that somebody would embody the public service for water and sanitation. The levels of the prices and of the investments required probably encourage to seek financial room to manoeuvre in the exploitation of the services. After all, the game is worth the candle : the part of the turnover of water services that goes to the delegated firms is probably about _5 billion per year.

It is true that the Sapin law begins to produce effects on the market and that it will probably markedly reorganise it during the next 10 years. However, there are still pressures for innovations in the field of regulation.

Rethinking the Contract

The first temptation would be to rethink the contract itself, its clauses and its degree of achievement. One of the most promising methods consists in playing the game of delegated management up to the end: the "philosophy" of delegation consists precisely for the delegate in committing himself or herself to reach objectives but he or she can undertake whatever course of action he or she might judge appropriate to achieve those aims. The payment received rewards both the costs of exploitation and the risk incurred. The idea is to introduce into the contracts performance indicators accounting for the quality of the service. The choice of such indicators is not immediate but a study carried out by the research centre on water management of ENGREF⁶ and supported by the Water Agencies has led to the identification of a list of adequate indicators ratified by a group of European experts.

The next step consists in reintroducing into the contract a system of financial incentives to promote the quality of the service in relation to those indicators. It is indeed considered that the exploitation of water services involves nowadays fewer risks for the delegated firm than it used to do and that this "peace", acquired as time went by, distorts the spirit of delegated management. The drafting of such contracts - monitoring of the quality, implementation of economic incentives - is under consideration and will soon be tested on real contracts.

Other researchers think that the nature of the contracts should be more radically changed. Jean Gatty suggests delegation contracts with an undefined duration - to ensure a good level of replacement of the facilities -,

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⁶ The research centre on water management and treatment is located in Montpellier

but exposing their holders to possible buying back by competitors who would commit themselves to provide the service at a better price.

Developing Advice and Technical Framing

Thanks to the provisions of the Sapin Law, a consulting market seems to emerge timidly, torn between the interests of the participating corporate bodies : accountants, lawyers and engineers, whose only point of agreement is the existence of a strong demand.

To boom, this demand needs to be framed: both technically, with the publication of schedules of conditions and of references and financially, with a financial support comparable to that already granted to the technical studies in the field. Water agencies could probably be in a position to ensure this development, if they were clearly commissioned to.

The issue of the role of the State services arises. The external services of the Ministries of Agriculture and of Civil Works are traditionally vested with a mission of project management and technical expertise for asking rural and town communities. Those services are paid for and produce an annual turnover of about _ 180 million. Legal and financial advice represents a part of this activity : assistance in Sapin procedures, assistance in drafting Barrier reports, control of the delegates. These missions are justified when they are carried out for small communities, who have neither the services nor the means to pay for private sector consulting. Because of the evolution of the organisation of the State, the long-term future of those structures and their missions might not be assured, and in any case it could hardly face to a great raise of the demand.

The intervention of consultants in a Sapin procedure is itself an element in favour of regulation. The procedure itself is complex, a precise inventory of fixtures is not always available for the contracting parties and this lack of knowledge is seldom favourable to the authority. For that reason, some people suggest to make the resort to a consultant during the procedures compulsory. Such a provision would make steps in favour of an organisation of the consulting market all the more necessary.

Motivating Vigilance : the Statistical Competition

The idea is to provide regularly the elected representatives with the means to assess the technical and economic performances of their services. With the ulterior motive to sustain the political pressure brought by the population and the associations on the elected representatives.

In fact, the trend is already noticeable and the question at stake is also to keep mastery of this trend. The associations and the media have begun to publish comparative analyses of the price of water. They have met with immediate success and with a chorus of protests on their rash comparisons. Public authorities are organising: first the Water Agencies that have implemented monitoring units intended for the general public, then the State, that has mobilised its statistical services. The regular publication of inquiries and econometric studies better mastered from a scientific

viewpoint will probably induce a decrease in the amazing number of studies led each year in great disorder.

The implementation of an actual statistical competition is not self-evident. The inevitably simplifying discourse of the global studies comes up against the great diversity of the situations of water services in France. That is why some people advocate a grading using letters, structured around a set of objective indicators, to reconcile the simplicity of the discourse with the fairness of the judgements. As it has already been shown, such indicators are already existing. The idea of a grading is appealing but it comes up against the central question of the legitimacy of the grading agency. The latter should of course be independent, especially from a financial viewpoint but it should also be endowed with all needed technical skills.

WATER, A PUBLIC SERVICE INFRASTRUCTURE : A PROBLEM OF GLOBAL FINANCING

HEALTH AND ENVIRONMENTAL POLICIES AND THE REGULATION

The standards as a major determining for the contracts

Several arguments plead for taking health and environmental policies into account in the debate on water regulation.

Probably not directly, the public policies in charge with water and health appear at first sight neutral in the question of market regulation. Their purpose is not to intervene in the distribution of costs and margins among actors. The contract itself is not considered as a stake as long as a service respecting the legal standards is ensured.

But their impact on the market is obvious, because of the consequences of the investments they are imposing.

In hardening the standards, the authorities compel water services to implement more sophisticated techniques and then to call on new abilities, either internal or external, through delegation. The issue of the critical size of water services arises, that is the size up to which a good level of service can be expected to be ensured in a reliable way. To that purpose, the services could gather together, which seems to be actually the case, and it is not without effect on the market structure.

In speeding up the rhythm of the investments of the municipalities, health and environment policies also provoke more renegotiations of the contracts. Indeed, the implementation of new facilities often appears as an opportunity to revise the contracts before their end and to raise the price of water.

Finally, these policies are causing noticeable increases in the prices. Fixing the standards influences the costs and then the tariffs and possibly the risks

incurred by the delegates and therefore their remuneration. In provoking palpable rises in the prices, regulations also have a noticeable impact on the acceptance of the price, on the public image of the firms of the sector, on their reputation and on the social demand for a better regulation. The themes of costly water, the opaqueness of the sector and the illegitimacy of the disparities in the tariffs have had a great success for some years in the newspapers, because of the political and financial scandals but also because the amounts of water invoices were rapidly increasing due to standard raising.

The water resources : sharing the responsibility between public services and environmental regulation

The final and more indirect link stems from the very situation of water resources: it argues in favour of a common approach of environmental and economic regulations. The levels of pollution we have reached are close to - and in some places above - the natural capacity of elimination. Locally, the resulting degraded quality of untreated water can confront the 'producers' of drinking water with a problem and impose on them costs they had not anticipated, for instance because of the excess of nitrates. The public policy to control the pollutions influences therefore the contract, its economic balance, the level of risk accepted by the delegate, its public image in the opinion, etc. This point is illustrated by the Guingamp trial, in which a delegate who was accused of the poor quality of the water supplied has brought an action against the State, because of its responsibility in the control of diffuse pollutions.

These relationships explain why the authorities intervene in the regulation without acknowledging it and why conversely the big groups concern themselves with the ecological situation before their commercial activity, take part in European negotiations and in the work of the Water Agencies.

Finally, authorities are evoking those policies to levy and redistribute about 20% of the water invoice especially through the Water Agencies. There is a blatant contradiction between the surface neutrality of the authorities and the economic weight of their interventions. As we will see it below, the issue of the renewal of the infrastructures is the heart of both debates, on environmental and economic regulations.

THE QUESTION OF RENEWAL

Public support for renewing the sewage systems

The question of the financing of water infrastructures must be analysed in the long term. Indeed, water sector is by nature capital intensive, that is to say that it imposes on the owners heavy and rare investments. For a decade, health and environmental policies have induced an increase in the imbalance between the time horizons of local communities' management and the investments they are required to do. Facilities might happen to be obsolete, for technical reasons or because of their dimensions, though their cost is not yet written off.

In the past, the investments for water have been made possible by the intervention of the authorities, and that is still often the case in the world today. It is not the solution adopted in France, where it is attempted to have the liberal principle of the truth of the prices applied in the long run ('water pays for water'). It can appear as realistic only since there is already a patrimony that is only altered at the margin (the annual investments represent about 5% of the replacement value of the patrimony).

The issue is not specific to France: in England, very degraded services have been privatised for want of sufficient provisions, it has justified their sale at a low price. In Germany, the problem is circumvented since the urban services, that have no reason to have financing requirements in the same time, can lean on each other.

The Water Agencies facilitating the renewal

The French solution consists in a continuous adjustment of the stock thanks to a provision method which is compulsory for the owners, through the intermediary of the Water Agencies: they are all subscribing and they are aided on the occasion of renewals and technological updating. Of course, the Agencies also finance stock extensions but the latter do not represent more than a third of the amounts granted.

If this system were not existing the owners would postpone as long as possible the compulsory or necessary investments and that it would lead to a general degradation of the stock that would be damageable for the environment. There is no opposition here between a 'mutualistic' logic and an 'environmental' one, as the actual size and financial capacity of the public services is taken into account.

Otherwise, it is held improbable that the owners would make by themselves sufficient provision for long-term time horizons, so that they would be led to borrow from the banks to finance their investments, what would have a weightier effect on the price of water.

Of course, all the owners are not considered to be alike: big towns and big firms can make provisions on their own initiative because of their greater 'management capacity' and of the lengthening of their time horizons. Furthermore, the investments are proportionally smaller in comparison to their economic size.

Therefore, according to the size and to the management capacity of the actors, it might be necessary to regulate on the one hand the part of the provision that can be confided to the owners, and that must roughly correspond to the upkeep expenses, and, on the other hand, the part of the provision that must be organised at a higher level corresponding to rather more expensive investments. Water Agencies participate in the latter kind of provisions.

PROVISIONS AND REGULATION

Both scales of provision are ensured through the good management of the services, which is a matter for economic regulation, and through the system of Water Agencies, that comes within the scope of environmental regulation.

It is quite justified: Water Agencies are collecting fees that they reallocate as grants. The fees are defined according to technical criteria and are intended to offer an economic incentive to the actors who are in a position to reduce the environmental damages that they are creating, based on the polluter-pays principle. The money is then redistributed to support projects that are relevant for the environment. The second economic incentive is complementary of the first. This complementarity enables to reach with reasonable levels of taxation the same environmental results as with a higher non-redistributed tax.

A first level of redistribution can therefore be distinguished: it allows to free oneself from time constraints and makes it possible for anybody to get funds when they are needed, however long he or she may have subscribed. The purpose is to serve general interest since it enables national community to take advantage from depollution without waiting.

A second level of redistribution appears as soon as the mutual benefit society is subject to environmental objectives, through the definition of financing priorities. This level is more closely linked to health and environmental policy objectives. Water Agencies allocate their aids according to the priorities defined in their five-year programmes. These priorities are the facilities on which it has been chosen to focus during a period and the geographical areas that are judged delicate. Following the same logic, there are grants for a good management of the facilities, depending on the achievement of good technical results.

To summarise, it could be said that a good environmental quality makes a good level of provisions for water services necessary. The provisions can be divided into two parts: a first part concerning a shorter term which is a stake in economic regulation and a second part concerning a longer term that depends on environmental regulation. These two types of stakes correspond to two modes of intervention of the authorities that are distinct and complementary: on the one hand, the regulation of local delegation contracts of public service; on the other hand, the monitoring of a management system of water resources, instituted at a relevant level, the watersheds, and which finality is clearly an environmental one.

CONCLUSION

The French practice of delegation of local public services seems to have given rise to a model that is spreading all over the world. In fact, this practice cannot be dissociated from that of decentralised management of local public services that prevail in France, where the numerous local communities have a great autonomy regarding the management of such services as water and purification.

In this context, the issue of regulation is stated in a specific way: how could the State intervene in contracts that are basically local, whereas it is not the

principal ? Similarly, is it possible to do without a national regulator given the huge asymmetry characterizing these contracts ? What kind of roles could be played by the national regulator?

Three roles, according to us: that of producing norms, a role of the State that no one would dispute because of the environmental and health stakes attached to these services; that of organising the system of economic incentives and redistribution that is necessary to water policy; finally, that of producing and circulating the information needed for a good position of the actors on the market (references, methods, etc.) without endeavouring to intervene on each local contract. This latter function is still to be organised in France.

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