

Workshop on
Limitations of progressive municipalism within a neoliberal EU

Brussels, 19 September 2017

The workshop, organised by Corporate Europe Observatory (CEO), in cooperation with CIRIEC, Rosa Luxembourg Stiftung (RLS) and Transnational Institute (TNI) focused on challenges and limits that public authorities have to face in order to re-municipalise the energy and the water sectors, in the context of an economic neoliberal paradigm imposed by the European Union (EU) policies and legislation.

Participants discussed four main themes, following the four panels of the workshop:

- Energy: progressive municipal policies and the role of the EU;*
- Water: progressive municipal policies and the role of the EU;*
- Austerity and public investment;*
- International trade agreements.*

For each panel, two initial presentations opened the debate on the issue discussed, leaving the floor for questions from the experts and all the other participants.

Panel 1: Energy: progressive municipal policies and the role of the EU

The first presentation was given by Alix Bolle (EU Campaign Manager, *Energy Cities*), who presented an exploratory study on local public initiatives in France, Germany and UK.

The study seeks to clarify the concept of “re-municipalisation”, in broad terms and to identify the reasons that push citizens and local authorities to start a local energy company as well as the barriers to this process (political and legal barriers, notably at the EU level). The study applied a 3D approach, which considers three key factors (democratisation, decentralisation and divestment¹) as necessary steps toward the process of re-municipalisation.

The study highlighted that, among the main reasons to start a local energy company, there are the increase of the political influence of the local management to foster local added values (since energy transition projects are job-intensive projects and contribute 8.5 times more to local economy, if driven by locals, than external projects), to encourage and find synergies between sectors (gas, water, waste, transports, etc.).

Specific national factors also played a role in remunicipalisation: for example, in Germany, it was a political vision the renewal of concession contracts and funding privileges; in France, the energy transition law provided more power to local authorities in terms of energy management; while in UK, it was to tackle the issue of poverty.

In terms of obstacles, the study surprisingly showed that the main ones did not come from EU legislation and policies but rather from the national level. For example, in France, the main obstacle is the centralised set up of the energy market, which makes it difficult for local entities to manage distribution networks which they have to concede to the national transport grid operator. In Germany, the main obstacles, at the local level, are strong regional differences and the “double regulatory pressure” coming from the Federal level and the EU level.

In fine, the study points out that, despite legal and political obstacles, it is possible to circumvent these difficulties, but there is not one working model since the “magical receipt” is context-dependent. As for the UK, the main difficulty to face is the full privatisation of the energy sector together with a political slowdown on energy transition.

At the EU-level, a change could come from the Commission’s proposal on the clean energy package, where there is a rhetoric recognition of new players on the energy market, notably local community energy, but besides this, their legal definition is “empty” since no tools are identified to help these “small” new players to make their way in the energy market.

The legislative proposal, furthermore, suggests the creation of a body representing energy distribution operators, but excluding again small players and civil society from the governance of the Energy Union. Finally, the market-driven and competition approach remains, making the final price to consumers the only criterion of efficiency. The proposal will also implement a “silo approach” since electricity and heat will be dealt with separately. Local authorities signing energy performance contracts with third parties had to account the related investments as debt in their balance sheets, according to Eurostat public accounting rules. This complicates the investments into EE in public buildings and even more so due to austerity rules.

¹ Shifting funds towards renewables and local projects favouring local development.

Key-elements considered in the presentation

- **3D approach:** democratisation, decentralisation and divestment as necessary steps toward the process of re-municipalisation.
- **Local added value:** energy transition projects are job-intensive projects and contribute 8.5 times more to local economy, if driven by locals, than external projects.
- Incentives and obstacles to municipalise energy are **context-dependent**.
- Additional obstacles could come from the **Commission's proposal on the clean energy package** (definition of new players on the energy market and representing body).

The second presentation, given by Pablo Cotarelo (Ekona) from the Barcelona municipality, focused on a proposal on public energy sovereignty presented by some movements (social networks, energy poverty movement, energy sovereignty movement) to the city of Barcelona and completely integrated in the political programme of the City Council.

These plans, still in the first stage, have to be developed further. For instance, two public energy companies, one producing for municipal facilities, one producing for consumers (all types of clients) could be created, but the second company would be in competition with others on the market. Another example concerns the efforts of the city to invest in renewable energy, notably solar energy. Presently, 1.5% of Barcelona energy comes from waste management and solar energy. Further projects plan to rent public buildings to solar energy cooperatives for period of some 20 years before returning to the municipality.

The proposal aims at the complete public control of the energy of the city, at the level of generation and provision, with a community oversight. The challenge is to use energy as a real *de facto* public service, not only in the legal sense. The long-term plan is to create two public energy companies: one producing for municipal facilities and another one producing for consumers. Both companies should be able to sell 20% of the energy, as to respect the maximum allowed by the EU directive.

Renewable energy is at the core of the initiative, as well as the community participation, not only in the management, but also in the funding. One of the main difficulties could be the guaranteed energy supply and the control of the ownership of the energy provision.

In terms of obstacles, at the EU-level, four elements are identified:

- 1) the Single market driven by a neo-liberal approach;
- 2) EU legislation on public procurement;
- 3) EU legislation on State aid;
- 4) EU austerity policy.

1) The legal instrument for the first element is the Directive 72/2009 of 13 July 2009 concerning common rules for the internal market in electricity, implemented by the Spanish government through a law which is very restrictive in some areas such as the distribution of energy and the ownership of the facilities.

The Barcelona proposal aims at guaranteeing electricity supply to citizens, since electricity is not regarded as a public service according to the Spanish law on the electricity sector and considering that the poverty rate of the Catalans population is about 20%.

2) Directive 24/2014 of 26 February 2014 on public procurement restraints the possibility for municipal energy companies to supply electricity to the population for a maximum of 20% of its activities (while previous legislation (Directive 24/2004/EC) allowed selling until 50%). In Spain, the possibility to have community control over the company is one of the main challenges, since the cooperative model controlled by users is not allowed by the legislation nor eased by the Directive. It is important to note further that, in Spain, the creation of new public companies is currently not allowed because of very restrictive Spanish national legislation regarding public expenses and public investment. Another difficulty is the municipalisation of the grid due to the Spanish law and restrictions imposed by austerity measures.

3) EU State aid legislation does not allow community energy companies to differentiate tariffs between customer categories, because of the costs which keep rising (the cost of electricity rose of 8% in the last ten years, in Spain), leaving the market access only to bigger “free market” company.

4) Finally, the EU austerity policy pushed the Spanish government to modify the legislation to align it with the debt and deficit requirements. One of the results, at the national level, has been the amendment of article 135 of the Spanish Constitution in a way as to restraint further the freedom of action of municipalities, limiting the creation of public corporation (no new public corporation can be created anymore) as well as the employment of new public workers. It should be stressed that the difficulty of creating new public companies and hiring new public workers comes from the pressure exercised by the Spanish debt, constraining the public authorities to invest in the public sphere because of budget constraints. The legislation itself does not prohibit social clauses and it is a political decision, up to public authorities to include them in public procurement. In practise, social clauses are rarely used and this for two main reasons: public authorities are not aware of the possibility to implement these clauses; or public authorities aim at reducing costs.

Key-elements considered in the presentation

- **National transposition of EU law can be more restrictive:** the implementation of EU law and policies at the national level can be stricter than the EU law itself, create bigger obstacles for local energy community (e.g. see amendment of article 135 of the Spanish Constitution).
- The main **obstacles at the EU-level** come from legislation in: austerity measures, State aid and public procurement.

The main following points emerged from the discussion:

- the European **Commission’s proposal for an energy package** if, on one side seems, to come from a positive message of solidarity (clean energy for all Europeans and contribution from all) on the other side, **eliminate the possibility to have regulated tariffs and social tariffs**, in the name of a presumed free-market and competition efficiency, eliminating a useful instrument used to tackle the issue of energy poverty. Moreover, with giving the possibility to people to disconnect from the energy system if they wish (because they found alternative ways) the proposal contradicts the

principle of “contribution from all for all” since it allows wealthier people who can allow alternative sources to not contribute to the general needs of financing the grid. The proposal would also **abolish the priority dispatch** (priority of clean energy) because it is not a market-driven measure.

On the democratic side, the proposal would create an entity, representing all the distribution system operators in Europe, but leaving aside the smaller distribution system operators (which are 90% of the distribution system operators in Europe) which would be set aside the decision-making process of the energy sector. Finally, EU funding possibilities and means do not reach medium and small enterprises (SMEs). However, the Commission’s proposal would create a legal status for “local energy communities” (possibly energy cooperatives), giving a chance, through this legal instrument, to this category of energy enterprise to consolidate and hence introduce some kind of community control as wished by the civil society initiatives in Barcelona.

- If EU legislation (notably on public procurement, State aid and austerity) represents an obstacle to the (re)municipalisation of the energy sector, the main **difficulties come from the national level** going often further in the implementation of EU law. One example is the Spanish electricity law, implementing the EU Directive, which does not oblige the energy operators to offer affordable tariffs, different from the normal tariffs. Still in Spain, the amendment of article 135 of the Constitution prioritises the payments of debts over public investment and social spending and allows the reinvestment of any surplus only on investments selected on a list. These main legislative changes have to be framed within the structural recipes, negotiated between the EU and Member States in debt crisis (in this case Spain) to establish a plan out of the debt crisis.
- The existing structure (in legislative and political terms) **distorts and de-democratises public money**. This fact calls on a reflection on what public money can/should be spent for.
- A possibility to circumvent existing legislation on State aid, which does not allow any subsidies for local energy communities, could be **to give subsidies (or fiscal incentives) directly to people** (the City Council of Barcelona is studying this possibility which, however, is border-law). Another strategy could be to get the financing from land taxes and the use of public facilities grids (a model applied since few years in Barcelona). As reminder, the final goal of the city of Barcelona is to supply both municipal facilities and citizens with locally generated affordable renewable energy.
- Some local entities face **double regulatory pressure**: from the EU side but mostly from the level and national side (it is the case for Germany, for example).
- There is a lack of clarity and sometime knowledge of what local entities can really do and cannot do, a fact which could cause a sort of “**auto-limitation**” on action.
- Legally speaking, in the new “Clean Energy Package”, **energy communities should be better defined** by a set of criteria and tools should be created, at the legislative

level, to pass from the simple legal recognition of these players to a practical contribution to their effective realisation coming into being.

- **Social rights should be part of a more integrated approach.** At the EU level, if on one side social policy is not properly a EU competence, there is some *marge de manoeuvre* to act, through other policy and through the common market. It should be added that, despite the theoretical neutrality of EU legislation, in practise, there is a tendency to interpret it through neo-liberal lens and this is true also at the national level, especially when a country is going through a debt crisis.
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Panel 2: Water: progressive municipal policies and the role of the EU

The second panel, on water, was introduced by Pierre Bauby, Stephany Warm and Christa Hecht, who together presented, respectively, the water remunicipalisation in Paris and in Berlin, in a comparative way.

	Paris	Berlin
General data		
Area	A rather small territory: 105 km ²	891,82 km ² The Berlin Water Works serves some municipalities in the neighbourhood with drinking water and waste water disposal
Inhabitants	2 257 981 inhabitants (2011)	1999 = 3 386 667 2013 = 3 517 424 2017 = 3.67 Mio.
Average density	A dense municipality: 21 504 inhab./km ²	3 948 inhab./km ² (2015 Wikipedia)
Habitat type	A high predominance of the collective habitat: but only 93 920 water service subscriptions by co-owned syndicates of social landlords	86% rental apartments, 14 % private owned apartments or single or double houses. Connecting rate drinking water 99,8% and waste water 99,6%.
Water consumption per inhabitant	120 l	115 l
Water sources	Many <i>extra muros</i> water resources (100-150 km far from the city) and Seine River for the Eastern part of the city	100% abstracted groundwater (some wells under bank filtration from rivers)

Case-study: Paris

Paris has an ancient tradition of public management of the municipal water service combined with a certain participation of private operators. In fact, since the beginning of the 19th century, the Parisian water service (production and distribution) has been managed by the municipality.

The *Compagnie Générale des Eaux* (ancestor of *Véolia*) had been conferred, since the early 1800's, the management of the water service through a long term concession contract, in the municipalities that became part of the city of Paris in 1859. At that time, the prefect of Seine (Haussmann) decided to buy these concessions. Since municipalities could not exercise economic activities, a contract of *régie intéressée* was concluded with the private company in 1860 and valid for 50 years' contract, which conferred the management of the billing and cashing of payments of the Parisian water service. A 50 years annuity had to be paid by the company to the city.

This organisation did not change until mid-1980s, when Jacques Chirac, elected Mayor in 1977, decided to reorganise the city water service.

In 1985, the water service was delegated. For the distribution of water, two lease contracts were concluded for a duration of 25 years, until 31st December 2009. The right part of the Seine river was conferred to *Compagnie Générale des Eaux* (which became *Véolia*) while the left part of the Seine river was conferred to *Société Eau et Force* (which became *Suez*). The management of the relationships with users was conferred to a *groupement d'intérêt économique* created by these two private operators.

Two years later, the city of Paris delegated also the services of production and transport of water, which, until 1987, were managed by a municipal department.

A public-private operator (SAGEP – *Société Anonyme de Gestion des Eaux de Paris*) was created to manage the water production and transportation, with 70% of the shares owned by the city, 28% by the two private companies in charge of water distribution, and the rest by *Caisse des Dépôts et Consignations* and other institutions.

As regards the wastewater collection, this service continued to be managed by a municipal department, while the treatment of wastewater was managed by SIAAP² (intermunicipal syndicate for 9 million inhabitants).

In Paris, in November 2007, during the local electoral campaign, the Mayor announced what the management of the entire water cycle would be conferred to a single public operator.

This proposal consolidated the political alliance between the Socialist Party, the Communists and the Greens and was integrated in the electoral program of the Mayor for the municipal elections of March 2008. After the re-election of Delanoë, 2008 and 2009 saw the creation of the EPIC³ *Eau de Paris*, with first the integration of water production and transport services, then of CRECEP (Parisian Centre on Water Research, Expertise and Control - *Centre de Recherche, d'Expertise et de Contrôle des Eaux de Paris*), and then of water distribution service and of the service of users relationships management.

² SIAAP: Syndicat interdépartemental pour l'Assainissement de l'Agglomération parisienne.

³ EPIC: Etablissement public à caractère industriel et commercial.

On 1st January 2010 *Eau de Paris* was the single public operator of Parisian integrated water service.

The objectives of the remunicipalisation process differ a little bit in the two cities. For Paris, the objectives were mainly the following:

- to rebuild the public capacities of direction, control and ownership of the system;
- to renegotiate the contracts with the delegates and the SAGEP;
- to lift the power of control of SAGEP over the distributors;
- to define investment objectives for the distributors;
- to rend transparent the objectives aiming to reduce leakages;
- to confer each distributor the direct responsibility of the relationships with users;
- to make distributors participants to the Solidarity Housing Fund;
- to buy the shares of distributors in SAGEP;
- to precise the conditions of the end of the lease contracts for the distribution of water.

Considering the effects of the remunicipalisation process: in Paris, users could not take profit of lower tariffs because of royalty fees for water extraction, which have been updated, while wastewater treatment service has risen by 6%. One of the main benefits of the remunicipalisation process has been the fact of moving from a system that was managed in an opaque, fragmented and short-term fashion to one that is now been managed in an integrated, longer-term, more transparent, efficient and accountable way.

Case-study: Berlin

In Berlin, after the reunification, in the '90s, the capital invested into facilities and networks of municipal providers of drinking water and wastewater, while disposal was secured by private capital, a practise encouraged by the German government, which granted tax concessions and by Ministerial task forces and consulting companies which supported these processes. However, there was a lack of the essential procedural know-how, leading to asymmetric risk distribution at the expense of the public as well as extensive transaction costs.

During this period, public private partnership (PPP)-initiatives were encouraged and used as an instrument to modernise the water and sewage facilities, electricity networks and power stations, without overloading underfunded municipal budgets. Thus, the '90s saw a wave of privatisations, partial privatisations and PPP in the branch of municipal providers and disposal companies, in former East and West Germany in Berlin notably.

Because of a big budget deficit, privatisation waves started.

Since 1994, the BWB (Berliner Wasserbetriebe) were organised as a public law institution with, however, a political aim to give the management more entrepreneurial independence and to reduce the political influence and control. Berlin assumed the institutional and guarantor liability for the public law

institution and, in return, the BWB should independently act and contribute to the development of the city by entrepreneurial expansion strategies, providing new jobs and encouraging private investments in Berlin. Critical voices call these public companies “cash machines”.⁴

A legal provision allowed the public law institutions to assume independent cooperations within their general tasks. The BWB developed a broad portfolio with more than 20 cooperations.⁵ Many of these entrepreneurial experiments proved to be unprofitable turning out to be expensive, unsuccessful investments for the BWB and of course for its guarantor Berlin. For many of these cooperations, three main problems can be highlighted:

- the relation to the general task of a public company vanished into thin air;
- the bad investments accumulated to a huge amount;
- no politician and no public supervision felt responsible to stop this development.⁶

Though in 1997-1998 the erroneous strategy of the BWB’s operations became obvious, Berlin’s government did not interfere, for instance, by reducing BWB’s operations back to its core business and generating a moderate revenue for Berlin’s budget, e.g. by means of strict supervision, delegating competent representatives as board members, ensuring a competent management, and installation of a corporate governance.

After the full privatisations of energy companies (Bewag and Gasag), in 1997 and 1998, the only public entity left was BWB.

Opposition against the privatisation in Berlin’s Parliament was not expected; there was a clear consensus of the coalition to cover budget gaps by privatisation.⁷

Berlin’s government found a model, which promised to be enforceable and generate adequate revenues: the BWB should remain a public law company within a holding (a typical silent partnership of a private company in a public law institution).

Compared to the transformation into a capital company and its full privatisation this model has some advantages,⁸ notably, the involvement of stakeholders.

In June 1999, the consortium Vivendi (today Veolia)/RWE/Allianz were awarded to take over 49,9% shares of BWB. The purchase price amounted to 1,7 billion euros and it was the highest of all offers. In addition, the consortium also accepted other obligations, e.g. creation of new jobs and a water research centre, guaranteed employment until 2014 for core employees and investments amounting to 5 billion euros until 2009.

The period of validity was 30 years. The partner agreed confidentiality about the contents of the contract of the partial privatisation, meaning that the contracts were not made public. The non-public board of assets recommended the Parliament the acceptance of that business. In July 1999, the Parliament accepted the contract prepared by a public board of assets and confirmed the partial privatisation.

The most important governance mechanism of the BWB and its relations to both

⁴ f.: Lederer, K., 2011, p. 447.

⁵ cf.: Senatsverwaltung für Finanzen (1999), p. 11.

⁶ cf.: Lederer, K., 2011, p. 447.

⁷ cf.: Hüesker, F., 2011, p.120-124.

⁸ cf.: Lederer, K., 2011, p.449.

the investors and Berlin is the consortium agreement, which serves as a fundamental framework of the partial privatisation. In addition to the shared aims of the contract partners, the consortium agreement defines, among others, the determination of business areas, the appointment of persons and bodies, the fundamentals and objectives of the cooperation and arrangements for interruptions, placement of the stock, contract questions of guarantee, merger control and implementation. All other contracts and agreements are annexed of this contract.⁹ The consortium agreement was not published in the commercial register because there was no disclosure and, even more important, because of the partners' interest of confidentiality.¹⁰

In Berlin, the tariffs increased ever since 2003 after expiry of a four years stand-still-clause in the contract. Several stakeholders and economical associations (Industrial, Trade, Owner of Houses, Tenants) fought against the increasing tariffs. In 2010, they asked for a referendum for the disclosure of the secret contracts of the partial privatisation. The referendum of 14 February 2011 was successful: 98 % of the voters called for disclosure (27,5% of Berlin's citizens voted). The next day the contracts were published on the internet, showing the reasons why tariffs kept rising: high depreciation and a clause for high interest rates for the private investors. Additionally, if the tariffs could not be raised up by the Senate, the profits for the investors were guaranteed by the State budget.

The objectives of the remunicipalisation process differ a little bit in the two cities. For Berlin, one objective was the reduction/stabilisation of the tariffs. The German cartel office forced the BWB to a reduction up to 15%. The situation was not much attractive for private investors any more. The risk of decreasing dividends and a damage of their image was real. Furthermore, RWE had changed its strategy. Since 2006 it withdrew from the water market national and international and concentrated solely on the energy market. Besides RWE had high debts and needed capital at that time. Veolia still active in the water market didn't want to sell its share at the beginning. Actually it tried to get legal aid after RWE had sold its share because with a share under 25% it couldn't prevent decisions. This attempt failed. Veolia was in a dilemma: public pressure to sell the share and avoid image damage on the one hand and on the other the loss of its cash cow and example for partial privatisation models.

After the complete remunicipalisation in 2013 the structure and organisation was adapted step by step. The last step was, in 2017, the abolition of the Consortium agreement of 1999. Since 2015-2016 the companies Berliner Wasserbetriebe and Berlinwasser Holding (formerly BWB's parent company) are almost completely separated companies and direct subsidiaries of the Land Berlin.

Considering the effects of the remunicipalisation process in Berlin there has been a reduction of tariffs but the reductions were an effect of the cartel office's reprimand and not the result of the remunicipalisation. At once the price for the remunicipalisation is to pay within 30 years which detracts the scope of tariff reductions. Until 2022 the tariffs will be stable which is a political requirement. However, several benefits came from the Berlin's remunicipalisation, such as the heightened public scrutiny of the utility's operations.

⁹ Abgeordnetenhaus von Berlin: D-13/3367 vom 05.01.1999.

¹⁰ cf.: Ochmann, D., 2004, p. 38.

Key-elements considered in the presentation

- The effects of the externalisation of water services in both cities, Paris and Berlin have been an **increase in tariffs**.
- **Remunicipalisation as a top-down and bottom-up approaches** (the two cities experienced opposite approaches: while the remunicipalisation process in Paris was the result of the political will of the Mayor Delanoë (2001-2008), meaning a top-down approach, while in Berlin, the process was the result of a citizens' initiative (bottom-up approach)).
- **The effects of the remunicipalisation in tariffs:** in Paris, users could not take profit of lower tariffs because of royalty fees for water extraction, which have been updated and wastewater treatment service has risen by 6%, in Berlin, there has been a reduction of tariffs but the reductions were an effect of the cartel offices reprimand.
- The role of the **publication of contracts between public authorities and private actors is key for a matter of transparency and clarity**.

The second presentation of this panel, given by Daniela Albano, member of the City Council of the city of Turin, illustrates the City Council proposal to modify the legal status of the water supply company (called *Smat*¹¹) from a private law joint-stock company to a public law consortium company.

Case-study: Torino

Currently, the integrated water system in Italy is in public management, in fact the service is managed through the scope of authority. The body that decides on the management of the service is composed of Mayors' representatives coming from the whole territory, gathered in an area conference, holding decision-making power over all infrastructure interventions in the area of competence.

The water supply company for the city of Turin and of the 36 municipalities in the surrounding area is called Smat s.p.a., which is a joint-stock company with a majority of public capital. The City of Turin represents the majority shareholder, holding about 65% of the shares.

Currently, Smat is entrusted with "in-house" as the company fulfils the two essential requirements that allow an administration to assign a non-competitive service:

- 1) similar control to 100% of public capital, allowing for instance the appointment of board and chairman);
- 2) to carry out most of its business (80%) for the entity.

The initiative to change the legal status of Smat was launched in 2012 by the citizens who, through a proposal for a popular initiative resolution, wished to reach two main objectives:

- to enhance the participatory process;

¹¹ Smat s.p.a.: Società Metropolitana Acque Torino.

- to remunicipalise and achieve a result that definitely secures the company that manages the integrated water service on the territory, guaranteeing the company not only a wholly public property but also a public and participatory management.

As reaffirmed in the premise of the resolution, the City recognizes access to water as a human right, universal, inalienable and indivisible, and therefore intends to confirm the principle of public management. Moreover, the City Council starts from the assumption that EU regulation does not force to privatise but requires a level-paying field for all actors, in the competition context.

There are two reasons for changing the legal status of the company:

- - to save Smat from any take-over from multi-utilities¹², by removing the company from the free market competition rules (which apply under a private law regime);
- - to better rule the distribution of profits between the associates of Smat.

On this second issue, it is worth to stress that it is unclear whether a company that makes profits and shares such profits among associates can be consistent with an in-house trust or not (a problem that would be completely solved with the changing of the legal status of the company, under a public law regime). Smat, at the close of the last financial year, registered a net profit of about 62 million euros, 80% of which was destined to remain in the company by a shareholders' agreement (signed in 2014) among the Municipal Members, while the remaining 20% was distributed among the Associates, whereas before the citizens' initiative (thus before 2012), 100% of the profit were redistributed among the associates of Smat and not benefiting Smat.

However, the Italian legislation does not clearly establish the possibility for this legal change, although the transformation is not forbidden either. In 2014, the Italian Court (Corte dei Conti) recognised the legitimacy of this transformation.

It is important to stress that the in-house is an important admitted exception to the principle of competition, which is one of the key principles of the Treaty on the Functioning of the European Union (TFEU). For this reason, strengthening the core principles of an in-house trust allows eliminating from the market the management of essential services and thus avoids private speculation that would see the management of the service as a source of profit rather than the protection of a common heritage.

In particular, the EU Directive 2014/24/EU on Procurement brings together the case law of the Court of Justice by trying to clearly and unequivocally codify the rules of internal affiliation, as the Member States often apply judgments of the Court differently.

As defined in Article 12 of the directive, the criteria for defining an in-house trust are three essentially:

- 1) Analogous control of the administration upon the legal entity;
- 2) Over 80% of the activity must be carried out in the tasks entrusted by the parent company;
- 3) In the legal person there is no private equity (with the exception of forms of capital that do not exercise control).

¹² Multi-utilities are big companies supplying several services (such as water, waste management, electricity, etc.). Very often, this type of big companies are joint stock companies. The risk for municipal public services to be run by this type of company is the exclusion of local authorities from the decision-making process due to the fact that, in these cases, the municipality is "reduced" to the status of associate, with little to say in the management of the company.

In essence, it is true that the rules for the in-house are very stringent, but they allow defining a path for the direct management of services by the administrations.

Finally, the biggest difficulties are encountered for policies that force fierce cuts to local governments and budget constraints, pushing administrations to use companies that run local public services as tools to collect dividends. However, it is possible to rely on a broad case-law on in-house issues to strengthen the direct control of local government on essential services. As the Turin case demonstrated, after six years of struggle, the municipality managed to transform the private water company by putting it back under public law and the local referendum confirmed this will, by voting against the water privatisation.

Key-elements considered in the presentation

- EU regulation does not force to privatise but **requires a level-paying field for all actors, in the competition context.**
- To recognize **access to water as a human right.**
- **In-house is an important exception to the principle of competition.** For this reason, strengthening the core principles of an in-house trust allows to eliminate from the market the management of essential services and thus avoid private speculation.
- Article 12 of the EU Directive 2014/24/EU on Procurement **establishes criteria for defining an in-house trust.**
- **In-house** is very stringent, but allows defining a path for the **direct management of services by the public administrations.**

The main following points emerged from the discussion:

- The key role of **secrecy** of contracts under privatised systems, which could be a potential source of corruption and the importance of knowledge of the day-by-day operations conducted especially if managed by private actors.
- The EU regulation had no role in pushing for the **disclosure of contracts.**
- **In-house mechanisms** could be a valuable instrument to oppose competition rules; however, one of the issues is how to keep in-house mechanisms in a non-profit logic.
- In terms of **democracy and transparency**, it is easier to guarantee these two principles if services are dealt by local companies instead of big corporations.
- Since there is **no legislation on compulsory privatisation in the water sector**, nor liberalisation directive such as there is in the energy sector, it is easier to manage the water sector at the local public level.

- The issue of securing the **supply of water in scarcely inhabited rural areas** is a real issue (e.g. in the city of Nice, the public authority decided to remunicipalise the water sector because the private provider could not supply the mountain area); a possible solution could be to overcome the countryside/city provision differences by using profit revenues to reinvest in the countryside.
 - There is a **trend in outsourcing, which is, together with the lack of public investments, one of the biggest challenges faced by the water sector.**
 - **Contracts revised at each political election:** the duration of validity of contracts between the private and the public could have a role to play: contracts could last less years and be revised at every political elections, in order to guarantee a better control on the services supplied by the private.
 - **Referenda** could be organised before each privatisation in the sector, but this political instrument can be very tricky.
 - The new proposal coming from the Commission on the **Drinking Water Directive** aims at introducing a benchmarking: the risk could come from criteria chosen to assess the quality of water, which risk to be based only on financial criteria.
 - Whatever is the **legal form of ownership**, the discussion on the model cannot be separated from the issue of the **form of financing, especially for long-term investments** (since a given legal form could have more difficulties in accessing long-term financing than another, meaning that legislation would encourage a model over another by the accessibility to finance).
 - There is a trend, especially in Spain, France and UK in developing collaboration and corporation between public entities (**networking between public entities**, in different sectors, sharing resources, know-how and empowering each other) without encountering, until present, any obstacles at the EU level in terms of regulation.
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Panel 3: Discussion on cross-cutting issues (including austerity, public investment, etc.)

Romana Brait (Arbeiterkammer - AK Wien) introduced the issue of European economic governance, from the Austrian trade union perspective.

After briefly presenting EU indicators for a “healthy” economy (Government deficit: max. - 3% of GDP; Government debt: max. 60% of GDP; Medium term objective (MTO)/debt break: max. -1% of GDP, which in practice is -0,5%), she addressed some criticisms and illustrated some consequences of this type of governance.

First of all, the method to focus exclusively on country-wise budgetary discipline leads to a marginalisation of other targets, such as the target of price stability and the target of external equilibrium.

Second, fiscal rules underestimate the economic impact of unemployment, which from a budgetary perspective has two main disadvantages: 1) public expenditure rise to pay more unemployment benefits; 2) there is less income because less people can pay tax). In third place, fiscal regulation at the EU level is very complex and leads to restrictive, pro-cyclical and increasingly unpredictable financial policy (since too many targets need to be fulfilled). An example of these unpredictable results can be illustrated through the post-crisis period, when the euro area recovered slower than other non-euro countries, such as UK or the United States.

In addition, the fiscal framework puts pressure on investments because running expenses are more difficult to cut. The consequence is a rising investment gap, which might result in higher (repair/replacement) costs in the future.

The impact of this EU economic governance on the sub-national level varies from a Member State to another. Many Member States, in fact, do not have a sub-national division of the deficit limit, while five countries regulate the sub-national deficit: Austria, Spain, Italy, Luxembourg and the Netherlands.

The Fiscal Compact in Austria is taken to illustrate an example of sub-national division of the structural deficit. This last one is divided as follow:

- overall Government: -0,45 of GDP (which is lower also than EU standards)
- Central Government: -0,35% of GDP
- Regions and municipalities: -0,1% of GDP.

The consequences have been a general drop in public investment, a drop which has been more severe for Southern EU countries, such as Spain and Italy, but it is also occurring for Austria and it is true for the euro-zone as a whole.

To face the situation, the idea of the Golden investment rule should be promoted, i.e. that middle term running expenses should be financed through current income, but borrowing should be the rule for (meaningful) net investments. The rule, which was conceived by Musgrave, in 1939-1959, was considered for a long-term financial policy standard and it is still in discussion, also at the EU level, but it has never been implemented.

A practical proposal, promoted by the Austrian AK Trade Union, is based on the following formula:

Maastricht balance or structural balance (in accordance with EU fiscal policy)

+ Net investment in accordance with national accounts (excluding military investments)
 + Investment grants according to national accounts¹³

= Result: balance figures for fiscal regulations

However, one of the issues of this Golden rule is how to define investments: if taking into account also the national account system, what about military investments (which will be included in the national account system); whereas hiring new teaching (which would correspond to an investment in education) is not computed as investment in national accounts.

About the advantages of implanting the Golden rule: the model includes general economic policy objectives such as employment, living standards, etc. with the current low investment rates, the side-cost to investment is quasi zero.

Considering the current levels of unemployment in the euro-zone, the implementation of the Golden rule with its investment policy would result in activating fiscal multipliers.

Investments would also increase the public capital stock which is the basis for future prosperity.

Key-elements considered in the presentation

- **Focusing exclusively on country-wise budgetary discipline** leads to a **marginalisation of other targets**, such as price stability and external equilibrium.
- Fiscal rules neglect the **economic impact of unemployment**.
- Fiscal framework puts *de facto* **pressure on investments** because running expenses are more difficult to cut.
- The **Golden rule** from the Austrian perspective: in accordance with EU fiscal policy, but with investments in accordance with national accounts.

The second presentation of this third panel, given by Simone Mangili (Member of the Office of the Deputy Mayor for Environment and Sustainability of the Turin Municipality) focused on “Implementing EU environmental policy: a city’s perspective in a time of austerity”.

The aim of the presentation was to show the difficulties of policy-making for a municipality, in the context of austerity.

The presentation first gave a snapshot of the background and present situation of the city of Turin. The city, which in the past was a very important industrial centre, had to go through a process of reconversion de-industrialisation, which left the city with major issues in terms of the urban fabric inherited and led to an onerous reconversion process, requiring major

¹³ where the sum of two investments represents 2% of the GDP.

investments in several sectors such as infrastructure, transportation, creation of new public spaces, etc. The result of the reconversion process was a high level of indebtedness.

Up to 2013, the city of Turin had a public debt which amounted to 3 billion euros (most of the transformation projects were funded through public debt), a debt burden that today, combined with austerity measures, hampers the city's ability to manoeuvre through the financial crisis.

One of the consequences of the imposition of austerity measures has been the reduction of 75% of transfers from the national to the local level. The new administration of the city is trying to tackle some of the major issues of the city, notably: air quality and waste management.

The city of Turin is trying, in particular, to meet EU air quality standards and used those standards to drive local policy. In case limits are exceeded, Member States are required to adopt and implement air quality plans that set out appropriate measures. April 2017, Italy received a final warning for exceeding maximum values since they came into force, on 1 January 2005. Italy was already found in breach in 2006 and 2007 and since 2008, limits have been regularly exceeded. And a condemnation by The European Court of Justice could lead to fines, which experts believe could reach one billion euro.

The city is also trying to adopt antismog measures to reduce air pollution, but these require, on the other side, to increase and improve the public transportation system. Other measures that the City would like to implement include structural measures, such as: expanded limited access zones with monitoring systems, electric buses, new high-speed mass transit infrastructure, additional safe bike lanes and pedestrian areas, etc. The problem is that there is no public money available to invest in any of these areas.

The same financial difficulties exist in the waste management policy, for which the city aims at a circular economy and a zero waste policy. The waste management company was fully public at first, then a process of privatisation started, until the transformation of the company AMIAT into a joint-stock company. In 2010, however, the City acquired 100% of the shares of AMIAT and in 2011 transferred 100% of its shares in AMIAT into a municipally owned holding company. 2012: the City's holding company offers for sale 49% of the shares in AMIAT, which were acquired by IREN Spa (the regional gas and electricity provider). 2014: the City offers another 31% of the shares in AMIAT which were promptly purchased by IREN Spa, bringing its share in ownership to 80%.

In the meantime, the City is seeking to reach the objectives of the EU Directive 2008/98/EC on waste, which includes further recycling and recovery targets to be achieved by 2020: 50% preparing for re-use and recycling of certain waste materials from households and other origins similar to households. The Directive requires that Member States adopt waste management and prevention plans. Member States have to re-evaluate their waste management plans at least every six years. The Commission is urging Italy to adopt and update plans to manage waste, in line with EU waste legislation and the circular economy. Several Italian regions, including Piedmont, failed to revise their waste management plans adopted in 2008 or earlier. For this reason, the Commission sent a reasoned opinion, warning that if the Italian authorities fail to act within two months, the case may be referred to the Court of Justice of the EU.

In 2016, the Piedmont Region did revise its waste management plan, which sets an ambitious goal of reaching 65% of recycled matter by 2020 in every municipality in the Region.

However, reaching these ambitious targets in the ongoing context of austerity, and within the framework of a privatised municipal multi-utility, will be very difficult.

Reaching the 65% recycled matter target requires an increase of over 20 percentage points from the current 43%. Each percentage point increase comes at a cost of roughly 1mln euro, for a total of 20 mln euro annual cost. At present, the City is in a service contract

overwhelmingly in favour of the private shareholders of AMIAT Spa, allowing them to profits from: the sale of materials, a larger service contract, reduced cost for the handling of non-recoverable waste, freed up capacity in the incinerator and an unaltered base fee for incineration regardless of quantity conferred.

While the City should have the ability to renegotiate the terms of the service contract periodically, indebtedness to AMIAT from budget cuts due to austerity makes it practically impossible to negotiate from a position of power. The result is that while the public entities shoulder legal/fiscal responsibility for achieving EU targets, and the costs of non-compliance, in the meanwhile the private shareholders reap all of the financial advantages of compliance.

Key-elements considered in the presentation

- **The issue of responsibility between the public and the private actors:** the public entities shoulder legal/fiscal responsibility for achieving EU targets, and the costs of non-compliance, while the private shareholders reap all of the financial advantages of compliance.
- **The issue of responsibility between the local and national level:** despite the fact that the issue of air quality is not a local problem, but a regional one, in the context of austerity, the city got very little help in trying to deal with this problem.

A Spanish perspective, on difficulties imposed by austerity measures, has been illustrated by Yago Alvarez, who is coordinator of the Municipal Network Against Illegitimate Debt and Cuts, a movement which seeks to connect local governments to organise common action and inform citizens about legislative changes going on in the country.

One of the main political objectives of the movement, in the short term, is to change two laws which amended the Spanish Constitution, creating a great impact on the socio-economic situation of the country. These laws, called the Montoro's Laws, from the name of the Ministry who proposed them, modified article 135 of the Spanish Constitution. Some of the effects concerned the closing of several mixed companies, the imposition of the zero replacement rate (meaning that a retiring public employee cannot be replaced¹⁴) and the prohibition to create new public companies.

One way to circumvent the law and, in general budget constraints imposed at the EU level, could be to use short term debt to finance long term. Another objective of the Movement is the creation of a public bank, but also to explain to citizens the reasons of disobedience related to the reimbursement, since nowadays with low interest rates, it costs less to borrow than to repay the debt. Surpluses should thus be used for investments and not to pay back debt.

Key-elements considered in the presentation

- Modification of **Article 135 of the Spanish Constitution** has had a negative socio-economic impact: closing of several mixed companies, the imposition of the zero replacement rate and the prohibition to create new public companies.

¹⁴ With the exception of the police and other public order forces.

- One way to circumvent the law and, in general budget constraints imposed at the EU level, could be to use **short term debt to finance long terms investment** and favour investment instead of debt reimbursement.

The main following points emerged from the discussion:

- The European fiscal rules are a problem as such but the application of the Golden rule, as presented above, could help to live with these rules and, at the same time, to **foster other targets**, not limited to fiscal ones.
 - In Spain, some movements are trying to create a **municipal public investment fund** where to gather surplus to be borrowed for necessary mid-term investments. The main difficulty comes from the financial centralisation process applied by the Spanish Government, which is reluctant to the opening of new and decentralised financial institutions.
 - **Revolving funds** are quite popular in the USA: to finance multi-services by a fund set up by the Federal Government lending money to local governments.
 - The problem of the cities of Madrid and Torino is the **existing debt** at the national level, inducing very stringent rules on numerous sectors and public action.
 - There is a need to cut debts but, before that, it should be clarified **who owns the debt**? It should be pointed out that, in Spain, 40 billion of euros were lost through the bailout of banks. Linked to this issue as regarding the origins of austerity measures, there is the issue of how to democratise money. In this sense, also the EU possibilities/limits are not identified yet.
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Panel 4: International trade agreements

The fourth and last panel was introduced by Lora Verheecke (CEO) who gave a short presentation on how current trade agenda reduces policy space for progressive municipal policies.

Another way for the EU to impact the local level is through international trade agreements, although the impact is not really at the purely economic level, but at the structural level, through a series of technical regulatory mechanisms that regulate relations between the economic and political actors involved. One of these mechanisms is the Investment Dispute Settlement (IDS), which is an investor-to-state dispute settlement (ISDS) mechanism, permitting investors to bring claims alleging that one of the investment protection obligations has been breached. These provisions create a specific procedure for an investor to bring a case before an international tribunal. One of the main criticisms to this type of dispute settlement mechanism is the fact that it gives more power to the investor (which very often is a big multinational corporation) than to the State. From a local government perspective, the situation is even worse because the local municipality cannot sue the investor but the local municipality can be sued by the investor at the national level. A practical example happened in the city of Hamburg, where the local Council asked Vattenfall, a Swedish company, to clean the water going out of the coaling power station. As response, the company sued Germany and asked for 1.4 billion euros to the city to clean the water. It has been estimated that a State, to defend itself in this type of dispute mechanism, would have to pay about 5 million dollars only in legal fees. Since the city dropped the case, without bearing the costs to clean the water, the European Commission sues Germany because it violates some EU environmental directives.

These trade agreements also imply services negative lists, meaning that everything is liberalised except what is on the list. This system would make it more difficult, especially for local municipalities, to (re)municipalise a service if it is not on the list, with the additional risk to be sued.

Key-elements considered in the presentation

- Investment Dispute Settlement (IDS) which is an **investor-to-state dispute settlement (ISDS) mechanism**: the local municipality cannot sue the investor but the local municipality can be sued by the investor at the national level.
- Trade agreements imply **services negative lists**, meaning that everything is liberalised except what is on the list. This system would make it more difficult, especially for local municipalities, to (re)municipalise the service.

The main following point emerged from the discussion:

- **The level of awareness on the implications** of EU international trade agreements seems to be quite high among citizens, considering the level of activism shown, especially against the agreements. Still, huge differences persist among Member States, in terms of awareness and political activism. However, there seems to be too little concern at the political local level, where municipalities seem resigned to the decision of the central government (at the national level).

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