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## Chapter 2

### France: Public-Private Partnerships in Water-Sanitation and Public Transport

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*Pierre Bauby & Cathy Zadra-Veil*

#### **Introduction ;**

In this chapter, we consider PPP as all forms of 'cooperation between public authorities and the world of business which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service' (European Commission, 2004)<sup>1</sup>.

In fact PPPs are very old in France (Bauby, 1996). Already under the Ancien Régime, some public services had been the subject of a first form of concessions, conferred by the royal power to many actors: officers, real agents, farmers, etc. A second form of PPP consisted in a direct delegation between the King and a man or a company to achieve the infrastructure and services (channels, bridges). A third was the fiscal and domainial delegation, consisting in selling or renting the recipe of the direct and indirect taxes and the income of the royal domain.

A long experience of private participation exists especially in the water and public local transportation sectors, and there is a growing acceptance that public-private partnership arrangements can be used as an additional and complementary instrument to meet infrastructure and service needs in a wide range of sectors, from environmental services to health care provision or education. In this chapter we will focus on the water and public local transportation.

France's political and administrative organisation is particularly complex. The country has 36,000 communes, 95 counties (*départements*), and 22 regions, as well as numerous structures designed to facilitate co-operation between its various administrative entities. France's communes vary considerably in size. Over 10,000 of them have less than 200 inhabitants, and over 30,000 communes have less than 2,000 (accounting for 25.3 percent of the country's total population). At the other end of the scale, 102 communes have between 50,000 and 200,000 inhabitants (14.4 percent of France's population) and 10 have over 200,000 people (8.9 percent). This diversity has important consequences in terms of the organisation and regulation of the water distribution and water treatment system.

#### **Delegation-concession contracts in France: various forms**

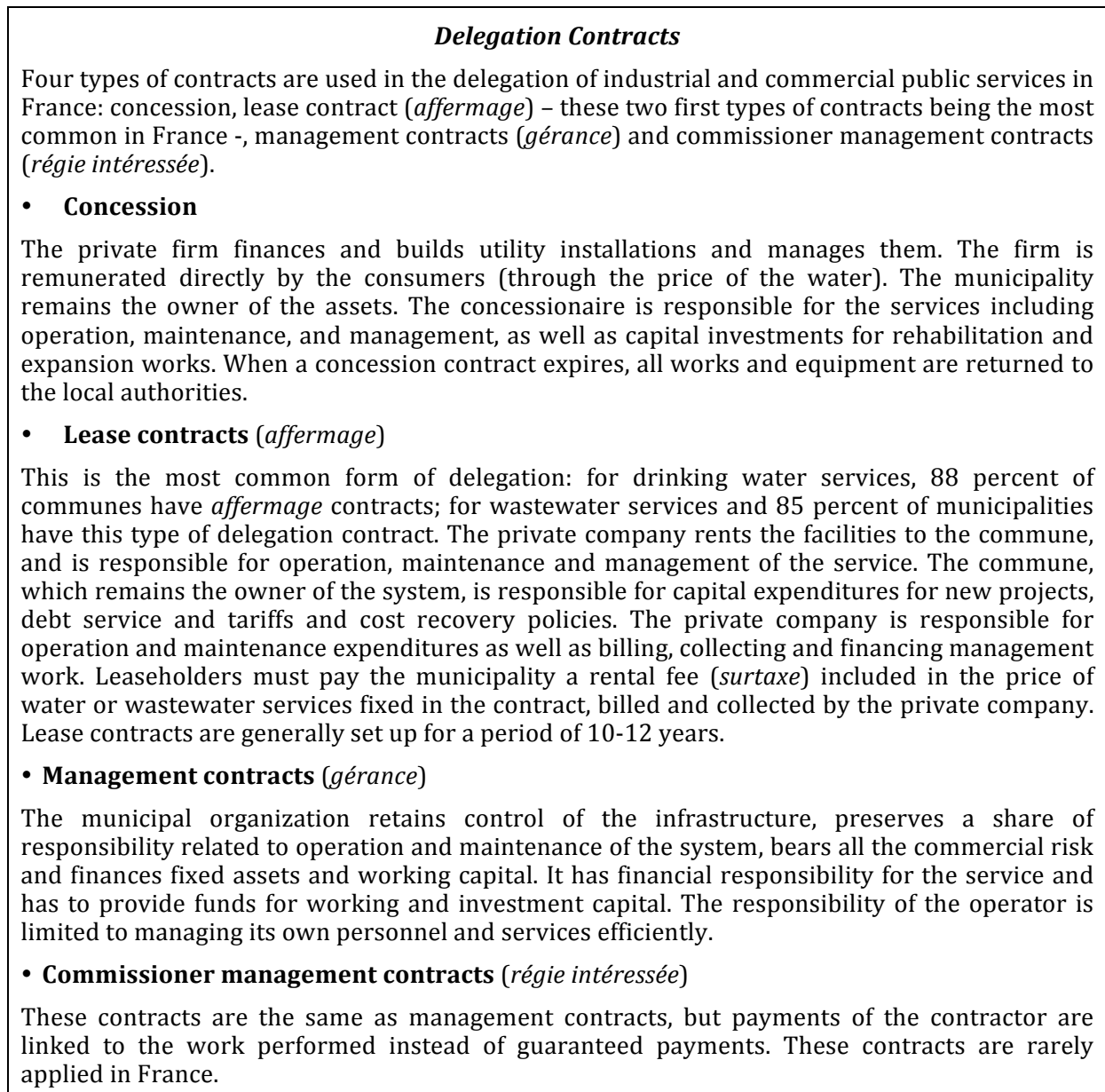
Delegated management can take two forms, both of which have the character of public law contracts. However, they are not financed in the same manner. The first form is a concession, or lease contract. Here, the contract winner is effectively paid for by the end user. The concessionaire is responsible for building, maintaining and managing a water distribution system, while the lessee is responsible for maintaining and running an already existing system.

The second form taken by delegated management is that of government contract, whereby the contract holder is paid directly by the local authority which has accorded the right to exploit the water distribution network. The company responsible for running the service is granted territorial monopoly (covering a given geographical area) and chronological monopoly (lasting for a predetermined period of time).

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<sup>1</sup> For further developments, Pierre Bauby, *L'eupéanisation des services publics*, Paris, Presses de SciencesPo, 2011.

**Figure 1: Delegation contracts**



Source: adapted from: Elnaboulsi (2001)

### **The water supply and sanitation sector**

The responsibility of France's communes for water and sanitation dates back to the Revolution. The original legislation, introduced in 1790, was bolstered by a number of laws and regulations passed throughout the 19th and 20th centuries, a process culminating in the decentralisation laws of 1982, which confirmed the legitimacy of the practice.

#### ***The origins of water management in the 19th century***

Breuil and Pezon have pointed out that 'in the late 19th century, French local authorities called upon the services of private companies to develop individual water conveyance systems which, at the time, were not considered to be part of the public sector remit (which was limited to providing free access to public water fountains). Water supply is a risky business and it was precisely for that reason that it was left to the initiative of private operators' (Breuil & Pezon, 2005).

It should be noted that, in France, the management of water supply and of water treatment are independent and that companies providing water are not necessarily involved in water treatment activities.

French local government bodies have long been precluded from 'economic' activities. In terms of water supply, they were responsible for public fountains and, to a degree, for monitoring water companies, but they did not have the right to levy charges on the end users. Thus, many of the earliest French water distribution networks were built by private concerns.

### ***The responsibility of the communes and public or private management***

The management of water supply and the services of wastewater treatment fall under the competence of some 36,000 municipalities. They can, if they wish, team themselves up within inter-municipal cooperation structures: inter-municipal syndicate, municipal or town communities; thus the number of water supply services is about 13,500, and a little more for those of wastewater treatment.

Local authorities may choose between two management approaches: either direct management, i.e. through a public operator, or *régie* (a system which presently covers the water supply needs of about three quarters of the population, and the wastewater treatment needs of about half of the population); or delegation contracts, which run for 7 to 20 years, and which are awarded on the basis of tender procedures open to competition (almost three quarters of the water market and more than half of the waste water market are controlled by 3 major companies).

### ***The origins of the major operators: Générale des Eaux and Lyonnaise des Eaux<sup>2</sup>***

The Compagnie générale des Eaux and the Lyonnaise des Eaux have their origins in the supply of drinking water and wastewater treatment services in the 19<sup>th</sup> century (the Compagnie Générale des Eaux in 1853, and the la Société Lyonnaise des Eaux et de l'Eclairage in 1880). Bouygues<sup>3</sup> was created in the early 1950s and grew with the wave of urbanisation that took place in the 1960s and 1970s.

Private operators first took an interest in water distribution in 1853 (Pezon, 2000). While most operators were content to do business on a local level only, managing the water needs of a single commune, others, including the Compagnie Générale des Eaux, founded in 1853, and the Lyonnaise des Eaux, set up in 1880, had national ambitions which they furthered by building up a portfolio of contracts and adding an ever increasing number of communes to their client roster.

The Société des Eaux et de l'Eclairage (SLEE) was founded in 1880. The company's aim was to 'obtain, purchase, lease and run, in France and abroad, all concessions and companies linked to water and lighting; more precisely, the distribution of drinking water, water treatment, irrigation, the building of dams and pondages, and public lighting and heating. The company also intends to purchase patents and but shares in already existing firms' (De Meritens & Fabry, 2001). In 1939, the turnover generated by the Lyonnaise des Eaux in the energy sector was five times bigger than that generated in the water sector. By comparison, in 1914, the two figures had been practically identical.

### ***From the first half of the 19th century to the 1950s***

By the end of the 19th century, the Lyonnaise des Eaux had a number of concessions in small French cities and was also active in Spain. Indeed, in 1903, a third of the company's turnover was generated in France's southerly neighbour, principally in Barcelona and Valencia. The firm continued to expand, supplying water to Dunkerque in the Lille region (the Société des eaux du Nord was set up in 1912 as a partner company of the Générale des Eaux), obtaining its first concessions in the suburbs of Bordeaux, and building its first water conveyance systems. In

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<sup>2</sup> Throughout this chapter the original names of the companies will be used: Lyonnaise des eaux – which now goes by the names of Suez, Ondeo and Suez Environnement in the water sector, whose projected merger with Gaz de France was announced by the French Prime Minister on 25 February, 2006; and Générale des eaux – which became Vivendi, then Veolia.

<sup>3</sup> Bouygues purchased SAUR in 1984; it was sold to PAI Partners in 2005.

1939, the turnover generated by the Lyonnaise des Eaux in the energy sector was five times bigger than that generated in the water sector. By comparison, in 1914, the two figures had been practically identical.

At the turn of the 20th century, the French Conseil d'Etat, the highest court in the land, gave the communes the right to undertake certain economic activities on condition that no private firms were willing to put themselves forward. More and more water conveyance systems were being built and, at the same time, local authorities, fuelled by a legalised sense of civic responsibility, decided to enter the fray. Gradually, in the first half of the 20th century, a relative equilibrium between public and private sector influence developed in the water supply sector. Pezon (2000) has demonstrated that 'the decline of concessions as the dominant form of organisation in the early 20th century and its gradual replacement by the lease contract system'.

At the same time, a number of factors played a decisive role in changing the approaches adopted by the major companies: post-Second World War reconstruction; the growth of cities and the rise of consumer society; the nationalisation of the gas and electricity industries (1946); and decolonisation (1960). Water increasingly became a value-added industry: demand soared, and rising pollution led to specific legislation making it obligatory to treat used water. Hence the Lyonnaise des Eaux's interest in the water treatment company Degrémont, which it acquired in 1972.

Having become used to dealing with the contingencies of local, national and political life and after the nationalisation of the gas and electricity industries, the Lyonnaise des Eaux entirely restructured its activities. In both France and the French colonies the company became increasingly active in the energy and water sectors.

### ***The development of delegation-concession contracts from 1960-1980: A combination of factors***

In France, unlike in most other European countries in which water falls under the remit of the public sector, local authorities, particularly in the period straddling the 1960s and 1980s, government increasingly delegated water and sanitation services to private companies. There are a number of considerations which explain this phenomenon.

The main consideration was that the production and distribution of water necessarily involves treatment procedures which were becoming increasingly demanding in terms of public health requirements and quality standards; wastewater treatment has evolved and treatment plants are now a *sine qua non*. Some municipalities, particularly small and medium-sized ones, have struggled to acquire the requisite levels of technical and administrative proficiency.

Delegation management provided the possibility for an integration of the conception, building and maintenance of infrastructure or services. Delegated management makes it possible, in cases of constrained budgets, to call on private investments, without being obliged to go as far as 'total privatisation' since the infrastructure remains the property of the municipality (as opposed to the reform introduced in the United Kingdom, where there has been complete privatisation of regional firms). It also enables the introduction of the logic of enterprise to replace administrative management and thus encourage efficiency in management. Furthermore, the increase in water supply and wastewater treatment procedures generally leads to the increase in the cost of service, in addition to the increase in productivity and the tendency to increased costs for consumers. Delegation contracts save elected leaders from taking responsibility for the rise in the price of water and, more generally, in the cost of the management of the service. Delegated management is supposed to bring together the advantages of a monopoly (the delegatee enjoying the monopoly for the duration of the contract) and those of competition (since competition rules must be observed at every renewal of the contract).

The process of decentralisation applied to France's politico-administrative system which began in the 1980s is a process which meant devolving greater powers to local government, and was a contributory factor in the growth of delegated management. In 1980, delegated management accounted for 47 percent of the French water market. Nine years later, the figure had risen to 73 percent. Thus, the number of delegated contracts involving the Lyonnaise de Eaux rose from

1,300 in 1979 to 2,500 in 1988. In 1989, the Lyonnaise des Eaux supplied water to 10 million people in France and controlled 40 percent of the water sanitation market.

This combination of factors demonstrates that delegated management was an effective approach in terms of not only innovation and technical excellence, but also management flexibility and economies of scale. However, it should also be borne in mind that one of the reasons for the success of this approach was that, until the 1990s, delegated management was used in France for a number of years as a significant means of financing political activities and election campaigns in the absence of public funding. This encouraged, in some cases, the development of corrupt practices, and led to the introduction of the Sapin Law passed on 29/01/1993, aiming at prevention of corruption and encouragement of transparency in economic activities and public procedures. The Grassroots Democracy Act of 28 February 2002 (*Démocratie de proximité*) introduced the principle of users' participation through consultative commissions of local public services, which should be consulted about any project of delegation; however, its implementation is very unevenly.

### ***The gradual development of large integrated multi-service companies***

The increase in technology, the diversification of needs as well as the growing autonomy of local elected leaders further strengthened by the decentralisation process of the 1980s, have resulted in an evolution of integration and in the formation of three major groups (*Générale des Eaux-Véolia, Lyonnaise des Eaux-Suez, Bouygues-SAUR*). Today, these groups cover the whole of the network from the urbanisation section to buildings and civil works.

Thus, after being nationalised in 1946, the Lyonnaise des Eaux was able to acquire interests in a number of unrelated sectors: water and sanitation; waste collection and processing; heating; gas and electricity distribution; fire safety; surveillance; and funeral services. It was also involved in the production of equipment and accessories required in those sectors. In the 1970s, the number of water treatment lease contracts grew substantially. During the same period, companies offering a number of different services were constituted.

One of the characteristics of the major companies is that they are highly proficient technically and managerially. Through their various divisions, these companies are involved in every stage of the process of production and distribution of water and water treatment; from research to sales to the running of plants to the building of infrastructure to activities linked to water usage (the treatment of water used in industrial processes, waste water, etc.). These characteristics were reinforced by the major operators' close relationship with the public sector and the political clout that they were able to develop during the substantial period of time that this arrangement lasted. The history of the two companies was marked at the end of the twentieth century by two captains of industry: Jérôme Monod at the Lyonnaise des Eaux, who was General Secretary of the RPR political party and, more recently, advisor to President Jacques Chirac and Guy Dejouany at the Compagnie Générale des Eaux. Indeed, they were able to develop international expansion strategies and have since become world leaders in the sector. Thus, the French water market has been characterised by an oligopoly since the 1960s as indicated in Table 2.

**Table 2: The main private operators in France**

<b>Figures concerning the 3 main private operators in France (2000-2001)<sup>4</sup></b>						
	<b>Générale des Eaux</b>		<b>Lyonnaise des Eaux</b>		<b>Saur</b>	
		<i>% of pop<sup>o</sup></i>		<i>% of pop<sup>o</sup></i>		<i>% of pop<sup>o</sup></i>
<b>Number of contracts</b>	8,000		2,900		7,000	
<b>Consumers served (millions)</b>	45 (1)		23 (1)		6	10 %
<b>Drinking water</b>	26	43 %	14	23 %		
<b>Wastewater treatment</b>	19	31 %	9	15 %		

**Note:** A proportion of consumers are double counted as they are served by the same operator for drinking water and wastewater treatment.

Source: OIE (2002)

### ***Territorial hegemony***

Over time the three major groups have extended their domain of activities almost without limit. They offer to local authorities all the provisions necessary for the existing services; from financial know-how and surveys to the installation and management of infrastructure. They can also, when required, meet new demands (hospitalised old people's homes, cable television, mobile telephony, etc.). They are found in all notable calls for tender organised by the local authorities as well as those organised by the State.

These three groups committed themselves to a process of vertical and horizontal integration. This diversification proved beneficial in that it exploited existing synergies between various activities. These synergies covering both production and commercial activities enabled the firms to increase their influence in the wider world.

The three firms have become true multinationals, with interests in Europe and throughout the world. They are active in all liberalised sectors of the world economy (telecommunication, energy, transport) as well as in the media and television (TF1, Havas, Canal +, M6, cable TV, program-making, newspapers and magazines, etc.). There is a growing suspicion that the excessive profits generated by the water distribution and treatment monopoly have been invested in other sectors of the economy. Some commentators have expressed concerns that, by expanding their sphere of influence not only to these national and international means of communication (the 'tubes'), but also to what travels through them (their 'content'), these companies intend to exert a massive influence on the society of the future. What is certain is that we are witness to the creation of a trans-sectorial oligopoly.

### **Regulation issues and reform initiatives**

Regulation may be defined as a mode of permanent, evolutive adjustment of a plurality of actions and their effects, providing a guarantee of the dynamic equilibrium of unstable systems (Bauby 1997). If there is regulation, it is because standards and rules cannot provide for all eventualities, must be interpreted, and are continually called into question and constantly adapted to different situations and objectives.

Any regulation implies a series of arbitrations between different interests - taking account of the diversity of players, the time scales entering into consideration (interests of future generations),

<sup>4</sup> These precised data saw relatively little changes during the last 10 years. See Fédération professionnelle des entreprises de l'eau, Report2010.

national specificities, the internalisation of this or that externality, etc. Such arbitrations broker interests and forces that are not only different, but more often than not opposed.

Considering the above, the regulation of the water supply-sanitation system in France is confronted with a number of profound distortions: (1) The structure of the industry, marked by the existence of an oligopoly made up of international companies providing a number of different services, indicates a situation which not only reduces scope for competition, but makes monitoring the sector more difficult. The problem of defining which activities are linked to the water and sanitation industry and which are not is, from a financial point of view, particularly arduous. (2) There are limited regulatory powers, due to the vast number of organising authorities (36,000 communes, 15,000 services). (3) The contracts are traditionally succinct, as objectives are only sketchily explained, incentive mechanisms are rare and monitoring tools even rarer. (4) There is a flagrant lack of transparency, both in terms of the selection of providers (informally negotiated contracts, use of the principle of *intuitu personae* in deciding the winners of calls for tender), and in terms of how contracts are implemented (incomplete information provided by the delegated firm, which is faced with few obligations in this area). Recently, the filing of succinct or incomplete accounts, making it impossible to correctly evaluate profit margins (Paris Regional Financial Court, 2000), has been criticised. A variable accounting system was the subject of a report published by a French Administrative Court (Cour des Comptes, 2003). Artificially inflated costs, double accounts and false invoicing were the subject of a court case in northern France (Nord-Pas de Calais Regional Financial Court, 1999). Investments inferior to provisions yet included in the price were investigated in Provence (Provence Regional Financial Court, 1999). A case in which indexing mechanisms ensured that prices rose faster than costs also came to light (Provence Regional Financial Court, 1999). (5) The highly informal regulatory system is based on trust rather than contractual considerations. This is a system which is both flexible and adaptable in that it allows for a near infinite range of adjustments, but at the same time is lacking in transparency and it is open to compromise. Dispute resolution is also carried out in an informal manner, with the parties involved rarely having recourse to arbitration procedures and industrial tribunals. When a contract is terminated by the local authority that accorded it, the notion of expropriation does not come into play (as it would in Argentina). In fact, an informal agreement is negotiated, as happened in the case of Grenoble (Report of the Cour des Comptes, 2003) in which Suez accepted compensation which was substantially inferior to that stipulated in the contract in the case of the latter being unilaterally terminated (especially when future profits were taken into account). More recently, the French Court of Audits emphasised the necessity of improving financial transparency and services monitoring and to strengthen the performance control (Cour des Comptes, 2011).

Since the mid-1980s, the French system has been legally attacked on a number of occasions, both by local authorities and by consumer rights groups unhappy with price rises, amongst other things. The development of local consumer associations protesting against the rise of the price of water or working on the stakes of its quality should also be emphasised. These associations have sometimes put up cases against concessionary firms which have in most cases led to the condemnation of the firms in question. It is striking to note how such small associations, having at their disposal only limited means, manage to cause problems for large international groups.

Considering the difficulties in ensuring genuine regulation of the delegation of the service, some municipalities have found it necessary, in recent years, to go back to direct management of water and/or wastewater treatment. Over the course of the last few years a number of local authorities have decided to return to public management, including Grenoble (European Commission, 2004), Neufchâteau (Vosges), Cherbourg (Manche), Castres (Tarn), Châtellerauld (Vienne), Alès (Gard) or Pertuis (Vaucluse). It should be noted that, in 2000, the French Competition Council commented in Order No.00A12 of 31 May 2000, pertaining to a request from the Commission of Finance, the Economy and the National Assembly Plan on water prices in France, that 'a provision should be added to the Local and Regional Authorities Code obliging the deliberative assemblies of such authorities, as well as their public establishments and agencies, to express their view on a the possibility of a return to the *régie* (or public) system of management after the present management contracts have expired'.



Municipalities usually group together (there are around 14 000 *intercommunalités* in France), and some (such as Nantes Métropole and the Agglomération de Rouen) have increased their negotiating power and controlling capacity. Rouen provides an example of increased control over delegated and public water management by an inter-commune organization in the form of the Rouen Agglomération (European Commission, 2004). Nantes is another example that illustrates an efficient organising entity, the *communauté urbaine de Nantes* (intercommunal organisation) (European Commission, 2004). Since the 1<sup>st</sup> of January 2001, the *communauté urbaine de Nantes* is responsible for the drinking water and sanitation. Before, 33 different administrative entities (communes, syndicates) organized the water service, which was more complicated to organize. The water bill was constituted of 214 different elements with 48 different tariffs. The *communauté urbaine de Nantes* (or *Nantes Métropole*) has chosen to accept the mix of management modes (*régies* and delegation), as it thinks competition between management modes can have positive impacts, and to harmonize prices and quality of services with the creation of a Charter (*Charte du service public d'eau potable*) agreed upon with the operators (*régie*, SAUR, Générale des Eaux).

Some small municipalities have weak negotiating power and control, and this asymmetry of available information and competences distorts the power balance to the detriment of the elected leaders and local authorities. One can talk of the non-regulation of the operator, even if the public municipalities have set up expertise tools of their service such as the "Service Public 2000" association. This association was created in 1996 by the AMF (Association des Maires de France – The Association of Mayors of France) and the FNCCR (Fédération Nationale des Collectivités Concédantes et Régies – The National Federation of Conceding Collectives and Régies) in order to assist municipalities in the management of drinking water and wastewater services, given the growing complexity of legislation and techniques. This association provides expertise, assistance and advice to municipalities in their decisions regarding water management.

The lack of transparency, the absence of effective regulation and control, the exaggerated profits which result from this situation, the existence of informally negotiated contracts or, in the case of calls for tender, the practice of basing the choice of operator on the principle of *intuitu personae*, and the difficulties involved in taking disputes through the courts have encouraged corruption. Indeed, until the late 1990s and the introduction of the Sapin Law on selection procedures and the laws on the financing of political parties, a substantial proportion of the funds flowing into the coffers of the parties came, via admittedly circuitous routes, from the water and sanitation industry. Official reports have taken account these criticisms and this has led to wide-ranging legislative and regulatory reforms.

### ***The struggle against corruption***

The preamble to the Sapin Law of 29/01/1993 'on the prevention of corruption and on transparency in economic activities and government procedures' mentions the delegation of public services amongst the five areas in which increased transparency and competition were needed. It notes the absence of a framework governing calls for tender and competition and underlines the 'grave concerns' caused by such phenomena as hidden negotiations, improper use of public monies to the detriment of users, and unfair advantages accorded to operators (Sapin Law, 1993).

The same law, which is not specific to the water sector, renders it obligatory in case of a delegation contract to apply competition rules and calls for tender on the basis of clearly defined specifications indicating objectives sought in volume, cost and service. Tacit renewals are prohibited.

The Sapin Law reduces the duration of contracts and can be used to increase competition between various operators. However, the Cour des Comptes points out that 'the duration of the delegated management contract can be extended – without a new call for tender – in the case in which the contract holder makes substantial investments requested by the local authority but not initially stipulated in the contract, thus modifying its budget. The Regional Finance Courts' enquiry has revealed cases in which such provisions have been extensively employed' (Cour des comptes, 1997).

Another area that remains to be examined is potential competition (or pseudo-competition). However, this sector is not well developed in France.

### ***Greater transparency***

The Barnier Law of 2/02/1995 stipulates that annual reports on the price and quality of service should be written, every year, by the municipality. The Mazeaud Law (voted on 8/02/1995) on public procurement and delegation of public service supplements the Sapin Law by obliging the operator to present, every year, to the delegating authority a report including, in particular, accounts of all operations accruing to the delegation and an analysis of the quality of service. The regional chamber of auditors can check the accounts of the operator. However, as the National Assembly Finance Commission recognised in 2001, we are still a long way from this position:

the least that should be done is to normalise accounting practices so that accounts posted provide an accurate reflection of the transactions undertaken by delegated companies and make possible valid comparisons between the level of service provided in various financial periods. At the same time, delegated companies should be obliged to provide more detailed accounts, especially in terms of certain balance sheet items and explanations of methods used to calculate depreciation, provisions, financial products and indirect costs' (Tarnier, 2001).

The Observatory set up by the Sapin Law under the aegis of ENGREF and designed to encourage transparency and competition has, since 1999, published an annual report of delegated management contracts (ENGREF-GEA, 2007).

### ***The development of incentive mechanisms***

The National Assembly Finance Commission report of 2001 underlines that :

the concept of "risks and perils" of the concessionaire, or, broadly speaking, 'responsibility', which constitute a factor of key importance in the legal definition of delegated contracts, must now cover service quality and performance indicators directly linked to the amount of remuneration received by the concessionaire....Contracts which include clauses of this kind will encourage delegates to provide the highest level of service for the best price and will put an end to the kind of monopolistic profits which presently characterise the market.

However, much remains to be done in this area. The report goes on to state that these 'risks and perils' are, in fact, absent in the French water industry. The role of the new law will be to 'reintroduce the notion of concessionaire risk. As things stand, best-efforts obligations have replaced objectives and 'quantitative' risk has disappeared from delegated contracts in the water sector' (Tarnier, 2001).

The report produced by the Cour des Comptes in 2003 broaches the subject of the risk engendered by the stagnation or even fall in the amount of water consumed, particularly in France's larger cities. This phenomenon:

Threatens operator profits. As a reaction to this situation, some operators are attempting to negotiate clauses, which will, in effect, afford them economic protection. Clauses stipulating automatic price rises in the event of a continued decline in the volume of water sold can have the effect of shielding distributors from the risk of declining profits (Cour des comptes, 2003).

This is unacceptable in that the only risk accepted by companies signing lease contracts is precisely a commercial one. More generally, Pezon highlights that 'the aversion of operators to risk, which encourages the regulator to protect them from certain contingencies' (Pezon, 2000).

### ***The introduction of user participation in the regulatory process***

In this context, the setting up of the Consultative Commissions for local Public Services should be mentioned. These bodies provide advice on the type of management best suited to particular areas, on large investments, and on the annual reports published by concessionaires. However, the level of competence of these commissions varies dramatically from commune to commune.

### ***The project to set up a national regulatory body***

A report by the *Haut Conseil du Secteur Public* (1999) recommended the creation of a regulatory authority for water and urban services responsible for defining technical standards, investment financing, price index rules, etc. In 2000, the French Competition Council (by Order No. 00A12 of 31 May pertaining to a request from the Commission of Finance, the Economy and the National Assembly Plan on water prices in France) suggested that 'the creation of a monitoring body with the right to make public any information held by the various administrations and organisations already operating in the water sector; the body would play an observational role, and dispense information and advice; it would also have the power to refer cases of malpractice to the Competition Council' (French Competition Council, 2000). In June 2001, the government proposed a bill to the National Assembly including the setting-up of such a regulation authority (*Haut Conseil du Service Public de l'Eau et de l'Assainissement*). The negotiations were very difficult, and the prerogatives of this authority were progressively cut down. After the 2002 general elections, the project was shelved. This last episode demonstrates just how difficult it is to change the system. In spite of the reforms, recent official reports continue to emphasise the dysfunctions that characterise the French water supply and sanitation industry.

The "Cour des comptes" public report of 1997 underlined that 'the absence of a framework for overseeing the manner in which delegated public service contracts are accorded has, along with the lack of transparency of this style of management, led to abuses. The Law of 29 January, 1993, and the Laws of 2 and 8 February, 1995 were intended to remedy these problems' (Cour des comptes, 1997).

Commenting on a survey conducted by the French Competition Council in 2000, the National Assembly Finance Commission Report of 2001 concluded by stating that:

it is essential to ensure that delegated management contracts are not slanted in favour of delegates and against end users. This has what the legislator has been attempting to achieve these last ten years without, however, having succeeded in entirely rectifying the structural disequilibrium between the parties involved (French Competition Council, 2000).

### **Major issues and trends**

The French delegation-concession system in the water-sanitation sector, anchored by one hundred and fifty years of history and tradition, has provided improvements in quality and efficiency in a sector whose administrative organisation is not always as well adapted as it might be, especially in view of continual technological advances in water treatment, distribution and sanitation.

The French system is characterised by the existence of profound structural imbalances, notably in terms of structural asymmetry in knowledge and expertise between organising authorities and delegates (Bauby, Coing & De Toledo, 2007). Operators have used the margins for manoeuvre which exist in the system to obtain – in a manner fundamental to their specific logic – extremely healthy returns based on the possible exploitation of monopoly situations. They have developed vertical and horizontal integrations, which have created an oligopolistic competitive framework whose characteristics were examined above.

Since the early 1990s, a series of legislative and managerial reforms have been introduced in response to growing public concerns about water issues in France and throughout the world. These reforms have given organising authorities greater powers in terms of setting objectives, monitoring, and regulation in the areas of reinforcing competition, increasing transparency, developing incentive mechanisms, and bolstering the expertise at their disposal. They have not, however, put an end to the structural asymmetry between local authorities and concessionaires. In some areas, water supply and sanitation services are provided by the public sector. In other cases, local authorities have acquired a critical mass in terms of influence, which enables them to carry out their role more effectively. The most striking examples of this are perhaps those in which local authorities are able to acquire expertise by directly running water supply and sanitation services in part of their administrative areas.

The tariffs of public water services differ widely in France, according to the territories because with no national equalization of tariffs. These differences are primarily due to major disparities in cost of access to resources and treatment; depending on whether it is located, in an area

where the resource is abundant and of good quality or on the contrary in an area where the resource is rare and requires extensive treatment to make it drinkable, the differences in costs are significant. Any comparison of rates and costs are meaningful only in relation to these realities.

Given the different modes of management of public water services, it was attempted to compare the rates to try to prove the superiority of one mode of management on the other. Global statistics show that tariffs are lower in a communal organisation and in the direct management than in the more complex intercommunal organisation or under a delegated management.

**Price of water according to the organisation and management of the services  
in communities with collective wastewater system<sup>(5)</sup>**

	<i>Organisation</i>	
	<i>Communal</i>	<i>Intercommunal</i>
<i>Direct management (régie)</i>	2,19	2,85
<i>Delegated management</i>	2,93	3,44
<i>Mix management*</i>	2,60	3,04
<i>Total</i>	2,59	3,19

\* With a different management and organisation for drinking water and wastewater

But overall this comparison does not make much sense. Moreover it does not take into account the differences of resource's costs, the fact that the decentralized management is correlated with the size (area and population) of the organizing authority and that it tends to generate increasing costs. While tariffs of delegated management include the benefit of the operator and the management in house does that only to balance the accounts, there may also appear differences in the effectiveness of management in coming up the effects. Overall, there is no proved evidence on the superiority of a management mode on the other.

Despite all these issues, the major operators continue to innovate, developing the kind of new techniques mentioned in the official reports quoted above. At this point in time, it is legitimate to ask ourselves what these firms would do if legislation were introduced to ensure that they were no longer able to generate profits over and above the norm. Perhaps they would be tempted to develop new areas of expertise or new, less strictly regulated geographical zones in which to practice their existing, well-trying skills?

**Local public transport**

Public transport faces a paradox: while its vital role in urban mobility is widely recognised, the financial resources allocated to its maintenance and development are scarce. Insuring proper financial schemas is today vital not only for the development of public transport networks but also to the sustainable development of cities and urban areas.

We analyse the organisational architecture through the main actors. The organisation of the French system of urban transport is a result of a long historical period with a central question about the State place in the public utilities. Our purpose will be limited for obtain a synthetic vision of a complicated system. We can say that there is a French model of urban services (Lorrain, 1992). In a second stage, the different forms of operating in the urban transport teach the possibility for the municipality to finance the need. Finally, we examine the regional analysis of the transports.

***The organisational architecture through the main actors***

In France, the transport organising authority (TOA) is a municipality, which have received the mission to organise the transport in accordance with the framework law for the internal transport (LOTI, 1982). The municipality carries out the direct management (*régie*), or delegates it to a private company. The French territorial division is the organising authority of the extra-urban transport in their territory. And the regions are the organising authority of the railway

<sup>(5)</sup> Source: Ifen-Scees, Enquête Eau 2004 – Insee, Recensement 1999 de la population, <http://www.ifen.fr/uploads/media/de117.pdf>

regional transport. In Paris and the Ile de France region, transport organisation works differently because it depends on the decree of 14 November 1949 and on another authority called the STIF. The Regional Council have now the majority in the STIF, while previously the majority was the State.

Apart from the suburban areas around Paris, there are 163 towns which have delimited their area of the urban transport, which are responsible for the organisation of public transport in these areas.

In France, municipalities or communes are generally small. Several towns grouped together make up an agglomeration. Only 22.8 percent of the urban organising authorities are communes working all alone. The other urban organising authorities are mainly made up of several communes. Urban public transport is one of the most important topics of inter-community co-operation. TOA in urban areas was composed of 42.7 percent of agglomeration communities, 13.5 percent of communes communities, 16 percent of "syndicats intercommunaux", 5 percent of urban municipalities in 2011. (GART, 2010)

### ***The Laws for internal transport***

The responsibilities laid down by the law of 1982, namely *la loi d'orientation pour les transports intérieurs* (LOTI). LOTI gives the right to everybody to use urban public transport and to choose among the different means of transport. Furthermore, it strengthens that principle that the urban transport has a mission of public service.

The main resource is the payment of the transport tax by the employer (TTE) (GART, 2010). The TTE is paid by employers within the 'public transport perimeter', according to a scale decided by local authority, up to a maximum fixed by law. The calculation of this tax is the wage bill. This resource is combined with the subventions or grants from the communes and towns. The resources are directly affected by the transport use.

The organising authorities establish the tariffs, with a price-cap fixed by the State. They also define the transportation policies and the investment programs. The management of the public transport network are generally delegated at private enterprises, excepted RATP and Marseille. This represents 90 percent of the organising authorities. Otherwise, the networks are directly exploited by the communities within the management contract. This is generally the case for the small cities.

### ***The operating forms of urban transport***

In most cases, the transport enterprises, either public or private operators, are a small number of major companies. At the national level, there are three major operators: one is public, the other two are private. The market form is specific because it has been defined by one operator according to agglomerations. It assumes direct operation through a management contract or a lease contract. Financial balance is obtained with the TTE in their area of tax for the transport calculated in the wage bill.

Broadly, the management of transport by the local governments or by their group may be direct, by delegation contract or by PPP. In the case of the direct ('in-house') management of public utilities transportation, this happens when the local government manages the public assets on their own, from downstream to upstream. In the case of a delegation of contracts, the local government assumes the service and the associated risks, but can mixed with private contracts (in a combination of the management contract and the public procurement) in the conception, building, assets and/or services. In this case, the local government has good information about the service cost. Nevertheless, the informational advantage implies short-term responsibility in the exchange because the relationship is a short-term one and there is no risk transfer between the public partner and the private one.

Three main contracts may be identified according to industrial and commercial risks: (1) the management contract, where the organising authority assume all risks, even if the enterprise has a share in the profits; (2) the management contract with an all-inclusive price, where the private enterprise assumes the essential industrial risk but the organising public authority assumes the commercial risk; and (3) the management contract with financial compensation,

where both types of risk are assumed by the private enterprise, but the organising authority get a commission over a limited set period of the contract.

In this context, the PPP is a hybrid form with the best risk distribution. The public partner researches specific reliable information for the best provision of a service. Most recently, the new contracts are less management contracts and can be better defined as management contracts with all-inclusive price and profit sharing in traffic resources. The offer and the tariff are fixed by the organising authority. In the smaller towns, the contract with risk sharing is different. The enterprise has the risk related to subvention. It is responsible for expenses and other commercial receipts, and for the balance of the budget. This contract is assumed to be tariff-free and the manager may receive financial compensation if they give a public service (tariff or operation).

### **Local public transport: a regional analysis**

In Paris and the Ile de France region, the State-owned company RATP has a monopoly and operates 75 percent of the transport activities within the city. Of the remaining 25 percent, 17 percent are assumed by the railway regional service, and the rest is supplied by private enterprises (grouped in OPTILE). The OPTILE activities are concentrated outside of Paris in the outer suburbs.

Until 2011, the main providers are: (1) Kéolis, created through the links established between the VIA-GTI firm and the Cariane company, in the SNCF subsidiary, who have 41 percent of the capital, and currently manage 75 networks (e.g. Lille and Lyon); (2) Véolia (formerly Connex), world leader in all means of transport; (3) Transdev, who have a partnership with the local government within the framework of a mixed economy company (SEM), and manage networks in Nantes, Montpellier, Strasbourg, Mulhouse, Valenciennes, as well as outside France (in Porto, Genoa, Édinburgh, Madrid, Tenerife, etc.); (4) Agir, an independent transport association; (5) SNCF, a historical railway operator, which operate in their own name and also through subsidiaries like Kéolis; and (6) RATP, which has been changed by state decision into a state-owned company with industrial and commercial activities. They wish to gain prominence in the international market and respond to an invitation to calls for tender, but European regulation will impose a choice between its French monopoly and the opportunity to enter the international market.

Then at the beginning of 2011, Veolia and Transdev merge. Île-de-France Public Transport Régie, RATP, which detained 25,6 percent of the capital of Transdev went out of it. The new capital is held in parity by Veolia Environnement and the Deposit Office (Caisse des Dépôts et Consignations). But, a new announcement of sale was made on this December 6<sup>th</sup> 2011. Veolia tries to refocus on its activities of water, waste and energy services and wants to give up Transdev to release its treasury.

**Table 3: The main transport providers' shares in the number of networks and journeys in 2002, 2010;**

	Keolis		Veolia		Transdev		Agir		Others	
	2002	2010	2002	2010	2002	2010	2002	2010	2002	2010
<b>Share by number of networks (%)</b>	30	29	25	26	19	14	9	12	17	19
<b>Share by the number of journeys (%)</b>	40	42	18	15	25	22	12	17	5	4

Source : GART, 2002, 2010.

Between 2002 and 2010, the situation little changed in term of market share, the three majors companies represent 69 %.

Local public transport financing is possible through the transport tax payable by the employer (TTE), combined with the subventions or grants from the communes and towns. The local public transport is the most heavily subsidised because the user receipts represent about one third of the total expenditures (CNT, 2005).

The State has reduced its contribution to the new mass transport building. Its participation represents 1-3 percent of the financing sources (see Table 4). Since 2004, the government’s new strategic orientation has changed the financing system of the urban mass transport, due to investment withdrawal. Hence, the local government tries to increase other financing sources, such as direct taxation, price setting or TTE, which represent on average 48 percent of the financing sources. Commercial contribution in the financing sources covers approximately a quarter of the need.

**Table 4: Proportion of different financing sources for the urban public transport**

	State		Local Government		TTE		Commercial Receipts	
	2002	2010	2002	2010	2002	2010	2002	2010
<b>Town with more than 100,000 inhabitants</b>	3%	2%	21%	28%	51%	52%	24%	19%
<b>Town with less than 100,000 inhabitants</b>	1%	0%	26%	34%	50%	50%	23%	16%

Source: GART (2002), (2010).

Beside the movement of people, public transport plays a decisive role in ensuring the economic vitality of urban areas and cities. It contributes to the maintenance and/or development of social inclusion for the most vulnerable citizens. This includes not only the less well off but also the elderly, children and disabled people. For them, public transport is the main network that can guarantee proper access not only to employment but also to basic health, educational and leisure services.

The “Grenelle de l’environnement” (the new French Policy of environment) plans the creation of more than additional 1500 km of public transportation, to reduce CO2 emissions, to develop the public transportation and reduce passenger car, and to fight against the urban congestion.

New investments must be made by the TOA. However, the resources being limited (the TTE), new articles is introduced into the General Code of Local authorities (article 55, 64), allowing to extend the TTE in the new zones (which are excluded from it), and to establish new property taxes on the product of the buildings resulting from the realization of infrastructures of collective transport. For example, the subway of Copenhagen was financed in 50 percent by the sale of grounds and for the “Grand Paris”, the property plus-value taxation was created by a new law (n° 2010-597 of 3 june 2010) as a complementary financing mode for the network extension of the local public transport.

## Conclusion

According to available data, no systematic and general superiority of PPPs over in-house public management of services can be established, but only on a case-by-case basis. The comparative evaluation (*ex ante versus ex post*) of the different solutions becomes very important here (Zadra-Veil, 2010). It involves clarifying the real (or implicit) objectives of the public authorities, and therefore elaborating economic indicators that give account of this, i.e. costs, quality,

efficiency, management, innovation, speed, and also indicators related to social or political objectives.

In a more general sense, PPPs drives the emphasis on public regulation. It involves a series of arbitrations between different interests, taking account of the diversity of players, the time scales in consideration (including interests of future generations), national specificities, the internalisation of specific externalities, etc. Such arbitrations bring together interests and forces that are more often than not divergent, if not even opposed. Regulation facilitates the expression, transparency, collective deliberation, confrontation of the plurality of approaches. It assumes the ability to base oneself on a multi-criteria evaluation and on the plurality of expertise.

The relationships between operator(s) and regulator are accompanied by a structural imbalance of information in favour of the former, which is likely to result in a 'capture' phenomenon. The operators of a service of general interest (private and public alike) are spontaneously tempted to abuse the asymmetry of information from which they benefit in order to capture or divert the revenue to the detriment of consumers and/or the public authority. This situation can be controlled by ceasing these 'games for two to play', and moving on from a regulation of 'experts' to a regulation of 'actors'. Regulation must involve all stakeholders concerned, not only the public authorities and the operators, but also the users and consumers, citizens, local authorities, elected representatives (national and local), service employees and trade union organisations. Through their different experiences, these stakeholders have a lot of information that the regulator is missing, and can place demands on the process and delivery on the basis of the diversity of their needs. Bringing together all the players concerned is a means to reinforcing the regulation of services of general interest.

Recently, new forms of PPP developed in France and new sectors have been investigated for new PPPs (health, prisons, etc.). However, their share in financing activities is not as developed as in Britain and in water and transport industries delegation continues to be the main forms of management of the public services.

Such PPP arrangements were driven by limitations in public funds to cover investment needs but also by efforts to increase the quality and efficiency of public services.

Before 2004, there were two contract forms: the delegation contract, and the public works contract. An edict on PPPs was introduced in June 2004 (Ordonnance No. 2004-559 du 17 juin 2004), creating a new form of contractual relationship (Contrat de Partenariat) between the public and private sectors. These are defined as administrative contracts by which the public body confers on tiers for a determined period (according to the length of investment depreciation or the retained modes of financing) a global mission relative to financing immaterial investments, infrastructure or facilities necessary to the public service, construction and transformation of the infrastructure or facilities, and their maintenance, their exploitation or their management, and, if the case arises, to other benefits of service (excepting capital participation), contributing to the exercise by the public person of the mission of public service with which it is charged.

This Ordonnance foresaw that this type of contract is reserved to complex projects or if they had the character of an emergency, and if an evaluation cost-benefits demonstrates the "best value for money" of the PPPs choice. French partnership contracts (*contrats de partenariat*) started slowly but since the the market continuously developed and became more diversified. The legislative amendments of 2008 and 2009 would improve the participation of the private sector in the infrastructure investments, because it is now possible to design more complex contracts. Ongoing budget constraints and efficiency requirements may increase the recourse to PPPs in the future. Since 2004, 213 contracts of partnerships were signed (Cefoppp, 2010). Concerning the sector-based distribution, the sector of the justice positions on the first place, followed by the health, and by the environment. In 2010, these PPP represented less than 5 percent of the public investment in infrastructure ; about 75 percent of the pending contrats or in preparation concerned the infranational communities. Further, according to the legislative amendments of 2009, when the contrats are concluded by territorial communities or local public bodies, the



final financing must be mainly ensured by the private partner, excepting the projects exceeding a specified amount fixed by a governmental decree.<sup>6</sup>

Compared to the traditional public procurement procedures, these new PPPs forms seem to be better at providing incentives for life-cycle cost savings. However, it is important to make sure that cost-cutting does not lead to quality-cutting. The division of risks, in turn, can become a source of inefficiency if it fails to allocate each risk to the partner in the best position to manage or bear it. Finally, the fact that the partnership requires the establishment of a long-term contract with a high degree of incompleteness imposes a significant cost. Competition is one of the main arguments for getting best value for money in public-private partnerships.

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<sup>6</sup> See Pierre Bauby, *Service public. Services publics*, La Documentation Française, 2011, pp. 79, 80.

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