

## New study demands Commission to support institutional environment for Human Right to Water - and to avoid threats to it



(8 February 2018) The European Commission published its proposals for a Recast of the Drinking Water Directive, 1 February 2018. They include amendments to guarantee vulnerable groups access to safe and affordable water. EPSU has welcomed these suggestions as [a step towards realizing the Human Right to Water in the EU](#) regretting that the Commission stopped short of recognizing the UN right in EU legislation. A [new study commissioned by EPSU](#) goes into more detail on what the European Commission can do to build the frame in which the Human Right2Water can be realized. The main recommendation is that the Commission should cease all actions that endanger this right.

Our study was commissioned in response to a study by the European Commission. The Commission has started to evaluate the exclusion of water services from [the concessions directive](#) (article 12 of 2014/23/EU). The exclusion of water services

from that directive was the result of the [first ever successful European Citizens' Initiative Right2Water](#) and the growing concerns that it could lead to [the privatization of water services](#) and undermine the demands of the ECI. EU Commissioner for the internal market at the time Mr. Barnier made clear that he considered water services a "bien commune". The proponents of market forces and opening water concessions, however, inserted text into the directive stating "the Commission shall also assess the economic effects on the internal market of the exclusions set out in Article 12 taking into account the specific structures of the water sector, and report thereon to the European Parliament and the Council by 18 April 2019."

The Commission's "[Study on water services in selected Member States](#)" was commissioned from the consultancy Ramboll, with the aim of seeking proof that there are negative economic effects on the internal market of the exclusion of water/wastewater concessions from the directive. The policy implications of the Ramboll study therefore deserve full attention but the results must have been a disappointment to the Commission. The report found hardly any correlations. Private providers do not do better. There is no proof that market processes result in extra benefits for consumers.

We asked PSIRU, the globally recognized critical experts on public contracts, water services and privatization to have a look. PSIRU identified a number of limitations to the study, including the:

- failure to discuss characteristics of the water sector (e.g. high transaction costs);
- limited scope of the literature reviewed which leaves out important and more critical contributions to the debate;
- selective range of stakeholders interviewed for certain countries;
- categorical errors made in defining the social factors discussed including factors as diverse as corruption, irregularities, service quality and remunicipalisation; and
- narrow view on the ultimate goal of water service provision, that neglects the significance of social factors beyond the technical indicators used in benchmarking exercises.

PSIRU's researcher Emanuele Lobina identifies a number of policy implications that the Commission and others should take into account. These are:

- the transaction costs of water liberalisation and privatisation which represent a social deadweight loss;
- underestimation of the social costs of water liberalisation and privatisation and which must be tackled in any serious evaluation;
- the demand of people for public water and the human right to water. These do not seek liberalisation, privatisation or technocratic regulation.

The EPSU study ends by emphasising that it is time for the European Commission to abandon its obsession with water liberalisation, privatisation and technocratic regulation. It should instead create an institutional environment where the human right to water can prosper. Such an institutional environment could be created by adopting a legislation that promotes meaningful public participation in decision making on water service provision, combats excessive costs to water users and fosters intra-European Public-Public Partnerships (PUPs) for capacity development in the water sector, in addition to international, North-South and South-South PUPs. According to the study the comparative advantage of the public sector can be used to promote the human right to water.

Four recommendations are made to the European Commission:

1. The European Commission must avoid creating an institutional environment that undermines the human right to water. In particular, the [European Parliament resolution](#) of September 2015 calls on the Commission to “permanently exclude water and sanitation and wastewater disposal from internal market rules and from any trade agreement”. It is therefore important that the European Commission should cease considering (as suggested by the rationale for the Ramboll study), the hypothesis of extending the application of the Concessions Directive to the water sector. The European Parliament resolution calls on the Commission to refrain from promoting “the privatisation of water undertakings in the context of an economic adjustment programme or any other EU procedure of economic policy coordination”. The European Commission should therefore avoid acting on a recently commissioned study that - as revealed by Corporate Europe Observatory - focuses on the operational and fiscal challenges that state-owned enterprises place on the

public purse. We add that there needs to be policy coherence in the European Commission. An example is that the Commission services have issued this large and expensive study on mapping state-owned assets in the EU. It has been ordered from KPMG. It is a good example of lack of coherence in the Commission for at least two reasons. First, this company has been mentioned as assisting corporations to avoid paying their taxes in EU member states. It has audited companies that have avoided paying taxes, a practice widely recognized as hurting public finances that underpin our social protection and public services. The European Commission is fighting such tax dodgers. It is not coherent to continue rewarding the industry that supports this behavior. Second, the study focuses on asset-management models in the light of public finance. The study however does not appear to take account of how public companies deliver on contributing to the rights of people in the EU such as the Human Right2Water or other targets of the Sustainable Development Goals. While the Commission denies that the study is part of a privatization push, it can not be seen in another light and which could threaten the human right to water.

2. The European Commission should create an institutional environment where the human right to water can prosper, by adopting legislation that promotes meaningful public participation in the water sector. Such legislation should promote advanced forms of public participation in decision making on water service provision, and robust mechanisms to strengthen accountability. The proposal to promote benchmarking - contained in the European Commission's 2014 response to the European Citizens' Initiative , is inadequate to fulfil the human right to water because, albeit necessary, access to information is a rudimentary and insufficient form of participation. Such legislation would heed the calls of the European Parliament's 2015 resolution for "active participation" in the water sector and for "the Commission to develop transparency, accountability and participation criteria as a means to improving the performance, sustainability and cost-effectiveness of water services".
3. The European Commission should promote the human to right to water by adopting legislation against excessive costs to water users. Such legislation should promote financial transparency and deter excess profits. The European Commission's proposal of February 2018 for a recast Drinking Water Directive - adopted in response to the European Citizens' Initiative Right2Water - contains an obligation for all EU Member States to "take all necessary measures to improve access for all to water intended for human consumption",

but no specific provision on ensuring financial affordability. The proposal thus ignores important lessons on fighting water poverty and promoting the human right to water. One such lesson is that reducing the overall cost of water provision is more equitable than providing social welfare to the water poor while allowing excessive costs to be imposed on all users. Another lesson is that because excess profits and prices have a negative impact on affordability, failing to tackle them risks fuelling water poverty and undermining the human right to water.

4. The European Commission should promote the human right to water by enabling and supporting intra-European Public-Public Partnerships (PUPs). Thanks to their not-for-profit character which enables trust and facilitates knowledge transfer, Public-Public Partnerships (PUPs) have been instrumental to the successful institutional reform and capacity development of public water operators in Baltic countries prior to EU accession. A facilitating environment could support the mobilisation of PUPs for the fulfilment of the human right to water in EU Member Countries. This should not exclude the possibility of supporting international, North-South and South-South PUPs for the fulfilment of the human right to water in ACP countries in view of their track record in promoting capacity development in the global South.

What the European Commission has been trying to do in the water sector is a near perfect example of how neo-liberal ideologues fired on by corporate interests seek to take hold of the European institutions and abuse the powers of the state and of the European Union to create and sustain markets. Alternatives like the public provision of water services are considered as deviations.

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