

# Alternatives to PPPs: positive action for in-house services

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## 1. Introduction

This paper is one of three dealing with the subject of PPPs in Europe. It covers positive initiatives for the improvement of public services and strengthening of the role of the public sector, as alternatives to the use of the private sector (EUPPPs-altern). The other two papers concern the problems experienced with PPPs and their role in EU law (EUPPPs-crit), and ways in which trade unions in Europe have negotiated protection for their workforces (EUPPPs-barg).

Unions and other organisations in many European Union countries are developing ways of improving and strengthening the role of public services. These initiatives focus mainly on strengthening democratic processes, through public participation; increasing the potential for worker participation; improving the quality of services, for example through progressive procurement policies; and strengthening the role of public ownership and public finance. Such initiatives often involve the development of ideas and arguments to counter the ideology of privatisation and PPPs, as part of a strategy to win greater public support for better, more accountable public services.

These initiatives are alternatives to the widespread ideology which favours the introduction of the private sector, or private sector management techniques, into public services.<sup>1</sup> They are alternatives which avoid the use of PPPs. Despite the prominence given to PPPs in media and general publicity, PPPs and Public Finance Initiative (PFI) are not the most common methods for building and running new facilities. Across Europe, including the UK, six times as many projects are carried out by the 'conventional' method of public borrowing, issuing contracts to construction companies, and then running the service.

This report is presented in eight sections.

- potentially positive elements in EU law on the role of public services
- union involvement in public services reform processes
- initiatives for increasing worker participation in public services
- initiatives for increasing public participation in public services
- initiatives for improving services, especially through procurement policies
- public ownership and public finance initiatives.
- arguments and ideas used to support public services in general
- a detailed case study of a union strategy in Italy

## 2. EU framework

Much of the EU legislative framework has created problems for public services. These include the competition and internal market principles of the treaty, the related provisions on state aid, and the rulings of the European Court of Justice (ECJ) on these issues and on the interpretation of the procurement directives. The decisions of the ECJ have made it increasingly difficult to maintain direct public provision of services, by extending the circumstances in which authorities have to offer work for public tendering. Investment in public services is also constrained by the limits on government borrowing which form part of the rules of the EU economic and monetary union. *These problems are discussed in more detail in the paper on critiques of PPPs.*

But it is still possible, within the existing EU framework, to pursue policies which promote public services. These provisions can be classified into three groups: provisions in the treaty itself which can be used to support and develop public services; the possibilities under the procurement directives for using criteria based on social and environmental standards; and specific legislation on standards and harmonisation of services across Europe.

Some of these aspects form part of the proposed new Treaty. In this section references to articles are to the existing consolidated treaty, unless specified as referring to the proposed new Lisbon Treaty<sup>1</sup>.

### **2.1. Freedom to choose direct 'in-house' provision**

The EU Treaty allows governments and other public authorities complete freedom to choose<sup>2</sup> to provide a service directly by in-house organisation (article 295).<sup>3</sup> The treaty does not limit this by setting down any criteria which must be fulfilled, or any procedures which must be followed. Governments and local authorities are free to decide, for any reason, to provide services directly rather than by outsourcing or via a PPP. There is no requirement to use competitive tendering in making this choice. The European Commission's (EC) guidance confirms this: "A public authority has full discretion to decide whether it provides services itself or entrusts them to a third party. Public procurement rules only apply if the public authority opts to externalise the service provision..."<sup>4</sup>

So the first, and most fundamental, decision, whether to provide a service directly, can be publicly debated by reference to public service criteria – what is best for the public service - not on what is best for the market.

### **2.2. Public services in the treaty**

The Treaty includes a number of provisions which support public services. The tasks and activities of the EU include promoting "a high level of employment and of social protection...the strengthening of economic and social cohesion..." (Article 2). There is a general provision requiring the EU and its member states to ensure that services of general economic interest (SGEI) "operate on the basis of principles and conditions which enable them to fulfil their missions" (Article 16).

The Lisbon Treaty, when and if adopted in its present form, will strengthen these provisions in three ways. Firstly, the overall aims of the EU will include a "social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment... It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion". Secondly, it responds to long-standing demands from EPSU and others for a framework on public services by stating that an EU regulation "shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services". Thirdly, it adds a protocol recognising "the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users;" and stating that "The provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest."<sup>5</sup>

In 2007 the EC issued a Communication on its perception of the role of public services, or services of general interest (SGI) in the EU. It includes positive statements on the European role of public services: "These services are essential for the daily life of citizens and enterprises, and reflect Europe's model of society. They play a major role in ensuring social, economic and territorial cohesion throughout the Union and are vital for the sustainable development of the EU in terms of higher levels of employment, social inclusion, economic growth and environmental quality."<sup>6</sup> Other aspects of the Communication are more problematic, and are referenced in the accompanying paper ECPPPs-crit.

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<sup>1</sup> To be seen to what extent, and when, the provisions of the Treaty will come into effect given the negative referendum in Ireland in June 2008

The EC has also issued a further Communication on social policy and public services, entitled "Opportunities, access and solidarity: towards a new social vision for 21st century Europe". Some of the language of this paper is also helpful: in presenting a new social vision, it includes: "Solidarity - to foster social cohesion and social sustainability, and make sure that no individual is left behind".<sup>7</sup>

These provisions can strengthen the position of unions and others in arguing that public authorities can themselves decide how to organise public services, and should do so in the interests of public service objectives.<sup>8</sup> However, unlike competition/internal market text, the provisions remain aspirational in nature.

### 2.3. Procurement directives

The EU procurement directives were revised and consolidated into two directives in 2004: the Public Sector Directive 2004/18 and the Utilities Directive 2004/17. The interpretation of these Directives has created problems for public sector service providers, and these problems are discussed in the paper EUPPPs-crit.

The Directives also allow public authorities to use a range of conditions and criteria in procurement, including social and environmental issues. By using these provisions, greater demands can be placed on all forms of contracts (including PPPs): this can make public sector delivery more attractive, and/or increase the general standards of contractors so that their impact is less damaging.

- Article 26 of the Public Sector Directive introduced a new explicit power for public authorities to use social and environmental conditions in procurement: "Contracting authorities may lay down special conditions relating to the performance of a contract, provided that these are compatible with Community law and are indicated in the contract notice or in the specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations".
- Article 23 allows public authorities to specify technical conditions, which may be defined by reference to standards or "in terms of performance or functional requirements".
- In selecting the contractor, the public authority can use not only the simple criterion of the lowest price, but also on the basis of other criteria specified in advance: "various criteria linked to the subject-matter of the public contract in question, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion" (Article 53). These criteria can be incorporated in the technical specifications of the contract from the start.

The directive also

- *requires* authorities to exclude companies which have been convicted of corruption, fraud, money laundering, or participation in a criminal organization (article 45), and
- allows authorities to exclude 'abnormally low bids' (article 55).

The EC has produced guidance on green procurement<sup>9</sup>, and produced studies on social procurement in practice.<sup>10</sup> It is carrying out further research in 2008 and is expected to produce a guide on social procurement towards end of 2008/early 2009.

The section below on service quality and procurement discusses some examples of how these provisions have been used for environmental and other objectives ('green procurement').

*The accompanying paper EUPPPs-bargaining discusses the potential for using these provisions to protect employment and working conditions ('social procurement'). The EC has also issued a consultation paper on social procurement.*

The scope allowed by these provisions remains unclear. Even before the new directives, the ECJ had ruled that the use of a range of criteria was permissible. The ECJ has ruled that it is legitimate to use environmental criteria in selecting a bus operator, and that in general non-economic criteria may be used as part of the 'economically most advantageous' basis for selection:

"where, in the context of a public contract for the provision of urban bus transport services, the contracting authority decides to award a contract to the tenderer who submits the economically most advantageous tender, it may take into consideration ecological criteria such as the level of nitrogen oxide emissions or the noise level of the buses, provided that they are linked to the subject-matter of the contract, do not confer an unrestricted freedom of choice on the authority, are expressly mentioned in the contract documents or the tender notice, and comply with all the fundamental principles of Community law, in particular the principle of non-discrimination... [the Directive] cannot be interpreted as meaning that each of the award criteria used by the contracting authority to identify the economically most advantageous tender must necessarily be of a purely economic nature. It cannot be excluded that factors which are not purely economic may influence the value of a tender from the point of view of the contracting authority. That conclusion is also supported by the wording of the provision, which expressly refers to the criterion of the aesthetic characteristics of a tender."<sup>11</sup>

The EC has also produced a paper of Frequently Asked Questions (FAQs) on the relations between the procurement directives and services of general interest (SGI).<sup>12</sup> These present the Commission's view of how the procurement directives may be used. These FAQ state that:

- clauses cannot be inserted restricting a tender to non-profit operators only: "Individual contracting authorities cannot decide themselves to limit a tender procedure to non-profit service providers unless this is part of a national legal framework."

But they state that 'familiarity with the locality' may be an acceptable criterion, if stated in advance and in the right way:

- "a requirement of familiarity with the local context might lead to an unlawful discrimination of service providers from abroad.... Nevertheless, certain requirements related to the local context may be acceptable if they can be justified by the particularities of the service to be provided (type of service and/or categories of users) and are strictly related to the performance of the contract."

As examples it suggests that an authority could:

- require that the successful tenderer establishes a local infrastructure such as an office or a workshop or deploys specific equipment at the place of performance
- for a shelter for women in difficulty, mainly addressed to women from a specific cultural minority, require that the tenderer should already have the experience of this kind of services in an environment presenting similar social and economic characteristics
- for a job placement service focused in particular on young adults from disadvantaged areas, specify that the service provider should have experience with this kind of services for similar target groups.<sup>13</sup>

### 2.3.1. Private sector contrast

These developments are reflected in the concerns of private companies. According to a survey on outsourcing by PricewaterhouseCoopers, both private companies and their customers agree that labour and employment standards at potential offshore locations are a key concern.<sup>14</sup>

## 2.4. Standards and harmonisation

A number of EU directives lay down standards which have the effect of regulating the quality of public services. These include for example the water and wastewater directives, and the various waste management directives. Compliance with these standards may be part of an argument for protecting public sector provision.

The EU is also pursuing the harmonisation of public service provision in some respects, notably through developing the interoperability programme to ensure the compatibility of public service software and procedures. A consultants' report in 2007 explained that: "The new European Interoperability Framework has been designed as a vehicle for pan-European public services. It builds on existing albeit different national infrastructures respecting subsidiarity, national autonomy and citizen privacy. The basic idea is to make national public information and interactive services available in a European context to certified intermediaries and users.... Already successful examples of pan-European public services can be seen: the Schengen Information System, the Customs Union and the Eucaris system for the exchange of vehicle information."<sup>15</sup> Public sector organisations should have an advantage in being able to ensure such compatibility.

## 3. Union involvement in public services reform

### 3.1. EU level union initiatives on public service principles

Union activity at EU level has been focussed on establishing basic principles of public services, through campaigns, social dialogue, and relations with European political groups.

Campaigns:

European Federation of Public Services Union (EPSU) has set out core principles for an EU-wide campaign for quality public services, including the following points:

- freedom of choice for local authorities to give the best service possible.
- sufficient legal clarity from the EU to give a secure basis of principles to quality public services.
- preventing big business "skimming-off" profitable parts of services.
- a right for the public to have a say in how public services are run.
- a guarantee that the services are available to all.<sup>16</sup>

Social dialogue: EPSU is engaged in social dialogue with representative bodies in the public sector at EU level, including healthcare, local government, and utilities. A report on local government reform in 10 member states, commissioned jointly by EPSU and the European Council for Municipalities and Regions (CEMR), emphasises the importance of social dialogue on proposed reforms.<sup>17</sup> European governments have now agreed to develop a general action plan for social dialogue in the public sector in all Member States, which will be able to deal with issues of public sector reform and issues such as the impact of demographic changes.<sup>18</sup>

Relations with political organisations: In 2008 the EPSU set out a list of 10 core proposals for the socialist group in the European parliament, which includes all the social democratic parties of EU countries. These proposals include a demand for a European framework directive for public services, an EU-wide evaluation of the impact of PPPs, legislation to ensure transparency in EU institutions involved in social policy-making.<sup>19</sup>

*Example: Ten union principles for public services in EU*

The EPSU proposals to the Party of European Socialists (PSE) are set out as a submission for the preparation of the PSE 2009 manifesto. Under the heading of 'Quality Public Services - Quality of Life', the proposals are based on ten core principles:

1. Right and duties for all - the individual active in society
2. Full employment - fulfilling employment
3. Investing in people - gaining through training
4. Inclusive societies - no one left behind
5. Universal childcare and Universal healthcare
6. Equal rights for men and women - Equality through example
7. Social Dialogue - essential services need essential support!
8. Making diversity and integration our strength
9. Sustainable societies - tackling climate change
10. An active Europe for people

The proposals also include demands for "A concrete commitment by the PSE to bolster European sectoral social dialogue; a pledge by the European Parliament to insist that sectoral social partners are jointly consulted at the drafting stage of any legislation that will have a social impact on the sector in question; a commitment to giving the social partners a formal evaluation role on the social impact of any sectoral EU legislation/ initiative."

The full text of the union proposals is set out at <http://www.epsu.org/a/3838>

### 3.2. Dialogue at national and local level

The most general issues concerning the public sector may be dealt with under the general dialogue between trade union centres and governments: for example, the social agreement for 2003-2005 in Slovenia between union confederations and the government included commitments to efficient use and allocation of public spending and to a more equitable distribution of the burden of taxation.<sup>20</sup> More specific issues of reforms may be dealt with through social dialogue and agreements in the public sector itself.

*Example: UK Public Services Forum – dialogue at national level*

The Public Services Forum (PSF) was formed in 2003 to improve dialogue on public services between Government, public service trade unions and employers. Those attending include ministers, senior officials from central government departments, local Government associations, and NHS employers, officials from the national trade union centre, the Trades Union Congress, and specific public sector unions, and representatives of private and non-profit employers.

The Forum has commissioned research; developed a toolkit 'Drive for Change' to support closer dialogue and joint working in changing or restructuring public services; and played an important role in developing the Code of Practice on Workforce Matters in Public Sector Service Contracts (the so-called 'two-tier agreement').<sup>21</sup>

## 4. Worker participation

Some initiatives highlight the value to the public service organisation of workers' knowledge. This offers a strong argument against PPPs and privatisation, because public employees are more able to follow a 'public service ethos' oriented towards the service, rather than being directed by private management in the interests of the firm. There are similar economic arguments for public participation, both in providing a better understanding of the service and in terms of more effective prioritising. However, using workers' knowledge requires time and resources – including the time of workers and/or union resource centres. It may still be a cheaper and better alternative to the use of expensive consultants, if a system for using this knowledge is created.

In Sweden and Norway public sector unions have established systematic arrangements for improving public services. The UK unions are beginning to develop the idea of 'co-production' of public services involving both workers and users. These cases are set out in detail below.

In a number of other EU countries there are some well established institutions for worker participation, including the 'mitbestimmung' system of worker-directors on company boards. This normally applies to public sector companies as well, and so in many countries there are already worker representatives involved in decision-making at this corporate level, at least.

There are also examples of similar initiatives from outside Europe.

- In New York State, USA, a number of councils in the 1990s have carried out restructuring programmes which have involved a range of formal involvement with trade unions, from labour-management committees to a complex system such as total quality management (TQM). According to a study of these initiatives, this was based on a recognition of the strength of organised unions, and thus the attractiveness of a 'partnership' approach: "*High levels of public sector unionisation in New York State make internal restructuring through labour-management cooperation an especially important alternative*".<sup>22</sup>
- Worker and unions have been involved in restructuring and improvement of services in the capital cities of Honduras, Uganda, Cambodia, and Bangladesh.<sup>23</sup>

A general set of principles for Workers' Initiatives (WIN) which emphasise the importance of establishing tri-partite bodies including politicians as well as management and unions (as is done in Norway) is being developed by the Public Service International (PSI).

*Example: Sweden – 'Kom An!', the union system for public sector reform*

The Swedish public service union Kommunal established a new approach to public sector reform based on use of workers' ideas. The union recognised that municipalities were under financial pressures to cut costs, under pressure from the public to improve services, and so the union had to discuss productivity measures – it was not feasible to simply resist all changes. The approach has been formalised into a system known as 'Kom An!' (which means 'Come On!'). It makes workers "researchers in their own jobs", and involves a total review of the whole organisation, centred on workers discussing ways of improving their jobs.<sup>24</sup>

The union has set up their own consultancy to promote it, known as Komanco, which runs training courses and consultancy for municipalities. In the 1990s this was subsidised by the union, but since 2000 it has been self-financing from the payments by municipalities for training and consultancy.<sup>25</sup> The system proved popular and successful from the early 1990s, and by 2007 over 60 Swedish municipalities have used the system, which has been applied to a wide range of services, including care of the elderly and water supply.<sup>26</sup>

*Example: Norway : using workers ideas for reforms*

Since the late 1990s, Fagforbundet (the Norwegian Union of Municipal and General Employees) has promoted a 'model municipality' policy, based on a similar principle to the Swedish 'Kom An', of using the ideas of public sector workers to improve the quality of services. "The idea behind the model municipality is that employees themselves know work processes best, therefore it will most often be employees who have the best ideas for change"<sup>27</sup>. One element of the policy is that management agree that during the period of a MM project there will be no attempt to use competitive tendering in the relevant service. The policy has led to changes which improve services or efficiency. For example, in Sorum municipality, the kindergartens had a policy of accepting children only on a full-time basis; the workers suggested allowing part-time attendance, and as a result an extra 21 children joined without any extra expenditure. In Porsgrunn municipality, the workers suggested creating a 'one-stop' counter for the public to use, whatever the subject of their concern, which considerably improved the quality of service.<sup>28</sup>

*Example: Co-production of public services by workers and users*

The UK union Unison has developed the idea of 'co-production' of public services by workers and users, in collaboration with a social democratic think-tank, Compass. A new joint report argues that instead of imposing reforms from the centre, public services can better be improved "through the interaction of staff and users". The initiative argues that the role of government should rather be to create greater autonomy for public authorities in setting budgets and making decisions, and to create a climate conducive to workers and users confidently using their knowledge to innovate and improve services.<sup>29</sup>

## Further information

Komanco website - A team united by blood, sweat and tears

<http://www.komanco.se/LinkClick.aspx?fileticket=%2f%2fsecFZhyH4%3d&tabid=71&mid=381>

NUMGE/PSI Model Municipal Methodology

[http://www.world-psi.org/TemplateEn.cfm?Section=Resource\\_Bank1&CONTENTID=4678&TEMPLATE=/ContentManagement/ContentDisplay.cfm](http://www.world-psi.org/TemplateEn.cfm?Section=Resource_Bank1&CONTENTID=4678&TEMPLATE=/ContentManagement/ContentDisplay.cfm)

Co-production - the modernisation of public services by staff and users. Unison and Compass. <http://www.unison.org.uk/file/B4175.pdf>

PSI Resource bank on worker participation in public services <http://www.world-psi.org/participation>

**5. Public participation**

There are initiatives for greater public participation in the decisions of public authorities in many countries in Europe. Participation is seen as a way of strengthening the accountability of public services, and so making them more responsive to people's needs and wishes. Unions have played a leading role in some of these initiatives, and three outstanding examples from Norway, Spain and Italy are discussed below.

Municipalities in other countries are also exploring the development of participatory budgeting.

In Bulgaria, for example, there is a campaign for greater public participation which is closely linked to the issues of freedom of information and attacks on corruption.

Movements for strengthening accountability through participatory democracy extend beyond Europe. The best-known initiatives originated in developing countries – in Brazil, where the city of Porto Alegre became famous as an early implementer of participatory budgeting, where unions and workers also have a formal participatory role<sup>30</sup>; and in the state of Kerala, in India, which also pioneered the distribution of the state budget to local level and making it subject to public participation.

*Example: Norway and the 'model municipality'*

The Norwegian union Fagforbundet (the Norwegian Union of Municipal and General Employees) has engaged in political campaigns to influence election results and subsequent policies on public services and privatisation. The campaign in the city of Trondheim had a major impact. The union drew up a 19-point plan for the municipal elections of 2003, including the reversal of privatisations, and distributed them widely during the elections. The elections were won by the left parties, which then re-municipalised the city's bus company and the cinemas, and ended the outsourcing of care for the elderly. The city council also increased investment in schools; improved social assistance for single mothers;<sup>31</sup> introduced

a system of planned maintenance for buildings, based on extensive consultations;<sup>32</sup> and is developing free wireless internet connections across the city.<sup>33</sup>

The Trondheim experience was used in campaigns for the 2005 general election in Norway, with unions and Non-Governmental Organisations (NGOs) (notably Attac) organising demonstrations for similar national policies; again, a centre-left government won the election.<sup>34</sup> The 'model municipality' policy was reviewed by a government team in 2005, which broadly endorsed the approach, especially the use of tri-partite union-management-politician steering groups, while noting that there had so far been few major cost savings. The approach is now officially supported by the government in Norway, and may be developed in many more municipalities, of all political tendencies.<sup>35</sup>

The four key pillars of the union's strategy<sup>36</sup> were (A) the union's own analysis of social and economic developments (B) the building of broad alliances: the union played a central role, but built a broad campaign for the welfare state with dissident municipalities, NGOs and others opposed to the trade liberalisation policies of the WTO (C) offering alternatives to privatisation and PPPs - "No to privatisation and competitive tendering – yes to restructuring and real modernisation!" – with model municipality projects (D) the development of trade unions as independent political actors with their own demands and clear alternatives, so the focus was on policies not on parties. This has also been pursued through the confederation of Norwegian unions, the LO, which initiated a debate resulting in 155,000 proposals from 44,000 members.

#### *Example: Participatory Budgeting (PB) in Spain*

There is a strong movement in Spain in favour of 'participatory budgeting' on the Porto Alegre model. The major implementation is in Sevilla, where PB was introduced in 2004 in a 3 stage process. Firstly, the municipality allocated between 32 and 42 per cent of its budget to 18 districts, whose boundaries were determined by population and other characteristics. Secondly, all residents in the neighbourhoods voted for particular projects, social policies and actions in their area and elected representatives to go to the assembly of districts. Thirdly, the assembly considered all the proposals and decided on an overall budget, a decision which is binding on the municipality. The system currently covers the departments of public works, sport, youth, education, culture, environment, health and gender. About 20 other municipalities have introduced a form of participatory budgeting, including Cordoba, Getafe and Albacete.<sup>37</sup>

The Spanish participatory systems are based on an unusually strong tradition of neighbourhood organisations. The law in Cordoba, for example, is based centrally on the districts and the neighbourhood councils, though unions are formally included as actors in the process.<sup>38</sup>

#### *Example: Italy: Rete del Nuovo Municipio*

A number of Italian municipalities are also developing participatory systems. This movement is centred around the Rete del Nuovo Municipio (new Municipality Network), which was set up in 2002 after the first World Social Forum. The network involves over 80 Italian municipalities, academics, unions, and other individuals and organisations. A leading example is the town of Grottammare, which created neighbourhood associations and committees to participate in decision-making, including budgetary policy. These mechanisms have led to the implementation of over 100 citizen initiatives, and more rapid development of the town and its public services.

## **5.1. Referenda**

In a number of countries legislation exists which enables organisations to mobilise votes and demand referenda on specific issues. There have been a number of such cases concerning various forms of privatisation, including PPPs. These have consistently resulted in large majorities voting in favour of public sector provision of services.

In 2007 a coalition of social organisations and unions in Leipzig campaigned for a referendum to stop the mayor from selling the municipal shares in the city's energy company. Within 4 months, over 42,000 signatures were obtained, which obliged the city to hold a referendum. In the actual referendum itself, there was a turnout of 35%, with a 87.4% majority in favour of the proposal, which forbids the city from privatising any essential services, including the energy company.<sup>39</sup>

This is part of a growing trend in Germany and elsewhere in Europe. There were about 300 referenda in Germany in 2007, mostly concerned with public services, and one-third of them concerned to stop privatisation or PPPs. In Freiburg, citizens blocked a proposed sale of public housing; in Meissen, they voted against privatisation of the city's municipal hospitals; in Hamburg, in 2004, they halted water privatisation plans.<sup>40</sup>

Similar referenda have taken place in other countries:

- In Slovenia January 2003 in two referendum ballots the Slovenians voted decisively against the privatisation of the state railways and the telecommunications industry.<sup>41</sup>
- In Hungary in December 2004 65% of voters rejected privatisation of hospitals<sup>42</sup>
- In Netherlands, in May 2002 Amsterdam voted against the privatisation of the city transport company GVB<sup>43</sup>

#### Further information

Eurotopia Issue 4 2007 Special feature on participatory democracy

<http://www.tni.org/reports/newpol/eurotopia4.pdf>

Sevilla participatory democracy <http://www.participacionciudadana.sevilla.org/>

Links to national movements for participatory democracy

<http://democracybythepeople.googlepages.com/direct-participatory-democracy-links>

For information on direct democracy and referendum see the Centre for Research on Direct Democracy, University of Zurich <http://www.c2d.ch/index.php>

## 6. Service quality and procurement

A range of public service initiatives have been initiated across Europe and other countries which focus on new possibilities for achieving public service objectives, rather than reforms encouraging commercial practices or private sector innovations. Procurement policies have been developed to promote environmental sustainability and better meals for school children. In house services, oriented to public service, have been reconnected to the public services they deliver. Public transport initiatives based on

*Example: Sustainable public procurement without PPPs*

The European Commission has itself produced publications encouraging the use of procurement to support environmentally sustainable growth ('green procurement').<sup>44</sup> A survey found a total of 103 initiatives to use procurement for environmental or social objectives ('sustainable public procurement', SPP), with every EU member state having taken at least one such initiative. Some countries have set up national information centres, for example; Sweden publishes a set of tools for sustainable procurement [www.eku.nu](http://www.eku.nu); Germany publishes advice on green procurement for nine different products at [www.beschaffungs-info.de](http://www.beschaffungs-info.de); France has implemented the directive in a law which encourages the use of social and environmental criteria <http://djo.journal-officiel.gouv.fr/MarchesPublics>.

Interestingly, according to the report, none of the initiatives taken by Member States have made any use of PPPs. The initiatives have all taken the form of new laws and regulations, campaigns and guidelines, and public sector action centres – but none of them have made use of partnerships, contracts, or financial relationships: “Partnering and financial/economic instruments hardly exist in this context.”<sup>45</sup>

The report’s conclusions include the following points:

- SPP policies are comparatively weakly developed in Central and Eastern European (CEE) countries
- “SPP initiatives should not avoid but pro-actively use the value for money argument for their own purposes. It should be made clear that governments should take the full range of economic, social and environmental costs and benefits of public procurement into account.” This suggests support for a wide range of economic argument, for example concerning employment impacts, equality, and financing.

*Example: Nutrition and school meals in Finland and Italy*

Public authorities can use procurement policies for food purchases in schools, care homes and hospitals to support local communities as well as environmental and health objectives. Regional and local authorities in a number of countries have developed contracts which specify fresh ingredients, seasonal produce, locally certified products, organic products etc. This has improved the quality of food and thereby health, as well as stimulating local agriculture and reducing the ecological footprints of food costs.<sup>46</sup>

These policies were being developed in many countries even before the revised procurement directive. The municipality of Pori (Finland) used the ‘acceptance of variants’ method of tendering (permitted under article 24 of the Procurement Directive), allowing positive evaluation of the environmental qualities of organic producers.<sup>47</sup> The longest-standing and most extensive developments have been in Italy, following a national commission on organic food in the 1980s and the introduction of organic food procurement in schools by the municipality of Cesena. Many Italian cities now have such systems. The Friuli Venezia Giulia regional authority encourages this by subsidising 30% of the cost of adopting organic catering. These developments have been supported by linking improved diets with Italian constitutional rights, including:

- the ‘fundamental right to health’ to which each individual is entitled;
- citizens’ ‘inviolable right’ to a ‘harmonious personal development’;
- a legal commitment to promote ‘cultural and territorial development’;
- the ‘protection of children’, both as family members and as members of social communities, such as schools;
- the ‘valorization of local autonomies’ and the devolution of decision-making powers.<sup>48</sup>

These concerns for nutritional values strengthen public services. By contrast, the UK lacked such initiatives until very recently. In the 1980s nutritional standards were abolished, and instead school meals were subjected to a ‘market testing regime’: as a result the quality of food actually *deteriorated* until standards were reintroduced in 2001; procurement policies are now also being reviewed.<sup>49</sup>

*Example: Re-unifying local government in Copenhagen*

In 1997 the city of Copenhagen established divided its organisation into a ‘purchaser’ part and an in-house technical services company acting as a ‘provider’. The in-house company was obliged to compete with private contractors for business, and its goals and objectives gradually shifted from the traditional public sector orientation towards a more commercial approach – both by management and employees. This led to internal tensions over objectives within the organisation as a whole.

To re-establish a ‘common culture of public service objectives, from 1st January 2008 the organisation split was abandoned. The provider and purchaser were reunited into one

organization with responsibilities for the whole range of services, with three divisions for parks, cleaning and roads. The amount of competition is limited by specifying that some services will be carried out by the private sector, and the city council will not itself compete against the contractors for this work –however, the proportion of work done by the private sector will rise from 20% to 31%.<sup>50</sup>

*Example: Successful competition by in-house provider: Newcastle, UK*

Unison has protected and improved in-house services at Newcastle City Council by intensive involvement at all stages in proposals for procurement of revised services.

The union successfully defended the in-house provision of social service meals for home, resource and day centres, by developing a service improvement plan. The in-house bid defeated proposals to supply frozen meals from multinational companies ISS and Appetito. The report is confidential but see file for press release and Newcastle press coverage.<sup>51</sup>

Using a broad-based political campaign, the union persuaded the city council to prepare an in-house bid for a ten-year £250 million contract for IT and related services, including the administration of benefit payments, debt collection and council tax. This 'in-house' option was chosen in preference to a bid from multinational telecoms company BT. A similar alternative proposal was advanced for the Design services of the city council in February 2004. The city council's procurement strategy has also been re-written to encourage in-house bids in future.<sup>52 53</sup>

A set of guidelines summarising the approach used by Unison in Newcastle has been produced by the ESSU.<sup>54</sup> They emphasise the scope for influence in the process: "Procurement is not simply a technical or legal process. Political decisions are made at various stages such as the criteria used to evaluate options, the extent to which the authority 'stimulates' or creates markets and whether it supports an in-house bid."

The guidelines emphasise the importance of union intervention in the decision-making processes before procurement commences. Service reviews should involve consultations with workers and users of service, and may result in a service improvement plan under which in-house services can be retained and improved without the need for tendering.

Unions can influence the tendering process by negotiating over the specification. Key aspects of this covered by ESSU guidelines include the objectives of the service, the employment practices required by the contract, the rules for monitoring performance, and the evaluation criteria which will be used to select the successful bidder.

The procurement process can make use of the concept of community benefits, as long as these can be shown to be a feature of the contract itself. These can include requirements for: employing categories of local labour; education and training schemes; nursery provision; social housing provision.

ESSU provides a useful tabulation of the arguments for direct provision of services, summarised under the broad headings of: improved services e.g. coordination and integration of services ; corporate advantages e.g. protecting public sector capacity; democratic accountability; financial advantages e.g. lower overall cost; employment.

## **7. Public ownership and public finance**

A core traditional role of public ownership is that it enables public authorities to invest in services and facilities which PPPs or commercialised services have failed to maintain. Even in countries which have strongly favoured privatisation, such as Estonia and the UK, public ownership has been used in order to protect public services against the problems of privatisation and liberalisation. At both municipal and national level there are a number of

cases where public ownership of service organisations has not only been defended but also extended

### **7.1. Returns to public ownership: Germany, Estonia, UK, France,**

Germany continues to maintain a strong base of public sector service organisations through its *Stadtwerke*, enterprises which are usually owned by municipalities. Despite some creation of PPPs through sale of shares, these municipal enterprises remain a vital part of German public services and have in some cases expanded their role at the expense of the private sector. For example, *Stadtwerke Osnabrück* was created in 1890, transformed into a public limited company in 1964, but remains wholly-owned by the city of Osnabrück in 2007. It is responsible for electricity, gas, district heating, water, and local public transport services. It has increased its responsibility in recent years, adding sewage disposal and treatment, and management of three new swimming baths.<sup>55</sup> In Bergkamen, the waste management service was remunicipalised in 2006. The in-house service was able to reduce costs by 30% through cooperation with other councils, reduce fees to users, while still maintaining the level of pay and conditions. There are a number of other cases of remunicipalisation of services in Germany, including for example water in Bochum, engineers in Hanover, cleaning in Freiburg and Dortmund.<sup>56</sup>

In Estonia, the railways were partly privatised in 2001 when the state sold a 66% share to a consortium of international companies, thus creating an institutional PPP in which the public sector was the junior partner. In January 2007 the state bought back all the shares of the private consortium, thus ending the PPP and returning the railways to full public ownership again.

In the UK, the Post Office is proposing to close 2,500 local post offices, mainly in rural areas, in order to cut costs and be competitive when the letter service is liberalised. About 50 local authorities are proposing to buy many of these offices and keep them open under municipal ownership, in order to maintain local access to services in villages. The councils include some controlled by the traditionally right-wing Conservative party: the Conservative leader of Essex county council said that: "If the public want post offices then it's up to us. It's our job to provide them. Perhaps the government and the Post Office are missing out by cutting a service that the public like."<sup>57</sup>

France is consciously using one of its government funds, the *Caisse des dépôts et consignations* (CDC), as an instrument for protecting essential services companies from takeover by international companies. This is part of a bi-partisan French strategy to protect key companies from foreign control, especially infrastructure, property and healthcare: "constituer un capitalisme d'Etat militant pour la localisation " au pays " des centres de décision des grandes entreprises privées.... Les secteurs prioritaires sont les infrastructures, l'immobilier, la santé."<sup>58</sup> This has already been done in the case of SAUR, a leading French water and waste management company: in April 2007 SAUR was sold by private equity firm PAI to a consortium led by the CDC, which holds 47%. In effect, SAUR has been partially nationalized.<sup>59</sup> This is not the same as direct public ownership but is based on a recognition of the importance of the public sector and the responsibility of the state to prevent speculative exploitation of public enterprises and their workforce.

### **7.2. Public finance**

An alternative approach to public services involves finding a different way of financing investments – such as new hospitals, schools or roads - without using the private sector through PPPs.

It is important to recognise that the public always pay for the cost of this investment, however it is made. The payments are made from taxes paid to public authorities, or charges paid to public or private operators, or a mixture of both. Private finance does not mean that private companies somehow subsidise the investments.

Usually, money is borrowed to help pay for the cost of a large infrastructure project, in order to spread the cost over a number of years. But the public still have to pay for the interest and repayment of the loans, through taxes and/or charges, whether money is borrowed by the public authority or by private companies.

The normal way of borrowing for public investment is still for governments, regions and municipal authorities to borrow money, by issuing bonds or borrowing money from banks. It is easy to show that this is more efficient, because central and local governments, and organisations owned by them, invariably get offered cheaper interest rates. See *the accompanying paper ECPPPs-crit.*

Specific initiatives to increase the financial powers of public authorities have come from some regional and sub-national authorities.

- A recent decision in France by the Conseil d'état, the highest public administration court in France, supported the right of a regional public authority to restrict public subsidies to municipalities which use direct in-house service provision. The Landes Regional Council, in eastern France, has been concerned for some years that provision of water through private concessions (a form of PPPs) leads to higher prices than direct service by municipalities. It therefore decided that its subsidies, for municipal water service research studies and investment in works programmes, would only be available to those municipalities using a wholly owned public service provider, and not to those municipalities using a private company. The private water companies protested, but in February 2008 the Conseil d'état supported the right of the regional council to operate this policy.<sup>60</sup>
- In the UK, the Scottish executive is pressing for greater powers to issue bonds as an alternative to being required to use PPPs for public investments.

### 7.3. Economic and fiscal policies

The EC restrictions on borrowing and debt are set in the treaty and protocol, and do not allow for exceptions based on public service needs. But economic pressures can lead governments to overriding the limits, as happened in 2005, when most of the largest members states in the EU broke these limits, without the EC applying any effective sanctions.

The current international economic context has led to increased fears of recession, and calls for expansion of public spending and greater borrowing by governments, even from such conservative institutions as the IMF.

There are general economic arguments against rigid borrowing limits and in favour of greater public investment and spending. A network of European economists, the Euromemorandum group, publishes regular critiques of EC economic policies.: the 2007 paper includes arguments for: "A more active macro-economic policy of the EU should promote more and better employment and sustainable development in the EU. Measures in this direction are public investment programmes on the national and on the EU level...."<sup>61</sup>

## 8. The fundamental values

For many years now the market-oriented and individualistic values of neo-liberal ideology have been persistently promoted by most governments, political parties and media. Part of the process of defending and promoting public services and the public sector necessarily involves offering some ideas and values to counter this ideology.

### 8.1. European Social Model and solidarity

The notion of the 'European Social Model' (ESM) is often used to support the idea that public services have a central role to play in European countries. At the centre of this model is the

concept of social solidarity, which has attracted growing interest in recent years in analyses of public services in Europe.

A recent analysis of the various ideas and origins of the ESM, carried out as part of a trans-European research project (PRESOM), identified a number of core features of the ESM. These included comparative aspects that were different from the USA, principles of social inclusion, and the core principle of solidarity which contrasts with the individualistic political principles of neo-liberalism.<sup>62</sup>

**Table 1 Features of European Social Model**

Comparative	higher degree of income equality
	progressive tax system
	public ownership
	public pension benefits
Social Inclusion	Universal, social rights/justice not charity
	Protection from risks
	Non-discrimination and equal access
	collective organisation of 'service public'
Political	Solidarity

Source: PRESOM 2007<sup>63</sup>

Legal analysts also identify the principle of solidarity as of central importance to the legal framework of public services. The principle of the public service ethos may be seen as fundamental to public services themselves, in a way which is not met by devolved and contracted-out service, however well regulated. Public services are not just about correcting market failures, but about deeper principles of mutual support: even the ECJ decisions in relation to social and healthcare policies show awareness of this deeper solidarity.<sup>64</sup>

The principle of solidarity financing continues to be visible in the operations of the EU itself. About one-third of the EU's budget is spent through the structural funds, which are designed to reduce inequalities between member states by centrally financing developmental spending, especially expenditure on environmental and transport infrastructure, and paying for retraining of workers in declining regions, and combat discrimination against groups of workers. The 2007-2013 programme involves €304 billion.<sup>65</sup>

## 8.2. Shared values, the future and evaluation

Unions and others have also focussed on key principles for a programme for developing public services in future.

EPSU and other European trade unions are demanding a legal framework supporting the central role of public services in Europe. Such a framework would set out the legal basis for public services in the EU, and for evaluation of public services based on the principles of accountability, solidarity, universal access, efficiency, and impact on employment. The new Protocol on public services is the possible basis for such a framework, together with the Charter of Fundamental Rights, and the rights of Member States, under the subsidiarity principle, to determine the scope of public services. The demand for a legal framework is shared by the socialist group in the European parliament (PES), the association of European public sector employers (CEEP), the CoR and EESC.<sup>66</sup>

### *Example: Ver.di-Unison on the values of public services*

Ver.di and Unison have published a joint statement on the values underlying public services and the importance of developing public services. The booklet "The Future of Public Services in Europe/ Die Zukunft der öffentlichen Dienste in Europa" identifies a series of common issues which extend across the different national administrative practices for delivering

services. It sets these out as positive features of 'expansive' public services, in contrast to the negative tendencies of the neo-liberal approach favouring 'residual' public services.

<b>Expansive public services</b>	<b>Residual public services</b>
Comprehensive, universal services developing to meet social needs	<i>Minimal "safety net" services for poorest who cannot afford private</i>
Tax and insurance based financing	<i>Increased use of co-payment</i>
Risk shared across the community	<i>Risk transferred to the individual</i>
Universal benefits	<i>Means-tested benefits</i>
Services developed on principles of co-production and social dialogue	<i>Adversarial roles between users, workers and government</i>
Government as a model employer setting standards for private sector	<i>Government employment standards match private sector norm</i>
Strategic investment in public-sector	<i>Increasing private finance and provision</i>
	<i>capacity</i>
Standards agreed through stakeholder	<i>Centrally imposed standards</i>
	<i>dialogue</i>
Strengthening of EU social rights and EU "social model"	<i>Pan-European "race to the bottom" in working conditions</i>
Broad and strong public support for redistributive funding arrangements	<i>Narrow and weak public support for redistributive funding arrangements</i>

Source: Ver.di and Unison 2007

Unison and Compass, a UK think-tank linked to the Labour party, organised a seminar focussing on specific issues in public services. The report from the meeting identified certain core basic principles underlying a positive political programme for public services, including:

- equal access to users;
- efficiency that accounts for human wellbeing and social benefits;
- a culture of continual improvement;
- empowering users;
- real partnership with the workforce;
- strategic focus that values necessary investment in physical, social and human capital;
- a non-ideological approach to providers;
- a holistic or 'systems' approach to reform that supports collaboration and integration.

The Economic and Social Committee of the EU (EESC), on which the trade unions of Europe are represented, has called for a public and independent evaluation of public services across Europe, replacing the present limited technical exercise carried out by the Commission.<sup>67</sup> The EESC frames its proposal on the EU's own provisions, emphasising the EU treaty obligation to ensure that services function effectively to achieve their objectives, including the EU treaty objectives of economic, social and territorial cohesion, the social market economy, and the exercise of fundamental rights.

Rete del Nuovo Municipio, a network of Italian local authorities concerned to develop public services, has agreed a charter which sets out its guiding principles for development of local authorities, which emphasise public participation, locally based environmental and global relationships. It also posts a number of examples of good practice on its website.<sup>68</sup>

**Table 1 Rete del Nuovo Municipio: Carta**

The role of local bodies in developing a grass-roots alternative to globalisation	Il nuovo ruolo degli enti locali e delle loro unioni per una globalizzazione dal basso
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New forms of direct democracy	Nuove forme di democrazia diretta
New multi-cultural society	Nuovi territori multiculturali
New indicators of welfare	Nuovi indicatori di benessere
Locally sustainable economies	Nuovi sistemi economici locali autosostenibili
Enhancement of local culture and traditions	Forme di valorizzazione del patrimonio territoriale locale
Fair and supportive trade networks	Reti di scambio equo e solidale

Source: [www.nuovomunicipio.org](http://www.nuovomunicipio.org)

### 8.3. International context: asserting the value of public services

The market orthodoxy of the World Bank and the EU, which emphasises the supremacy of the market and the priority of commercial activity, is also being challenged at international level.

Public services, especially public sector investment, are key elements in the policies of social democratic governments in key emerging countries, for example India, Brazil, and South Africa.

Major international NGOs such as Oxfam and Bread for the World now argue that public services are central for social and economic development and social and territorial cohesion.

Public Services International (PSI) is running a global campaign for quality public services.

Public authorities, unions and NGOs in Europe are developing solidarity links with developing and transition countries through public-public partnerships (PUPs) to assist in the building of public services.

These initiatives are supported by growing amount of research supporting the role of the public sector.

- A number of studies have shown the importance of public investment for economic growth: while the private sector invests only in projects which can yield profits for shareholders, but public investment can deliver greater benefits for the economy as a whole, as well as social benefits.
- Other studies by economists have shown that the efficiency of the public sector is not intrinsically inferior to that of the private sector, in many services including water, electricity, telecom, and health and social care.
- Economists from the UNDP have argued that the positive value of public services must be taken into account in deciding economic policies and government plans for taxation, spending and borrowing.

#### Further information

Oxfam. In The Public Interest. 2006 <http://www.oxfam.org/en/policy/in-the-public-interest>

PSI. Quality public services <http://www.world-psi.org/qps>

UNDP. Public Resource Management <http://www.undp.org/poverty/prmgmt.htm>

## 9. Case study: union campaign in Italy

Italian trade union FP-CGIL (Funzione Pubblica – Confederazione Generale Italiana del Lavoro) has been proactive in establishing networks and joint initiatives with Italian NGOs and social movements. Such initiatives aim at promoting alternative policies to the neo-liberal agenda in the area of public services, particularly in water supply and sanitation. The choice to focus on the water sector derived from the need to start the struggle for a more socially-oriented approach to public service provision, mindful of the public interest, on favourable

ground. Since the beginning, FP-CGIL's strategy has been to use any successes obtained by the water campaigns as an example for replicating similar experiences in other sectors. In terms of tactics and strategies adopted, there has been a considerable interweaving of experiences from the water campaigns and those run in other sectors.

The main lesson drawn is that treating NGOs and civil society organisations as equal partners is vital to strengthening mutual support around common objectives shared by trade unions and social movements. This has enabled trade unions to achieve results beyond their actual social and political clout. Results obtained by the water campaigns undertaken in Italy include progress on promoting national legislation outlawing water privatisation and the exclusion of water services from the application of EU competition law. Although the Italian social movement on water is very much alive, there have been difficulties in fulfilling the potential of the campaign. However, this was exclusively due to the political instability affecting the ability of the last Italian government to enact legislation as intended. It should not be construed as a sign of any limitations of the campaign in itself. FP-CGIL acknowledges that replicating the same approach in other sectors is proving difficult as it is harder to mobilise public opinion around the common good value of non-water public services. Nonetheless, efforts in this sense are ongoing and it remains to be seen whether they and to what extent they will bear fruit.

The below sections elaborate further on FP-CGIL's experience with promoting positive action.

The water sector has been chosen as the focus of positive action in light of its strategic importance due to its essential nature. In other words, the fact that water services can be easily recognised as central to the public interest facilitates the mobilisation of public opinion and the coalescence of trade unions and civil society organisations around common campaigning objectives. These include the promotion of in-house service provision as a means to defending water as a common good.

FP-CGIL has recognised that the above characteristics make the water sector particularly mature to start a struggle to counter the neo-liberal offensive. However, it has devised a conscious strategy to "export" the struggle to other public services where the rejection of neo-liberal policies is no less urgent.

#### **9.1.1. Genesis of the "equitable partnership" approach**

The initiatives undertaken by FP-CGIL in concert with Italian social movements have recently intensified. However, the opportunity for establishing the first contacts with civil society organisations was provided by the resistance to the Bolkenstein Directive (the Stop Bolkenstein! campaign). The positive results of the campaign encouraged FP-CGIL to engage further with social movements in other campaigns, not only in Italy but also at European level.

One lesson derived from the experience with the Stop Bolkenstein! campaign was that it is important to win the traditional reluctance of trade unions to treat NGOs and social campaigners as peers. Treating social movements as partners on an equal basis allowed for trust to be established along with a sense of belonging in the campaigns undertaken. In turn, this resulted in the multiplication of energies around mutually shared principles and goals and in the achievement of objectives beyond what the resources of individual social actors would have made possible.

A strong alliance between trade unions and civil society organisations requires sharing respective resources so that all actors in the social coalition can gain. Trade unions are usually in a position to contribute their sectoral competence, logistic organisation and resources which few other organisations can rival. From a trade union point view, a valuable contribution offered by civil society organisations is proximity with citizens and the perceived

representativeness of the general interest. The latter point is debatable. FP-CGIL notes that CGIL, the broader trade union confederation, has historically addressed public interest issues such as public service tariffs.

As a matter of fact, FP-CGIL takes the view that a traditional corporatist approach limited to the defence of salary and working conditions would have resulted in the passive resistance against the erosion of workers' rights. Adopting this approach alone has proved to be limited in effectiveness. Conversely, establishing an alliance with other actors affected by neo-liberal policies such as civil society organisations, but also local authorities, has enhanced the effectiveness and reach of campaigns. Obviously, this implied broadening the scope of the campaign objectives but as a result there has been a shift from predominantly reactive to proactive and positive action.

### **9.1.2. Difficulties encountered so far in other sectors than water: context matters**

The most visible results achieved by FP-CGIL as part of social campaigns have been obtained in relation to the Italian water sector, as is discussed in detail below. Although FP-CGIL is attempting to replicate the same approach in European campaigns on water and on other public services in Italy it is proving harder to achieve the same resounding successes as in the Italian water campaigns. One of the reasons is that acting at European level might not provide the same unifying context for trade unions and social movements from different countries. This is particularly true in the absence of a common threat as the Bolkenstein Directive might have proved to be. However, FP-CGIL is participating in the newly established Reclaiming Public Water Europe network and it remains to be seen how this will address issues of coordination and strategy implementation.

Furthermore, FP-CGIL is participating in the Italian network Rete Nuovo Municipio which covers many sectors such as water, waste management, local public transport, energy, health care, social welfare and local public finance. A well researched book was published in 2007, containing reviews of sectoral developments and the results of surveys on the scope and impact of liberalisation and privatisation. The surveys were respectively designed for and responses obtained from trade unions, local authorities and civil society organisations. FP-CGIL trade unionists interviewed for this manual acknowledge the difficulty of raising popular awareness on the implications of neo-liberal policies and mobilising social support for in-house service provision in other services than water. In addition, coordinated and focused action across many different sectors has been made difficult by the broadness of issues to address in terms of analysis as well as action. By contrast, *"focusing on the water sector alone has resulted in a multiplier effect of both contributed human energy and results obtained"*.

However, it should be noted that it might be too early to express a final judgement on the success of positive action on water at European level and on other sectors at Italian level. In both cases, lessons are in fact continuously learnt and the process is in constant evolution. For example, FP-CGIL intends to use its experience in promoting legislative change of the institutional framework underlying water service provision to demand similar changes in other sectors. In the specific case of water campaigns at European level, this initiative is extremely recent. FP-CGIL (and other participants in the Italian water campaigns) see their involvement as an opportunity to share their experience with their European counterparts to strengthen the European network. FP-CGIL recognise that the Reclaiming Public Water Europe network or similar European initiatives have considerable potential in the following areas: a) promote change of EU Directives and sectoral policy; b) facilitate the exchange of knowledge on experiences in different European countries; c) support local initiatives and campaigns where needed (although so far it seems more realistic to expect such support to materialise indirectly rather than indirectly – *"A victory of the Italian movement benefits the whole European movement"*).

### 9.1.3. Results obtained so far from the water campaigns in Italy

Since the introduction of the 1994 Galli Law reforming the Italian water sector, private sector participation has considerably increased. FP-CGIL estimate that, of the 91 concession areas in which Italy was subdivided by the Galli Law, in approximately one third the service has been awarded to private or public-private operators, in approximately one third the service has been awarded to publicly-owned corporatised PLCs (public limited companies or joint stock companies), and in approximately one third the service remains to be awarded. This is a considerable change if compared to the end of the 1980s when private operators accounted for 4% to 5% of total operations.

It is against this background that FP-CGIL has promoted a number of initiatives together with social movements and a number of sympathetic local authorities (including some large communes and provinces). FP-CGIL, social movements and local authorities established the Italian Forum of Movements on Water. These initiatives include the following.

- Centre left coalition which formed the Prodi government adopted, under the initiative of the more leftist political parties, an electoral manifesto including specific reference to a law banning water privatisation (Dutch style). It has proved difficult to enact the proposed law during the short lived Prodi government, due to the partial support received from the political parties in the majority, which promote private sector solutions.

- Confronted with the political reluctance of the parliamentary majority to honour its electoral pledges, the social movement has submitted a proposed law to Parliament. The Italian constitution provides in fact for so-called "popular legislation" to be considered for approval by Parliament if a number of citizens' signatures are gathered by the promoting organisations. The movement managed to collect 406,000 signatures instead of the minimum 50,000 required. Emphasis on the number of signatures was placed to exert pressure on members of parliaments to approve the law, as the experience with the electoral manifesto showed that only the far left would have supported the act but this was not sufficient for its enactment. The proposed "popular" law provided for the following: a) outlawing the privatisation of water infrastructure; b) service provision could only be entrusted with public sector undertakings (in-house service provision would have resulted in the exclusion of water from the application of EU competition law); c) establishment of a national public fund aimed at financing the remunicipalisation of privatised and semi-privatised operations throughout Italy (estimated in Euros 1 billion, which local authorities would not be in a position to raise); d) the partial subsidisation of water tariffs by using general taxation; e) the introduction of public participation in the planning and management of water operations; e) establishment of a national fund, partly based on general taxation, partly on a levy of Euro 0.01 per cubic metre of water supplied, aimed at promoting access to water services in developing countries by financing not-for-profit public-public partnerships (PUPs) and twinning arrangements. Prior to the premature fall of the Prodi government in January 2008, the pace of progress with the "popular law" appeared to be particularly swift when compared with similar initiatives without such a prominent social support. The fall of the Prodi government has if anything increased the uncertainty around the proposed law but the social movement insists on lobbying for its approval.

- In order to mitigate the risk of further privatisations being approved before the enactment of the proposed "popular law" and to capitalise on time, the social movement promoted and obtained in November 2007 the approval by parliament of a moratorium. The moratorium had the effect of suspending all water privatisation processes in Italy for the duration of one year.

- In order to maintain pressure in support of the above initiatives, the Italian Forum of Movements on Water organised a 40,000 strong national demonstration in Rome on 1<sup>st</sup> December 2007. This was an unusually successful demonstration for such a sectoral issue. The participation reflected the broad representation of the Forum in terms of organisations involved (trade unions, NGOs, local governments) and territorial representation. The Forum

constitutes in fact a federation of virtually all the anti-privatisation campaigns on water that are active in all Italian regions and at national level.

- In order to serve the above purposes and support the Forum's campaigns, the Forum decided to establish a permanent observatory for the monitoring of water privatisations in Italy, the monitoring of semi-privatised multi-utilities and the coordination of local campaigns at national level.

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<sup>3</sup> Article 295 is very broad: "This Treaty shall in no way prejudice the rules in Member States governing the system of property ownership." The EC FAQ say that in effect there is no separate entity so there is no contract to tender: "The "in-house" exception is meant to cover a situation where a public authority decides to provide a service itself, albeit acting through a legally independent entity. In this case the public authority and the legally independent entity are effectively regarded as one. Such a relationship is neither covered by the principles of transparency, equal treatment and non-discrimination derived from the EC Treaty, nor by the public procurement Directive" (EC FAQ 1.2)

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