

Chapter three

German municipalities take back control of water

By Christa Hecht

In Germany, water has traditionally been owned and managed by the municipalities. Since the Middle Ages, there have existed public associations to carry out irrigation and drainage operations. In the 19th century, corporations and cooperatives were formed to ensure water management and wastewater removal in the growing industrial centres, mainly to prevent epidemics.

Today, there are more than 12,000 water and land associations, water and wastewater associations, and dike and sluice associations in Germany. In addition to water supply and wastewater treatment, they are also responsible for the preservation of water resources under the EU Water Framework Directive. An estimated 6,060 water operators deliver clean tap water to citizens and there are over 6,900 wastewater operators.

Water governance is based on local working units that are close to users. Sustainable management of water resources for future generations and environmental protection are key principles.

Municipalities are responsible for providing citizens with drinking water and wastewater removal as public services of general interest (named *Daseinsvorsorge*). Local governments have the competence to determine the organisational form of water management. Smaller towns often join municipal associations to provide water and/or sanitation services and benefit from such inter-municipal cooperation. The right of self-government of the municipalities is protected by the German Constitution.

Municipalities can use several organisational and legal forms for water supply and wastewater removal in Germany:

- Government-operated system
- Municipal Company or Public Law Company (PLC)
- Special-purpose association
- Water and land association
- Special legal association in North-Rhine-Westphalia
- Other forms of inter-municipal cooperation
- Public-private partnership
- Concession/operational contract with a private company

Table 3.1 *Water management in Germany (2014)*

Legal structure	Wastewater treatment	Water supply
Public service legal structures	92%	64%
Public companies/municipal companies (PLC/Ltd. Co)	(28% associations and inter-municipal cooperation)	(23% associations and inter-municipal cooperation)
Public-private partnerships		21%
Other private companies	8%	15%

Source: *Branchenbild der Deutschen Wasserwirtschaft* 2011 and own research.

From the 1950s to the 1990s

After the Second World War water management developed in different ways in the East and West. In the Federal Republic of Germany (West), the historically decentralised structure survived with the constitutional protection of local self-government. In the German Democratic Republic (East), the water sector was centralised in departments for ground and surface water and for urban water management oriented on river basins and government districts

with 15 large state-owned utilities. After the fall of the Berlin Wall and the reunification the latter were decentralised and the utilities and their water network infrastructure were handed over to the municipalities.

Through this process the German states in the eastern part of the country wrote clauses into their new federal laws to open up for private investments in the water sector, allowing concessions, operation agreements and public-private partnerships. As a result, some full-fledged privatisations and partial ones took place in the 1990s in the former eastern part of Germany. On the western side of the country some privatisations had already taken place beginning in the 1980s in financially stressed municipalities.

While in the 1980s and 1990s advocates of privatisation promised greater efficiency and better service from the private sector, the traction of these arguments in favour of privatisation has now faded completely. These days Germans equate privatisation with higher rates for users, while profits soar for the private operators. Studies have indeed demonstrated that after privatisation prices for water services generally increased.¹

Politicians have had to acknowledge that in the public water management sector the knowledge and experience of engineers, scientists or technical experts was at least as valuable as in the private industry. When it comes to taking social and environmental concerns seriously in the planning of infrastructure, to setting tariff pricing and to using the resources responsibly, they now see that the public water sector is also clearly superior.

Public water operators also tend to be of great significance to the regional economy because they often concentrate their investments in local small and medium-size companies for infrastructure and maintenance works – contrary to private operators who tend to contract out work exclusively to their subsidiaries.

In 2007 the Alliance of Public Water Associations (AöW) was founded by public water operators to fight against privatisation and to lobby for public management. In the last few years, there has been significant progress towards achieving these objectives. Since 2012, at least six German cities have decided to remunicipalise water services.

Key remunicipalisations in Germany

Berlin

In 1999 the Berlin House of Representatives approved the Senate proposal to sell 49.9 per cent of Berlin Wasser Holding AG to a consortium of private German and French companies. RWE Aqua GmbH and Vivendi (now Veolia Wasser GmbH) bought the shares for €1,679 billion. This was preceded by tense discussions and a largely unsuccessful complaint filed by two members' groups of the Berlin Parliament before the state's Constitutional Court.

Nonetheless, the project went ahead, negatively affecting the 3.5 million residents of the German capital. The main terms of this partial privatisation included: a four-year exclusion from any increases in tariffs, a ban on layoffs until 2014 as negotiated with the trade union² and a level of investments of €2.5 billion for the first 10 years (€250 million per year). The state of Berlin also guaranteed profits for the private investors; if the profit targets were not met, it would be obliged to make up for the difference by drawing from its budget. The contract was signed until 2028.

Additional terms of the contract secured a decisive influence for the investors on the Management Board, even though they did not have a majority of shares. They included the expansion of activities in the German and international telecommunications and water markets and creating 700 new jobs in subsidiary companies by 2009. The partial privatisation of Berlin's water utility (*Berliner Wasserbetriebe*) was intended to become a flagship for successful privatisation.

However, by 2004 water prices had increased in roughly 35 per cent.³ Between 1999 and 2011 the private investors banked €1,526 billion in profits, equivalent to a 7 per cent annual profit rate relative to purchase price.⁴ The revenues to the state of Berlin increased, but the €365 million of its possible share of profit were not accessed. The cause is not explained.⁵ Despite high profits, the investments in infrastructure decreased after 2009 and in 2013 a study showed an investment gap compared to planned spending.⁶ Due to financial losses in its international activities, Berlin's water operator reduced these activities and they

will be stopped completely in the future. The exclusion of layoffs for employees was extended until 2020.

Popular discontent with the high prices of water fuelled political debate and voices emerged against the privatisation. A referendum proposal was pushed forward by the citizens' initiative *Berliner Wassertisch* (Berlin Water Table) in 2011 to demand transparency on the terms of the privatisation contract, which had been kept secret until then. The initiative was supported by 98.2 per cent of voters. A few days after this referendum the contracts were published online by the *Berliner Wasserbetriebe*. Berlin citizens saw the favourable conditions the private investors had guaranteed for themselves as the main reason why the water price had increased so much.

Moreover in 2012 the German Federal Cartel Office ordered Berlin's water utility to lower the water price in 18 per cent due to what it considered to be abusive pricing. A comparative analysis of the Cartel Office showed that the price was significantly higher than in comparable companies (they are all publicly owned).

In 2012 Berlin bought back the shares from RWE Aqua GmbH for €654 million and in 2013, the shares from Veolia for €590 million. To do so the city of Berlin took a loan that must now be repaid through water bills (and thus citizens) over a period of 30 years.

Since the buy-back, investments in infrastructure have increased and the price for wastewater treatment was lowered too.

Rostock

In 1993 the urban water and wastewater systems of the city of Rostock and the 29 surrounding municipalities were privatised through a 25-year contract with Eurawasser Nord GmbH (originally part of the Suez Group). Some 200,000 residents and 320 staff were affected.

The municipalities have decried the lack of transparency ever since and their inability to influence the private operator. Compared to other cities, prices are roughly 20 per cent higher, but this does not translate into higher quality

services or significant reinvestment in the water systems. The utility was sold in 2011 to Remondis Group by the first private owner and the affected municipalities did not have a say.

In 2014 the City Council of Rostock decided to cancel the contract at the end of the term in 2018, in consultation with the 29 other municipalities. After this decision, Eurawasser Nord GmbH stopped sponsoring events and sporting clubs in the city. In the coming years, difficult negotiations are expected for the transfer of water management from the private investor to a new public company.

Stuttgart

In 2002, Stuttgart, a city with 613,392 inhabitants in the south of Germany, fully privatised the water supply by contracting EnBW Regional, a subsidiary of EnBW AG (exchange-listed stock corporation).

Citizens in Stuttgart led a strong public campaign for some years. In 2010 the local citizens' initiative *Wasserforum* successfully collected 27,000 signatures for a referendum on remunicipalisation. At the 17 June 2010 City Council meeting, Stuttgart decided to terminate the contract with EnBW Regional at the end of December 2013. Following this decision EnBW Regional decided to increase the price for the water service in 2012. The City of Stuttgart has appealed the court against this increase, but a judgement has not yet been rendered.

After Stuttgart's decision to remunicipalise the water works, a major conflict over the repurchase price of the water network erupted. The city is willing to pay €150 million, whereas EnBW AG wants to sell at €600 million. Now the management of water supply by EnBW Regional was extended until this conflict about the water price increase and the repurchase price is resolved.

Lessons learned

Selling away the municipal silverware during financial crunches is not a good solution. Municipalities end up making themselves vulnerable to blackmail by private investors.

The contracts are usually designed in favour of private investors and any buy-back is very expensive for the citizens. In Germany, citizens have paid as much as twice or triple the combined value of utilities and infrastructure, although all along they were the ones to finance these through water charges.

The message to mayors and members of city councils is to steer clear of privatisation.



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Endnotes

- 1 Ruester, S. and Zschille, M. 2010. The impact of governance structure on firm performance: An application to the German water distribution sector. *Utilities Policy* 18 (3): 154-162.
- 2 Contract of trust with the trade union.
- 3 Verband Deutscher Grundstücksnutzer e. V, excerpt from the complaints, 2 March 2012.
- 4 Judgement *OLG Düsseldorf*, 24 February 2014, *VI-2 Kart 4/12 (V)* paragraph 175.
- 5 Schaefer, C. and Warm, S. 2014. Berliner Wasserbetriebe (BWB) – Water and sewage company in Berlin. Working Paper CIRIEC No 2014/01, p. 28. http://www.ciriec.ulg.ac.be/fy/telechargements/WORKING_PAPERS/WP14-01.pdf;
- Hüesker, F. 2011. Kommunale Daseinsvorsorge in der Wasserwirtschaft: Auswirkungen der Privatisierung am Beispiel der Wasserbetriebe des Landes Berlin. Munich; Berlin Senatsverwaltung für Finanzen. 2014. Berliner Beteiligungsbericht 2014 Band 1, p. 75. www.berlin.de/sen/finanzen/vermoegen/downloads/artikel.7206.php
- 6 Report: Requirements for sustainable rehabilitation of water and wastewater system in Berlin, 2014.