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Appendix 1

21 February 2014

Advancing the human right to safe drinking water and sanitation [HRWS] in the European Union

- **Proposals of private water operators**
- **Comments on the proposals submitted by the organisers
of the European Citizens' Initiative ECI(2012)000003**

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All individuals need clean water every day and this basic need for water is now recognised as a human right by international law¹.

This right has precise requirements for European Member States. It means that everyone should enjoy access to a minimum quantity of clean water that is safe, accessible, acceptable, affordable and can be obtained without discrimination. Transparency and accountability of public action are also important elements of this human right².

Currently, this is not the case everywhere in the European Union. Some EU citizens still lack access to public services for water supply or sanitation. Water supplied is not always safe everywhere. Affordability of drinking water to users through bills and taxes may be hindered by unnecessary costs and may not be guaranteed to the poorest. According to the Commission, "20 million Europeans don't have access to quality water and safe sanitation"³. Furthermore, all citizens do not enjoy easy access to detailed information on the performance of their public water systems.

European Governments, which are all parties to the International Covenant on Economic, Social and Cultural Rights, have the responsibility to turn the human right to water into a reality progressively for all their citizens.

1. Private operators contribute to making the human right effective to all

Private water operators are companies that deliver public services to individuals as mandated by responsible public authorities through Public-Private Partnerships contracts or through regulated licenses. More than 33% of European citizens receive water or wastewater services from them (directly or indirectly).

Private operators deliver significant progress on all the dimensions of the right when they are requested to do so by public authorities. Their daily job is to provide good quality water to all water-users without any discrimination. Competitive tendering ensures that private operators use their professionalism to optimise costs to users and taxpayers as a whole. Private companies implement the social support mechanisms and subsidies that are designed by public authorities and are therefore efficient tools for governments that want to ensure that safe drinking water and sanitation services are affordable to people, including the very poor. Private water operators have also expanded water services to many un-served or poorly-served areas in developing countries. Many examples are documented in the AquaFed brochure, "*Private operators delivering performance for water-users and public authorities*". For example, in Europe, the satisfaction of users with respect to water quality has been dramatically increased in Gdansk (Poland) and in Rostock (Germany). In France, private water operators have initiated and are funding the regional mechanisms that pay the water bills of the most-disadvantaged people.

Private water operators are committed to "engage actively with the public authorities that employ them to help them achieve the progressive realisation of the human right to safe drinking water and sanitation within their jurisdiction"⁴.

¹ UN Human Rights Council resolution A/HRC/RES/15/9 dated 6 Oct 2010

² Article 49 of the General Comment 15 to the International Covenant on Economic, Social and Cultural Rights: "The national water strategy and plan of action should also be based on the principles of accountability, transparency and independence of the judiciary, since good governance is essential to the effective implementation of all human rights, including the realization of the right to water."

³ Stated by Commissioners Potočník, Piebalgs and Barnier on 21 March 2013

⁴ Declaration by AquaFed on behalf of private water operators in the 6th World Water Forum, 16 March 2013

2. AquaFed proposals to improve the delivery of the human right to safe drinking water and sanitation in the EU

AquaFed would like to make three proposals that would concretely advance the human right to safe drinking water and sanitation in the EU.

2.1. Including the human right to safe drinking water and sanitation in the European Charter of Fundamental Rights.

Private water operators have already proposed that the EU should recognize the Human Right to safe drinking water and sanitation by including this Right in the European Charter of Fundamental Rights. This was suggested through a letter to Commissioner Viviane Reding on 22 March 2013. This would contribute to making this Right more visible and would create an incentive and example for governments to make it effective in all its dimensions to all individuals across Europe and beyond.

2.2. Reporting on right to water indicators

As indicated in General Comment 15 to the International Covenant on Economic, Social and Cultural rights, *"Indicators should address the different components of adequate water (such as sufficiency, safety and acceptability, affordability and physical accessibility), be disaggregated by the prohibited grounds of discrimination, and cover all persons residing in the State party's territorial jurisdiction or under their control."*

The Union could decide that the current national reporting by EU Member States through the Water Information System for Europe (WISE) system be extended to include reporting on all these Right to Water indicators.

In addition, all Member States could determine that all public authorities in charge of components of the human right to safe drinking water and sanitation report annually both on progress made within their jurisdictions and on targets fixed for all their operators, whatever their status.

2.3. Increasing transparency and accountability of water services through transparent benchmarking for all

The UN General Assembly resolution, adopted on 19 Nov 2013, called upon States "to provide for effective accountability mechanisms for all water and sanitation service providers to ensure that they respect human rights".

Today, not all EU citizens can easily access information on the quality of their drinking water and on the performance of their water services. In many cases, this information does not exist, is not reported, or is not available to the public.

In particular, benchmarking systems should be improved in EU countries. While national benchmarking systems in France and the United Kingdom are fully transparent to the public and to academic research, several other benchmarking systems are closed to the public, which means that water-users and citizens cannot apply pressure to their water suppliers to improve their performance.

The transparency and the accountability of water services would be enhanced significantly if all public water systems, all public water authorities and all of their operators, whatever their status, were required to disclose regularly through Internet and other appropriate means, comparable data on key economic, human rights and other performance indicators.

3. A Citizens' Initiative on 2 distinct topics that should not be confused

The ECI on the Right to Water includes 3 requests.

1. *The EU institutions and Member States be obliged to ensure that all inhabitants enjoy the right to water and sanitation.*
2. *Water supply and management of water resources not be subject to 'internal market rules' and that water services are excluded from liberalisation.*
3. *The EU increases its efforts to achieve universal access to water and sanitation.*

Requests #1 and #3 are related to the implementation of the human right to safe drinking water and sanitation in the EU and beyond Europe. Request #2 on internal market rules and liberalisation is related to the organization and the management of water services and water resources. We obviously approve #1 and #3 as they promote a wider and better access to safe drinking water and sanitation.

Aptly squeezed between #1 and #3, the second request plays on the same note and tries to showcase itself as an obvious consensus for all that the organization and the management of water services and water resources should not be "liberalised". The approach is misleading and the point is crucial. It is a caricature to simplify this debate into a pseudo anti-liberalisation approach.

It should be made clear that this request 2 on the internal market rules is disconnected from the two other ones for at least two reasons:

- because, as described in paragraph 4 below, if adopted literally, this request 2 would create room for opacity in decision-making, potential corruption and unfair competition and in consequence be inconsistent with the progress required on the human right to safe drinking water and sanitation.
- because the human rights framework is neutral with respect to the types of operators chosen to deliver it.

When the UN Human Rights Council recognized access to safe drinking water as a human right in October 2010, it also formally resolved that public authorities have full discretion to select public sector operators, private sector operators or NGOs to implement their policies with respect to this human right⁵. This neutrality of human rights with respect to the organization of water services was confirmed in writing by the UN Special rapporteur on the Human Right to Safe Drinking Water and Sanitation. In Sept 2012, she wrote⁶ to the organisers of the ECI as follows:

"In seeking to ensure universal service provision, human rights are neutral about the type of service delivery that is decided upon in a particular country - whether it is direct provision by the State, whether services are operated by a private company after a formal delegation, or whether the provision of services is informal. However, the provision through private actors does under no circumstances exempt the State from its human rights obligations to progressively realize the rights to water and sanitation."

This statement, supported by human rights lawyers, means that contrary to the propaganda of anti-private lobbies, satisfying the human right to water does not restrict the range of management options for water services that are available to public authorities.

⁵ UN Human Rights Council resolution A/HRC/RES/15/9 dated 6 Oct 2010

⁶ Letter from Catarina de Albuquerque, Special Rapporteur on the human right to water and sanitation, to the ECI organisers dated 10 Oct 2012
www.right2water.eu/sites/water/files/Letter%20from%20Catarina%20de%20Albuquerque.pdf

Therefore, the 3 requests of the ECI should be neither mixed nor blurred. The Commission should answer each of them separately while recognising the neutrality of human rights with respect to the management options for the delivery of water services.

3.1. An unclear Request #2 on Internal market rules and liberalisation

The 1.7 million people who signed the Citizens' Initiative on the right to water are obviously willing to support a better implementation of the human right to water. Besides, by signing they also supported the request 2 "*Water supply and management of water resources not be subject to 'internal market rules' and that water services are excluded from liberalization*".

The meaning of this request #2 is unclear. It is very difficult to interpret the exact intention or understanding of the signatories with regard to this request when they signed the petition.

Most of them probably signed without knowledge of the "explanatory note" filed by the organisers since more than 1.2 million people had already signed the request before the "explanatory note was made available on the campaign website www.right2water.org.

This is why there must be serious doubts that the interpretation of this request 2 given by the ECI organisers reflects the true intent of all of the signatories.

We provide, attached to this document, a legal assessment (Appendix 2) of the ECI request #2. It shows in particular that excluding water services from internal market rules might result into less transparency in the delivery of these public services and, in consequence, would act against the implementation of the human right to safe drinking water and sanitation.

In light of this assessment, when responding to the Citizens' Initiative, we invite the Commission:

- i) to clarify the limits and conditions in which ECI can be used as foreseen by article 11(4) of the Treaty,
- ii) to assess the current ECI having in mind the clear difference to be made between water as a resource and the services that can be rendered by water supply and management,
- iii) as well as taking into account the EU "acquis", both from an internal market and environmental policy point of view,
- iv) to act in conformity with the provisions of the Treaty, notably regarding the wide discretion accorded to the national, regional and local authorities in their organisation of services of general economic interest.

3.2. The Right to Water should not be "instrumentalised" to promote ideological objectives or corporatist interests that do not benefit the rights-holders

3.3.1. *Polemics that are detrimental to right-holders*

The need to satisfy the human right to safe drinking water and sanitation is so urgent for right-holders that polemics about the respective merits of the different types of operators of public services should not be allowed to get in the way of implementing the right.

Out of 10 people on the planet, 5 receive water from a public operator, 1 from a private operator mandated by a public authority and 4 do not benefit from any public service provision at all. Billions of people are using unsafe water and half of mankind does not have its human right to safe drinking water satisfied. These people are desperate for water and do not mind who delivers it to them.

In the EU, many performing water utilities, public and private, make profits and pay dividends. This is economically and socially sound practice that ensures the sustainability of the services. Contrary to some allegations, this does not prevent them from contributing to the human right to safe drinking water and sanitation through, among other things, implementing the pro-poor policies and the related subsidy mechanisms that target the economically-disadvantaged people who cannot pay water bills. Affordability mechanisms and pro-poor subsidies are implemented by all types of operators, public and private⁷.

The unclear request #2 of the ECI (on internal market rules and liberalization) is interpreted by some observers as aiming at creating additional obstacles to the work of private water operators in the EU. If this was the case, it would aim at reducing the number of valuable and performing management options that are available to governments and to citizens, thus making the implementation of the HRWS even more difficult.

Furthermore, excluding the water sector from internal market rules would mean that the new public procurement directive and the transparency, accountability and anti-corruption provisions it contains would not be applicable.

If adopted in this way, this request #2 would go against the interests of the right-holders.

3.3.2. *Benchmarking should be used to promote consumers' interests not to protect entrenched positions*

The document entitled "*Proposals to implement the human right to water and sanitation in European Legislation*" was submitted end 2013 by the ECI organisers to the Commission⁸. This "wish-list", includes a proposal to:

"promote benchmarking for water services operators similar to long standing practices in the Netherlands and Germany".

As this document rightly explains, "*a benchmark study objectively compares the performance of the drinking water companies in terms of their core results: Drinking Water Quality, Service, Environment and Finance & Efficiency and addresses all aspects of sustainable water services (Social, Environmental, Economic).*"

However, the ECI organisers present "*Benchmarking of water services at national level as alternative to competition*" justifying their proposal in the context of the right to water by saying:

"The benchmark gives consumers, central government, politicians, shareholders, researchers and supervisory directors of the participating water companies a better understanding of the performance of the sector and the individual water companies. The aim is to create transparency in the operating results and to serve as a tool for further improving the water companies' business processes."

⁷ See *No one left behind; good practices to ensure equitable access to water and sanitation in the pan-European region*, UNECE-WHO, 2012 and *Drinking water for all. How to implement affordability and public participation mechanisms in the European Union*, Tribune 39, Thomas More Institute, February 2014

⁸ http://europeanwater.org/images/pdf/ECI_right2water_final.pdf

To our knowledge, this argumentation is flawed for two reasons:

- Although benchmarks provide very useful information and should certainly be developed more systematically in Europe for all kinds of suppliers, they will never be able to offer the full benefits of competition. Indeed, comparing results of similar companies allows the best result achieved by these operators to be detected but does not guarantee that, if requested to do so, another operator would not be able to provide an even better result. This is particularly important for cost-effectiveness. Only competition or a very strong independent regulator can drive the costs down to the level of the best available option, something that a benchmarking system alone cannot achieve.
- All benchmarking systems are not transparent enough to enable water-users and citizens to apply pressure to their water suppliers to improve their performance. For example, the benchmarking system that exist in the Netherlands offers less transparency on operating results for consumers than the benchmarking systems that exist in the United Kingdom or France.

This is why the proposal on benchmarking that is articulated by the ECI organisers gives the impression to be aiming more at protecting public water utilities that never took the risk of competition than at satisfying the human right of citizens better.

As described in paragraph 2.3 above, we argue that the European Institutions should consider the development of “transparent benchmarking for all”, i.e. benchmarking activities that require all public water systems – public water authorities and their operators, whatever their status - to disclose regularly through Internet and other appropriate means, comparable data on key economic, human rights other technical performance indicators.

4. Distortion of facts is unhelpful

The ECI organisers have published a “wish-list” of proposals that they submitted to the European Commission at the end of December 2013⁹. Their document formulates proposals that derive from their *interpretation* of the three requests signed by 1.7 million citizens (although other interpretations could be argued).

It seems necessary to highlight that this wish-list includes blatant slanders against private water operators that are unsupported by actual experiences or facts, and also distorts a resolution of the European Parliament as described in paragraphs 6.1 and 6.2 below.

4.1. False statements against private management of public water services

When presenting proposals that are supposed to implement the ECI request #2, the “wish-list” tries to justify them by stating:

“The result [of profits made by private operators] is increased prices for consumers, continuous need for public investment, and potentially unsustainable services (Paris, Berlin, Bucharest). A lack of investment in water infrastructure caused by the siphoning off of money for profit and other purposes has led to excessive leaks, water-service disruptions and unaccountable management.”

This statement is not supported by any evidence. As documented in detail below, publicly available verified information on the Public-Private Partnerships [PPPs] in the cities of Paris, Berlin and Budapest demonstrate exactly the opposite.

⁹ A summary is available on www.right2water.eu/sites/water/files/ECI%20summaryFinal.pdf

The full document is available on http://europeanwater.org/images/pdf/ECI_right2water_final.pdf

The term “wish-list” is the one used by the ECI organisers on www.right2water.eu/fr/news/our-demands-and-proposals-implement-human-right-water-and-sanitation

False statements of this kind that materially distort reality are pure slander against private water operators. They do not raise the level of the public debate. We trust that the Commission - which has made its own assessment of several of these contracts¹⁰ - recognises that the way in which the ECI organisers attempt to substantiate their proposals on the basis of these false arguments is completely unjustified. Please find below for each component of this calumnious statement factual information that shows that the reality is completely different from the assertions made by the ECI organisers for each of the public-private partnerships they mention,

4.1.1. Significant investment by private operators ensures sustainability

The alleged "lack of investment" blamed on private operation by the ECI organisers is not real. On the contrary, each of the three PPPs has undertaken substantial investment programmes, financed by the operating company, to develop and renew the water infrastructure. These investments have significantly contributed to improvements in the sustainability of water services.

Paris

In Paris, *"more than 50% of the public distribution networks have been renewed by the private operators."*⁷

*"The average renewal and refurbishing rate was 2.5 higher than the French average."*¹¹ As a result, at the end of the contracts, *"the average age of the distribution networks was 21 years younger than it was at the beginning of the PPP contracts 25 years before."*⁷

*Furthermore, 100% of the lead communication pipes [customer connections] have been replaced to comply with tightened safety standards"*¹².

Berlin

According to an external assessment made at the end of the first 10 years of the PPP, the infrastructure investments planned in the PPP were completed even earlier than forecast¹³.

"The company was to make a specific volume of infrastructure investment ... At the same time, prices were to remain at 1999 levels until the end of 2003, and customer service improved."

"Nearly every goal ... was achieved. In many cases Berliner Wasserbetriebe even exceeded set targets. For example, the company self-financed investments reached the level agreed upon not in 2009 but in 2008."

In the 12 years following partial privatisation, €3.6 billion have been invested in water and wastewater services by Berliner Wasserbetriebe¹⁴.

Bucharest

Major investments of around €350 million have been made by the operator during the period 2000-2013.

*"In the first 10 years of the concession, ANB [the operating company] has invested equivalent to 30 percent of its total revenue over the period (2000-2009)"*¹⁵.

¹⁰ Resource Book on PPP case studies

http://ec.europa.eu/regional_policy/sources/docgener/guides/pppresourcebook.pdf

¹¹ Source : reference 4

¹² Source : reference 3, page 38

¹³ Source : reference 2, page 2

¹⁴ Source : Veolia Environnement

According to the evaluation study done by Castalia Strategic Advisors in 2010 and published by the World Bank¹⁶:

"The concession has massively improved water services in Bucharest, lifting the city's standard of service above other Romanian towns and toward western European levels. Under the concession, efficiency gains were considerable, producing cost savings totalling around US\$ 349 million as of 2008. The concessionaire has financed US\$275 million in total investment, all without public subsidy, while keeping the combined water and sewerage tariff below the average for Romanian cities."

4.1.2. No need for additional public investment

Contrary to the ECI organisers' allegations that private management results in "continuous need for public investment", all three of the referenced PPPs worked in favour of public budgets, freeing them from the need to contribute any more funding to the water systems and operations under the responsibility of the operating companies.

Paris

No grant subsidy was awarded by the City to the private operating companies and the City did not fund any investments in the distribution system under the responsibility of the private operators because these were all funded independently by the two companies within the scope of their contracts.

Berlin

The same position applies in Berlin. No grant subsidy was awarded by the City to the operator and no direct investment in drinking water and wastewater infrastructure was made by the municipality. Therefore, there was no additional public investment in these services. The financial flows from the PPP worked in the opposite direction. They permitted increased funds to be transferred from the utility to the City during the PPP period:

*"The State of Berlin has received more revenues under a 50.1% ownership stake than it did under full ownership. Berliner Wasserbetriebe's annual payments to the State of Berlin have increased from an average 117 million euros per year (1996 to 1998, under 100% ownership) to an average 158 million euros per year (2000 to 2008, under 50.1% ownership)."*¹⁷

Bucharest

A similar situation prevails in Bucharest: the concessionaire didn't benefit from any subsidy for its services.

4.1.3. Operational efficiency of private operators limited – not triggered – price increases

The ECI organisers wrote that private profits "resulted" in "increased prices for consumers" in Paris, Berlin and Bucharest.

While it is true that prices to consumers increased during the PPP period, correlation does not mean causality.

These increases are not the result of private management but of ambitious investment programmes or transfers decided by the public authority in all three cases. Pre-existing tariffs would not have allowed the incumbent public utility to fund them without tariffs increases.

¹⁵ Source : reference 3, page 37

¹⁶ Source : reference 1

¹⁷ Source : reference 2, p32

The responsible public authorities, who set the tariffs, would not have selected private operators if the impact of private management on costs of water services was disadvantageous. The presence of PPP operators has almost certainly limited the tariff increases needed to fund the public policy, as documented in more detail below.

In addition, it should be made clear that profits are not specific to private companies. In the EU, many well-run public sector water operators make profits. This happens in the Netherlands, in Germany, Italy, Belgium, Portugal, Spain, Scotland, etc.

Paris

Between 1985 and 2010, two private companies operated the water distribution system according to PPP contracts. Their part of prices to consumer, i.e. the aspect of water distribution, reduced from 20% to 16% of the price of a cubic meter charged to water-users between 1985 and 2009. In the same period, the share of prices to consumers that relate to the activities of the Paris public sector utilities (water production and wastewater management) rose faster than the price of water distribution.

Furthermore, the important investments realised during the 25 years of the PPP contracts had been fully amortised before the end of these contracts. This means that a decrease of 10% of the water distribution price was possible at the end of these contracts whatever the identity of the next operator¹⁸.

Berlin

Between 1999 and the end of 2003 prices did not change¹⁹. Then prices increased but at a slower rate than before the PPP. According to an external assessment made at the end of the first ten years of the PPP (1999-2009)²⁰:

“Between 1992 and 1999, drinking water prices increased 10.75% per year.

Between 1999 and 2007, drinking water prices increased 2.7% per year.

Between 1992 and 1999, wastewater charges increased 10.71% per year.

Between 1999 and 2005, wastewater charges increased 4.04% per year.”

The assessment goes on to note that *“based on the results of this study, it can be assumed that without the increases in efficiency achieved since 1999, the rise in rates and charges would have been even more drastic. ... If this [the ‘facilities under construction’ pre-existing accounting item] is excluded from the calculations, prices would have increased even more before 1999 and less after 1999.”*

Bucharest

In Bucharest, where unlike many water utilities in the country, the operating company does not benefit from public subsidies, the water tariff is around the country average. According to Romanian law, it is recommended that the water charges should not exceed 3.5% of the household average income. With this value at 2.5% in Bucharest at December 2013, the tariffs are below this affordability limit.

According to an evaluation study published by the World Bank, the typical household bill in Bucharest in 2009 was just over half of what it would have been if no PPP had been set up in 1999²¹:

“The concession of Bucharest’s water utility has brought its citizens higher-quality water services, at a lower cost, than they could have had under continued municipal provision.”

¹⁸ Source : reference 4

¹⁹ Source : reference 2, page 2

²⁰ Source : reference 2, page 3

²¹ Source : reference 1

“To test the total impact of the concession on costs, a financial simulation model of Bucharest’s water utility was constructed. The model shows that if the utility had made the same investments in improved service, but with the efficiencies observed in Romanian utilities that do not have a public-private partnership, the total cost of service provision over the period 2000–08 would have been US\$349 million higher.

The people of Bucharest would have borne this additional cost, through either higher taxes (if the municipality had been called on to subsidize the company) or higher bills. Indeed, under continued public management, achieving the same investment levels that Apa Nova did would have required almost doubling the bills for a typical household. Instead, compared with a scenario with no concession (and no subsidy), the concession reduced household bills by 33 percent on average between 2000 and 2008. And the savings keep growing. The 2009 bill for a typical household was just over half what it would have been in the scenario with no concession.”

4.1.4. Presence of private operators reduces leakages and disruptions

According to the wish-list of the ECI organisers, the alleged lack of investment in water infrastructure would have led to “excessive leaks” and “water-service disruptions”. This is far from the reality. We have explained above that in all three PPPs the private operating companies funded huge investments. Besides, the usual behaviour of professional private water operators is to pay utmost attention to reducing water leaks. As document below, impressive results were achievements in Paris, Berlin and Bucharest on the reduction of leaks. In addition, we are not aware of any major abnormal disruption in any of the three cases.

Paris

“The leakage from the network has therefore decreased from 22% in 1985 to only 4%, which means a reduction by a factor of 5 in the volume of water lost through leakage. The leakage effort as well as the renewal investment has allowed the city of Paris to save the equivalent of three years of annual drinking water consumption”²².

The public operator that succeeded the private operators on 1 January 2010 posted higher leakage ratios in 2010²³. Its results in 2011 and 2012 are not available on the national database.

Berlin

“The pipe breakage and water loss record shows that the company has not only maintained quality levels since partial privatisation – it has significantly improved them over time.”²⁴

“Since the partial privatisation, the rate of pipe bursts within BWB’s grid has sunk by around 25%. Within the same timeframe, the quota of water loss has been limited to an average of 5.2%.”²⁵

Bucharest

“Water resources have been preserved by a reduction of two-thirds in the water losses in the distribution networks as a result of both decreases in consumption and reduction of leakage.”²⁶ The leakage ratio decreased from 55% in 2000 to 36% in 2013²⁰.

²² Source : reference 3, page 39

²³ Source : <http://services.eaufrance.fr/sispea/showSpealIndicatorsAction.action?speald=176855&exerciseld=41>

²⁴ Source : reference 2, p3

²⁵ Source : Veolia Environnement

²⁶ Source : reference 3, page 37

4.1.5. Management accountability

The ECI organisers asserted that the presence of private operators results in “unaccountable management”. However, in all three PPPs referenced, operational results and progress against goals were publicly reported or externally assessed. Today, much more information on private operators is available than on others²⁷.

Paris

The operating companies reported annually on their operational results, providing detailed data to the responsible public authority. In addition, since 2008, they have reported publicly on 20 performance indicators in the new national database on water services, the Observatoire National des Services d’Eau et d’Assainissement²⁸.

The public operator that succeeded the private operators on 1 January 2010 did not upload on this national database any data on these indicators further to 2010, limiting the capacity of water-users and citizens to make their own opinion about the quality of the service in the City of Paris.

Berlin

The PPP agreement included several operational goals. According to the external assessment made at the end of the first ten years: “*Nearly every goal ... was achieved. In many cases Berliner Wasserbetriebe even exceeded set targets.*”²⁹

Bucharest

In Bucharest, the operating company has been continuously accountable on its operational achievements. The PPP contract is regulated according to 24 performance indicators with high-cost penalties in case of non-compliance. As published by the World Bank, “*Mechanisms for regulation, monitoring, and dispute resolution were also key to success.*”³⁰

4.2. Wrong quote of EP resolution

One proposal included in this “wish-list” is that

“the management of water and water resources should not be subject to internal market rules’ (EP Resolution P5_TA(2004)0183).”

This proposal is presented as if the Parliament had already decided in 2004 to support such request. However, this is a biased quotation.

In 2004, the Parliament only mentioned “water resources” in the article 5 of its resolution P5_TA(2004)0183³¹ that said: “*the management of water resources should not be subject to the rules of the internal market;*” It did not include water or water services in its statement on internal market rules. Furthermore, its article 3 “*calls, without going as far as liberalisation, for water supply to be ‘modernised’ in accordance with economic principles and with quality and environment standards and the needs of efficiency*”

²⁷ See the ‘lamppost syndrome’ in reference 3, page 5

²⁸ www.services.eaufrance.fr/

²⁹ Source : reference 2, page 2

³⁰ Source : reference 1

³¹ www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P5-TA-2004-0183+0+DOC+PDF+V0//EN

5. Comments on the ECI procedure

The current ECI procedure provides a useful channel of expression for European citizens. The ECI on the human right to water is the first one to have taken this procedure up to this advanced stage. With this experience, it is now easier than before to identify its potential deficiencies. We understand that several EU institutions, in particular the PETI Committee, the Committee of Regions, the EESC and the Ombudswoman are currently assessing the functioning of the ECI procedure. It seems to us that at least two improvements should be added formally to the current procedure.

5.1. Providing room for comments by third parties

The current ECI procedure does not formally provide room for third parties to giving evidence or to express different opinions on the matters concerned with the ECI requests. No third-party consultation is organised. This does not guarantee that the debate in the Parliament and the written answer by the Commission are fully informed and balanced. We deeply regret that our request to participate as experts in the hearing was rejected by the Parliament. We believe that the ECI procedure needs to be significantly improved by providing room for consultation with third parties and allow them to express their point of view as is usual procedure for all legislative work of the EU institutions.

5.2. Differentiating the requests of signatories from the views of the ECI organisers

The ECI procedure forces the European institutions to listen to the requests of European citizens when the number of those who support this request exceeds one million across the Union (0.2% of the EU population). The political legitimacy of the procedure derives obviously from the number of signatories.

However, the current procedure also forces the institutions to take into account the views of the organisers of the Initiative. When these views exceed the requests signed by EU citizens, the institutions cannot know how many citizens support these views. As evidenced by the ECI(2012)000003, the interpretation of the requests given by the organisers may not necessarily reflect the intent of all the signatories³². It should be clarified that the views of the organisers may not have the same political support as those which are supported by a million plus citizens. One way to do this would be through making a clearer difference within the procedure between the requests signed by citizens and the proposals of the organisers.

³² See for example the letter sent to the ECI organisers by the UN Special Rapporteur on the human right to safe drinking water and sanitation (footnote 6)

6. References

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- Ref 2 *"10 years of water partnership in Berlin. An assessment of the public-private partnership between the state of Berlin, RWE Aqua and Veolia Wasser"*, WIK Consult, 2009
- Ref 3 *"Private operators delivering performance for water-users and public authorities"*, AquaFed, 2012
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