WHERE IS POLITICS IN CORPORATISATION?

AN INTERPRETIVE FRAMEWORK FOR A COMPARISON IN LOCAL SERVICES

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1. Introduction

In recent years the study of the corporatisation of public agencies at the local level, i.e. the creation of private-law companies for the fulfilment of public-interest activities, has typically focused on governance and regulation issues. Indeed, private-law companies have been largely analysed as policy instruments to improve the management, delivery and performance of public services. Beyond these consolidated approaches, however, recent empirical researches interpreted corporatization also as an engaging room for politics, especially at the local level (Christensen and Laegreid 2011; Christensen and Pallesen 2001; Hodge and Greve 2009).

Such researches demonstrated that the success of the instrument has to do with the new opportunities corporatization may offer to local politicians in order to collect (and maintain) consensus and to exert political power in the local administered community. More precisely, the creation of municipally-owned companies (often under private-law) does not only meet the need for increasing the efficiency of local public services, but also provides local administrators with a certain number of advantages, through the creation of enterprises which leave room for political action in a territory of business, or administration in a broader sense. In a nutshell, such scholars say, corporatization may (and does) have a political facet, which is an endogenous reflex of the intrinsic ambiguity of corporatization itself, and includes all the effects resulting from the introduction of corporate governance in public service delivery, such as the hybrid public-private networks developing into the companies’ boards, the ambiguous role local administrators may play when wearing the two hats of regulators and owners of the service providers, etc.

The paper starts from this latter basic assumption, but tries to make a step back, shifting the question from “why?” to “where?” politics may enter the corporatisation game. Current studies on the matter, in fact, mostly focus on single national cases, but the space for politics in the corporatisation of local public services, and its shape and intensity, can vary according to the different national institutional settings, the policy legacies consolidated across time in the domain of public service management, as well as the configuration of interests and stakeholders relations.

In this paper we look then for the empirical dimensions of the “politics of corporatisation”, and draw some preliminary notes for an analytical framework which could help future comparative studies on the matter.

The analysis will take into consideration four European countries: France, Germany, Italy and Spain. These cases have been selected on the basis of their common Napoleonic institutional arrangements, and their shared path towards corporatisation inspired by the EU regulation. Section 2 illustrates the commonalities affecting all the selected cases, looking at the factors which may favour a political dimension of corporatisation and the variety of management options by which local governments can enact corporate governance in local public services. Section 3 provides an overview of the current management choices in each country, while Sections 4, 5 and 6 are entirely devoted to explore the specific politics dimensions of corporatisation: the selection of service providers, the political appointment of members in the companies’ boards and the bargaining between municipalities, firms and other stakeholders. Section 7 focuses instead on a less “intuitive” space for local politics, i.e. the system of regulation and control, looking for the room for manoeuvre left to municipalities and local administrators in the various national contexts. Some reflection on future comparative research strategies will be finally provided in the concluding remarks.
2. When corporatisation meets Napoleon: municipal companies in four European countries

The creation of private law companies for the fulfilment of public task is not actually a novelty, but rather a long standing issue in the development of several European governments since the 1950s. This approach, which reflects the nature of the so called “middle ground” introduced by Seidman (1954) and then proposed by Rose through the concept of “big government” (1984), refers to the persistent attitude of the national governments to create their own firms or other bodies to expand their sphere of action and the Cabinet’s political influence out of the institutional border. Many scholars have depicted this phenomenon as the result of the increasing influence of the political power over other fields, so we may say that the politics of private-law partially privatized entities owned or controlled by the central government is a consolidated issue in political science. The political reasons for these strategies were usually found in the distributive hand of government in favour of its members and their careers, or in the chance to expand State’s influence over the economy through political bargaining or pork barrel strategies. All these attitudes have been stigmatized in the recent years, and in the last 30 years the State-owner approach has increasingly been replaced by more flexible and – at least on paper – responsive models. The New Public Management and the regulatory mainstream supported such a new approach, focused on competition and accountability.

Corporatization is one of the more significant solutions provided by the managerialist approach in terms of modernization and (soft) marketization, which requires governments to dismantle their public entities in the light of a more efficient and effective strategy made of privatization, on the one hand, and public private partnership, on the other. In Europe, this has proven to be particularly challenging for those countries that were strongly engaged in a State-owner approach and that developed after WWII a bureaucratic model for the delivery of public services. It is the case, for example, of France, Italy, Germany and Spain, which – albeit with relevant differences in their institutional designs – adopted the so called Napoleonic approach to the State and to the intergovernmental relations between centre and periphery. In all these four countries all the above mentioned political attitudes with respect to publicly owned entities delivering public services have been observed and documented. Furthermore, all these countries coped with problems and constraints in their public expenditure during the last twenty years. Finally, in all these countries administrative reforms promoting innovation were more incisive at the local than at the central level, leaving the State substantially out of radical NPM-driven changes. Local governments in the Napoleonic countries became a significant laboratory for innovation in public service delivery, human resources management and self-financing, leaving some room for manoeuvre to the strategic action of the local political class, and generating a very complex and variegated set of concrete experiences and policy processes. It is in this framework that the creation of (or the transformation of former municipal undertakings into) private-law companies totally or partially owned by the municipalities developed as an appropriate and flexible solution for public service management, and experienced a considerable growth in the last two decades. All the selected countries adopted thus a similar strategy for corporatisation, namely: a “soft” attitude toward marketisation, strongly oriented to modernisation without a real privatization, on the one side; and a “territorial” approach that favoured the implementation of corporatisation at local level and not at central one. Both these factors are quite far from the consolidated approach to corporatisation experienced in the UK and in the Commonwealth States, where NPM-driven reforms interested all the levels of government and revealed a harder attitude towards marketisation and competition. The British case is outstanding, and somewhat represents the closest approximation to the pure NPM paradigm: clear competition among players, clear-cut separation between regulation and control, weak role of the municipalities, strong role of
coordination for the State. This fact makes the UK absolutely different from the remaining European countries. That is why we do not consider that case in our analysis: corporatisation in the UK came first, in some way played a role of first mover, and has been translated in practice in a more “radical” fashion. Then, its different institutional arrangement, including the common law based legal framework, strongly differentiates the British case from the others.

As a result, the paper deals with four comparable cases, all starting from a different original continental background typically based on state intervention in public services, which in the last twenty years undertook a deep transformation in the management and delivery of local services, but leaving spaces for local adjustments and political influence in several respects. Before examining this point, however, it is worth to provide an overview of the legal and institutional framework underlying the provision of local public services in Italy, France, Germany and Spain, as well as the management options available for municipalities in the four countries (see Table 1).

As for the legal framework for public service delivery, all the selected countries have not enacted a general law for public service delivery, leaving the discipline of the matter under the laws on municipalities and/or competitive tendering regulation. On the one hand, France and Spain provided for specific laws on public procurements and concessions looking for a general regulation of the relationships between municipalities and players (France) or specific public sector Acts; on the other, Italy separately enacted several sectors Laws for specific utilities (water and sanitation, energy, waste and disposal, transports, gas) without a clear common legal framework, thus generating a situation of uncertainty and ambiguity as for the implementation of such rules at the local level. In all four countries, however, municipalities are traditionally given a key role in the provision of services of general interest: in general, the Local authorities are expected to guarantee most part of the local services to their citizens.

As for the management options, in all four countries municipalities may choose among a wide set of solutions, including direct or indirect styles of service provision:

a) In France municipalities may decide to operate public services themselves (through their own administrative units – régie directe – or local public enterprises – régie personnalisée), possibly in association with other local communities, or to contract them out to a private-law firm. If they opt for this second solution, they can choose among a wide variety of contractual arrangements. 1. In the gérance contract the firm manages the service and is paid a fixed amount by the public authority; 2. The "intermediary management" contract (régie intéressée) has almost the same contractual arrangement as the gérance, but a part of the firm’s revenues depends upon its performance; 3. the lease contract (afermage) implies a sharing of the investments between the municipality and the firm (although in practice the most important investments remain public), and the firm is no longer paid by the municipality but by the customer’s bills; 4. the concession contract implies a higher degree of risk for the firm to the extent that it is responsible for all the investments occurring during the contract. The last two types of contractual arrangements (3 and 4) are also referred to as "delegated management contracts".

b) In Germany local services had been traditionally provided in house, by units of the core administration or municipally owned utilities. However, in the Eighties the government’s intention to reduce the activity of the state and its influence on the private economy led to a strengthening of market forces and to a transfer of public services under private-law solutions, paving the way for a corporatisation strand. Today German municipalities are allowed to choose among a wide range of instruments to manage service delivery through the creation of public or private-law entities. In the domain of public law a municipality can opt for one of the following solutions: 1. direct management by the organizational bodies of the municipalities
(Regiebetrieb); 2. semi-autonomous municipal undertaking (Eigenbetrieb); 3. institution of public law (Anstalt des öffentlichen Rechts); 4. joint venture among municipalities (consortium) for specific policy tasks (Zweckverband); 5. joint venture among municipalities (consortium) explicitly devoted to water or waste management (Wasserverband e Bodenverband). The German law also provides for different types of private-law instruments:

1. creation of a private law company entirely owned by the municipality (Eigengesellschaft); 2. tender for service management (Betreibermodell); 3. public service delivery concession (Dienstleistungskonzession); 4. public private partnership (Kooperationsmodell). As we can notice, there are many ways to adopt private law instruments ranging from very detailed solutions for service delivery to more general management awarding or the creation of private law company owned by public and private shareholders.

c) Also Spanish municipalities can deal with public services directly or through delegated management. In the case of direct management, not only may the service be managed directly by the offices of the local municipality (Entidad local), but also by an autonomous local entity (Organismo autonomo local), a local public enterprise (Entidad publica empresarial local) or even a private-law limited company whose share capital is totally controlled (directly or indirectly) by the municipality (Sociedad mercantil local) (Font 2009, 35). Instead, indirect management may take four different forms: 1. concession to a private-law operator that will provide the public service and take on the economic risk; 2. the “interested” provision (gestión interesada), a technique rarely used, whereby the private-law operator provides the service, but shares with the public authority the results of the activity according to proportions previously agreed in the contract; 3. the “agreement” (concierto) between the public administration and a private-law operator that was already supplying the service and receives fixed compensation; 4. an institutionalised public-private partnership in the form of a mixed company (Sociedad de Economía Mixta), the capital of which is held jointly by the contracting entity (less than 50%) and the private partner. Its remuneration derives exclusively from tariffs paid by the users (Arrojo-Jimenez 2010).

d) Since the early 1990s (Law 142/1990 and subsequent regulation), in Italy municipalities are allowed to use a very wide range of instruments for local services delivery: 1. the institution (Istituzione), namely a public-law based organization strictly dependent on the municipality, without its own legal status and primarily used in cultural and social services; 2. the municipal undertaking (Azienda speciale), i.e. a public-law enterprise, with its own legal status but dependent on municipal grants and usually employed for different services such as public transports, water supply and energy; 3. the Consortium (Consorzio), i.e. a public-law association of several municipalities, with its own legal status and historically employed by (small) municipalities to manage “traditional” municipal services such as water supply, waste collection, transports etc.; 4. the Foundation, private-law based and totally or partly owned by the municipality, with its own legal status and primarily employed for cultural and social policies; 5. the Association, namely a private law based entity and totally or partly owned by the municipality, quite similar to the Foundation but employed for a wider range of policies; 6. contracting out to pure private operators or cooperatives (no profit organizations, especially used for social services); 7. corporations totally or partially owned by the municipality or groups of municipalities, that may control the share capital directly or indirectly. Such corporations can be limited companies (società a responsabilità limitata – SRL) or joint stock companies (società per azioni – SPA). Unlike the French and Spanish cases, both limited and

\[\text{In addition, the Italian law provides municipalities with the possibility to create the so called Municipal unions, (Baldini et al., 2011) i.e. temporary joint ventures established by a certain number of municipalities to manage a public service in a cheaper way.}\]
joint-stock companies may be totally or only in majority owned by a municipality; however, SRLs are (at least in theory) designed for small scale services (min. equity 10.000 euro), while SPAs for medium and large scale activities (min. equity 120.000 euro).

**Limits to municipal ownership** are set in France (between 50% to 85% for the Société d’Economie Mixte) and Spain (less than 50% for Sociedad d’economia Mixta), but not in Italy and Germany, although in the German case the limited companies have to be totally or in majority owned by local governments and the stock companies may also be fully or partially owned by the municipalities. The same applies for limits to the 100% public ownership. On the contrary, limits to the territorial expansion of corporations totally owned by the municipalities are envisaged in all four countries, preserving the local nature and mission of each enterprise (locality principle, explicit in Germany, implicit in the remaining countries).

**Table 1: Summary of legal provisions on municipal corporations in France, Spain, Germany and Italy**

<table>
<thead>
<tr>
<th>Legal framework for local public services delivery</th>
<th>France</th>
<th>Spain</th>
<th>Germany</th>
<th>Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>No general law on public services. National law on local governments + other laws on public procurements and concessions</td>
<td>No general law on public services. National law on local govt.s + public sector contracts act</td>
<td>No general law on public services. Federal law on municipalities and constitutional provisions</td>
<td>No general law on public services. National law on local govt.s + several sectoral laws. Fragmentation and uncertainty as for competition rules.</td>
<td></td>
</tr>
</tbody>
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| Municipalities’ role | Expected to guarantee most local services independently from their size | Expected to guarantee most services, which vary according to their demographic size | Central role (federal system) | Expected to guarantee most local services independently from their size |

| Management options | Direct (régie directe or personnalisée) and indirect (gérance, régie intéressée, affermage, concession) management | Direct (4 types) and indirect (concession; gestion interesada; concierto; institutionalised PPP - SEM) management | Direct (5 types) and indirect (creation of 100% public private-law company; tender and concession; institutional PPP; Foundation; Association) management | Direct (3 types) and indirect (Foundation; Association; Contracting-out; institutional PPP; creation of private-law companies) management |

| Types of municipal corporations | Entreprises publiques locales (EPL): Société d’Economie Mixte (SEM) + Société Publique Locale (Spl) + Spla | Sociedad mercantil local + Sociedad de Economia Mixta | Limited (GmbH) and joint-stock (AG) companies. Limited companies more diffused. | Limited and joint-stock companies. Joint-stock companies more diffused. |

| Min/Max municipal ownership specified? | YES (between 50 and 85% for SEMs; 100% public for Spl) | YES (less than 50% for mixed companies; 100% public for sociedad mercantil local) | NO min/max. In general, limited companies must be totally or in majority owned by local govt.ts, while stock companies can be totally or partially owned by local govt.ts. | NO |

| Limits to 100% public private-law companies? | YES: not listed in the stock market and no competition with private sector | YES: not listed on the stock exchange | NO limits as for the legal form, but limits as for goals (that must be public) and financial investment (proportional to municipal capacity) | NO |

| Territorial limits to companies’ activities | YES for Spl and Spla (100% public); NO for SEMs | YES for both 100% public and mixed | YES (locality principle), but often partially transgressed | YES for 100% public companies |
3. Many options, common choices? Organisational solutions for the management of local public services

As it has been illustrated in the previous section, today in all four countries municipalities are given a wide range of management option for service provision, having the possibility to opt between direct and indirect management, as well as between public and private-law instruments. Because of the fragmentation of data sources (for example systematic statistics and complete time series on the characteristics and legal forms of service providers are rarely available, classifications are often built following different criteria, etc.) and the scattered variety of experiences encountered in all four countries, a rigorous comparison has proven to be a task beyond the current possibilities of this paper. We have thus confronted the four national experiences on the basis of the information available so far, trying to emphasize differences and similarities on some dimensions, such as the public-private balance and the most recurrent organisational solutions.

Since the mid 1990s privatisation and indirect management are gaining ground in all four countries, albeit with some differences. On the one hand, in Spain and France the current opening up of local service provision to private-law actors represents a further strengthening of the pre-existing tradition of delegated management to pure private operators: in fact, in spite of the abstract and normative appeal generally attributed to the French idea of service public, reflected on the very peculiar features of state industries (especially in the domains of energy and transports) after the nationalisation programme of 1946, in France the concrete developments of local public services followed a rather pragmatic path. Municipal concessions to private operators in several sectors, such as water and sanitation as well as energy distribution, played a prominent role in the management of local public services since the end of the 19th century (Grossi, Marcou and Reichard 2010, 218), and further extended after the French decentralisation reforms of 1983. Like their French counterparts, Spanish municipalities have a long tradition of delegated management, it suffices to think that 15% and 23% of current privatised assets in the domains of waste and water date back before the mid Seventies (Warner and Bel 2008, 731). After the opening of many areas of competition in the 1990s, the model of delegated management is now even more widely used, with private operators replacing the local government’s direct management in the area of heating and water, for example. In the water sector indirect management accounts for 85%, and concessions are used in 60% of cases (Cañete and Menendez 2004), with a high market concentration (about 75% of contracts) in the hands of two private holdings (Aguas de Barcelona and Aqualia – Fomento de Construcciones y Contrats).

On the other hand in Italy and Germany, where municipalities began the in-house provisions of local services in the early 20th century and concessions to pure private operators were (and are) less frequent, privatisation has occurred mainly through the shifting from public to private-law policy instruments (organisational privatisation), in particular through the transformation of municipal undertakings into self-standing corporations, both 100% public or mixed. Corporatization of local public services has particularly affected the public utility sector in Germany (electricity, gas, water supply/sewerage, waste disposal, public transportation), with a growing number of municipalities tending to partly privatize traditional public corporations in order to cope with local fiscal problems (Kuhlmann 2008). Today in Germany there are about 3.500 municipal private-law companies, which depend on one or several municipalities, with an organization which is often in horizontal integration (multitility) (www.wku.de). Limited company is the most diffused type at the local level today (73%), while the use of Joint stock companies is rather limited (5%) (Grossi, Marcou and Reichard 2010, 224). However, dimensional and sector-related differences exist behind average values: for instance, in smaller municipalities (<50.000 inhabitants) public-law solutions are still very relevant (25% public consortia and 20% Eigentrieb).
and only 40% of corporations are limited companies (Bremeier, Brinckmann and Killian 2006); the same could be said for some specific services, such as water and sanitation, which are more backward in privatisation and corporatisation reform than others and show an almost perfect balance between public and private-law management solutions (Citroni 2010, 198). The recourse to mixed companies (Kooperationsgesellschaft) is still less relevant than other organisational solutions, but it is rapidly increasing in “expensive” sectors such as energy: “according to a survey conducted by the German Institute of Urban Studies (Difu) only 30 per cent of municipal energy companies are still entirely the property of the cities whereas more than 70 per cent have external shareholders”, and “in the big German cities, local governments have minority holdings in roughly 20 per cent of the energy companies” (Kuhlmann 2008, 8). In addition, it is just in Germany that we can find the biggest mixed company providing local public services in Europe, i.e. the Berliner Wasserbetriebe, carried with the task of managing water services in the city since 1999. In Italy, a recent research on municipal companies in of six Italian regions reveals that private-law companies totally or partially owned by local governments are today employed across a very wide range of policy sectors (including vocational training, economic development, social care services etc.), well beyond legal provisions and their envisaged institutional mission in public utilities (Citroni, Lippi and Profeti, 2013). Public utilities, in fact, represent only 1/3 of municipal corporations. This evidence testifies the extraordinary success corporatisation has had among the Italian local governments: in 2011 the Italian Chamber of Commerce documented an amount of 5.512 companies directly owned by municipalities (Unioncamere, 2011), a very huge amount if compared with the number of Italian municipalities (8.142). Municipal corporations are particularly concentrated in the Centre and in the North of the country, and in big cities, but also smaller municipalities take part in the game (Citroni, Lippi and Profeti 2013). As for the public-private mix, it is interesting to distinguish between companies’ shares (which are prevalently public, roughly 70% vis à vis 11% of private shares, the remaining quota being owned by mixed enterprises) and the “heads” represented in the shareholders assemblies (49% private actors vis à vis 47% public actors). This unbalanced proportion goes against the conventional assumption that the reason to open up the companies’ share capitals to private actors is to “absorb” private money to realise new investments. Rather, it seems to strengthen the rival hypotheses that emphasize the political and strategic rational behind the creation and development of municipal corporations.

Such a trend towards corporatisation is however on the rise in France and Spain as well. According to the Annuaire des EPL (the French national database of municipal corporations), in 2013 there are 1.148 local public enterprises in France (http://www.lespeil.fr). SEMs are largely dominant (994), while SPLs and SPLAs are only 113 and 41 respectively. EPLs concentrate mainly in sectors such as tourism and regional/urban planning, while in the management of “traditional” municipal tasks (such as water and sanitation services, waste management, electricity distribution etc.) their role is less important (http://www.lespeil.fr). In this latter domain, services are rather managed or directly (en régie), especially as for municipal sewage (60%), local public transports and school canteens (Grossi, Marcou and Reichard 2010, 220), or by few powerful private operators through the awarding of concessions. This is the case of water services market, dominated by three major corporations (Vivendi – Générale des Eaux, Suez – Lyonnaise des Eaux and Boygues – SAUR) sharing about 98% of delegated management (Citroni 2010, 209; Canneva and Garcia 2010). In Spain as well municipal enterprises passed from 467 in 1999 to 1.924 in 2008, of which 1.108 are private-law companies. 80% of such companies are fully publicly owned, while 20% take the shape

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2 The partial privatization of this company providing water services was carried out in 1999, and the contract was signed for a period of 25 years between the City of Berlin (50.1% of the shares) and the international companies RWE and Veolia together (24.95% of the shares each).
of institutionalised public-private partnership (Vallespín 2011); although still a minority in number, mixed companies are recently experiencing a considerable increase, especially in the domains of solid waste and water distribution (Bel and Fageda 2008).

Beside the extreme flexibility which characterises municipal organisational choices in all four countries, the growing success and development of mixed companies is probably one of the most interesting common trends. As several authors point out (among the others, see Bel and Fageda 2010), joint ownership via mixed companies is considered an appealing solution by several municipalities because it might be an optimal combination mitigating the disadvantages of pure public ownership and full privatisation: especially in the domain of local utilities, for example, private partners tend to be large firms with extensive know-how that conduct day-to-day operations (the water sector is emblematic in this sense), while local governments – and politicians – are able to retain some degree of control in the firm thanks to their status of shareholders.

Another common trend is the development of inter-municipal cooperation via municipal corporations, both in their fully-public and mixed versions: in all four countries, joint shareholding in municipal companies is becoming a common practice, which in many cases represents an evolution of older forms of cooperation for the management of services and the realisation of economies of scale (such as consortia and similar arrangements, which are traditionally well developed in all four countries). The phenomenon is particularly diffused in Italy (Grossi and Reichard 2008; Citroni, Lippi and Profeti 2013b) and Germany (Kuhlmann 2008; Grossi and Reichard 2008), but it is also relevant in France (Kuhlmann 2008) and Spain (Bel and Fageda 2010).

In Italy, for example, a recent study revealed that inter-municipal cooperation through corporatisation is currently more diffused than other institutionalised forms of cooperation encouraged by national laws, such as municipal associations (Citroni, Lippi and Profeti 2013b). All in all, this short overview reveals that today, in all four countries, private-law companies are used by municipalities as a kind of policy tool which is flexible enough to be used in several areas of activities and for various purposes, well beyond industrial services and profitable sectors. In other words market-like instruments are more and more transferred into the ordinary local policy-making alongside traditional instruments and “techniques” such as hierarchy, negotiation or resource distribution, a fact which confirms that some political convenience is likely to lay behind the extensive use of municipally-owned corporations.

The academic literature has recently started to consider this aspect and to explore the reasons of the growing success of public or private-law municipal enterprises; what is still missing, however, is a preliminary and systematic analysis of the current state of management options in the various EU member states (the “how” of corporatisation), e.g. through the development of homogeneous databases which take into account both companies’ and municipalities’ characteristics, which is a necessary step to set a rigorous comparison and advance hypotheses and generalisations on “why” such phenomenon is on the rise.

4. The selection of service providers and the renewal of concession contracts

Since the end of the Nineties, also in response to EU requirements, in all four countries some stricter procedures have been introduced in order to guarantee more transparency – and fair competition – in the selection of service providers and private partners; however, in all four countries the compliance with such procedures has not been very rigorous so far.

In Italy, for example, the ambiguous and continuously changing regulation on the topic provided municipalities with high discretion in interpreting the normative framework: since 2000 repeated attempts at an overall reform of public utilities imposing compulsive competitive tendering have
always been aborted or have, most recently (2011), faced repeal through a referendum. The last legislative intervention has been article 25 of the so called “Decreto Cresci Italia”, a Decree Law issued by the former Prime Minister Mario Monti in January 2012. This provision, which deals directly with market competition in public services, sets some new restrictions to in house providing, and further promotes competitive tendering as the “normal” procedure for the selection of service providers. However, while we are writing this paper the implementation decree has not been approved yet (also because of the difficult political situation resulted after the general election of February 2013), and many areas of uncertainty continue to characterise the national legislation, concerning in particular the companies’ ownership structure (e.g. the public-private balance) and legal form, leaving considerable room for manoeuvre to municipalities, and thus paving the way for the development and consolidation of “local paths” towards corporatization.

On a different perspective, in Germany the consolidated and well detailed legal power the state awarded to the Local Authorities entitled them to gain degrees of freedom in decision making adapting and reshaping the regulatory EU framework on the national practices previously experimented in the country; as a result, although competitive tendering procedures have been introduced in the national legal framework on local services, authorities have nevertheless often opted for the simplest way of awarding these services directly to the existing service providers, or to maintain in house provision. Indeed the European Commission has often called Germany to stricter compliance with EU requirements for free competition, especially in the domains of public procurements for public transports and waste disposal\(^3\). A similar practice is diffused in Spain, where the many exceptions to the rule of competitive tendering envisaged in the Contract Act of 2007 \textit{de facto} weaken its compulsoriness (Warner and Bel 2008, 726).

In France, in the early 1990s the lack of transparency in the awarding of concessions and selection of local service providers had often been criticised by the national Court of Accounts, as well as by the European Commission, and strong criticisms invested the opaque practice of concessions which were awarded and renewed (also to private operators) out of principles regulating public procurements (Cole 1999, 178). In 1993 the Loi Sapin (an anti-corruption law) was introduced to make it compulsory for municipalities to organise a public tendering if they wished to delegate a public service, also placing a ceiling on the duration of contracts. Moreover, with this law the automatic renewal of contracts has come to an end. However, the new legislation has neither forbidden negotiation within the procedure, nor called into question the “\textit{intuitu personae}” principle (whereby trust prevails on formal competition). Indeed, since 1993, local public services providers are selected according to a two-step procedure: in the first step, the public authority chooses potential candidates by using a classical competitive tendering process. In the second step, there is a phase of negotiation between the public authority and the potential operators. At the end of the negotiation, the public authority chooses its partner for the duration of the contract. This two-step procedure “affords a greater degree of freedom to the public authority. It can select its partner more freely, using both objective and subjective criteria (the latter during the negotiation stage), even if they are not necessarily specified in law” (Desrieux, Chong and Saussier 2010, 8).

The partial observation of EU requirements on competitive tendering, and the related implications on the transparency of the selection process and local actors’ discretionary power in all four countries, suggest that one of the most interesting angles of observation for the comparative analysis of the role of politics in corporatisation and privatisation of local services is the selection of service providers, as well as the renewal of concession contracts. Indeed, the creation and

\(^3\) For an overview of the EU Commissions’ infringement procedures against Member States, see http://ec.europa.eu/community_law/index_en.htm
maintenance of privileged (trusty) relations between local administrators/politicians and service providers may help the former to perpetuate (or strengthen) local networks of influence and power, and eventually keep some kind of political control over the company.

Operatively, in a comparative perspective and on a formal level, one could examine the objectivity of criteria followed for the awarding of concessions (economic advantage, quality of the offer, subjective evaluations etc.) in different countries, as well as the existence or not of different procedures/constraints according to the nature of the provider. Also the design and duration of contracts are crucial elements to be investigated: for example, any imprecision (voluntary or not) in the contract design could hamper the possibility of the public authority to exercise strict control over the quality and efficiency of the delegated service. The period of application of a contract can also become a problem: while a very short-term contract can have negative consequences on the provider’s capacity to realise investments, if the duration is too long “lock-in” situations may occur (Williamson 1979), with the incumbent enjoying a “first mover” advantage over rivals at contract renewals and the public authority encountering difficulties to switch to another supplier.

In alternative, an in depth qualitative analysis of specific national cases of service awarding could shed light on the relations existing between the representatives of the public authority and tender participants (ownership; cross- or joint shareholding in other companies; personal ties; common organisational affiliations; political affinity etc.), which is a crucial element to understand the real governance mechanisms ruling a specific policy sector.

5. The appointment of members into the companies’ boards and shareholders assemblies

Another key issue through which politics can enter the corporatisation game is no doubt the appointment of members into the companies’ boards and shareholders assemblies. This holds true especially in those cases where municipal representatives (i.e. mayors or their delegates) are both regulators and owners (shareholders) of the companies delivering services. It is obvious that this double role complicates the chain of delegation between principal and agent, and may generate conflicts in the activities of monitoring, controlling and possibly sanctioning the service provider in the event of non-compliance with contractual provisions. And it is also well known that the phenomenon of politically connected firms is quite widespread, affecting to various degrees not only EU member states but also the US and Asian countries (Faccio 2006).

A comparative analysis of the appointment of boards’ members can be addressed in at least two ways: first, one could analyse the organisational structure of the companies’ governance envisaged in the national regulation on corporate governance, and how it is translated into practice. In Italy, for example, almost all municipal corporations are organised according to the one-tier board system, where the shareholders’ meeting is quite influential and roles between ownership and management are more confused; on the contrary in Germany the two-tier board model is firmly rooted in the national company law, and the boards of directors are coupled with supervisory boards composed of council members with functions of oversight (Grossi, Marcou and Reichard 2010). Or, again, in France a third option – which relies on the traditional one-tier structure but establishes a functional division between management and ownership – is gaining ground since the approval of the Law “Nouvelles régulations économiques” in 2001 (Hopt and Leyens 2004). Usually the analysis of board organisational models focuses on issues such as efficiency and companies’ performance; however, also the exam of political issues such as the separation of ownership and control and agents’ accountability may profit from such an investigation.

Second, one should analyse the specific resources held by the boards’ members to understand the rationale behind their selection and the companies’ profiles as political arenas: since the private
nature of municipal corporations gets the decisions taken within their boards out of public scrutiny, and allows shareholders (including municipal representatives) to discuss broad policy and political strategies away from prying eyes, municipal corporations may generate autonomous
arenas of representation which develop alongside the “traditional” procedures and loci typical of elective representative democracy, providing both local private stakeholders and elected politicians with more comfortable and “safe” ways to co-decide and accommodate their respective interests. This is all the more relevant as recent researches on boards’ composition, for example in the Italian case, revealed the emergence of a class of “hybrid” managers characterised by both skilled managerial experience and strong ties with the local political systems (Citroni, Lippi and Profeti 2013c), so far peculiar to the companies owned by larger cities but progressively gaining ground also in other contexts thanks to the development of cross-shareholding in smaller municipal corporations (Citroni, Lippi and Profeti 2012). And, more in general, strong connections with politicians and party officers have been detected in the boards of (partially or fully) publicly owned companies in several Western democracies (Faccio 2006). The issue is particularly worth to be investigated also because politically connected firms can obtain more favourable regulatory treatment, better access to public procurement contracts, or any other form of preferential treatment to the detriment of other companies and society as a whole.

A common framework for a cross-national comparison of boards’ members resources has not been developed so far, nor a common classification of political connections has been proposed yet (ibidem). In our view a distinction should be made among members with a) managerial skills, b) professional skills; c) economic power; d) political and networking resources (i.e. previous institutional roles, party affiliation, membership in interest organisations etc.); e) personal ties with politicians (Citroni, Lippi and Profeti 2013); furthermore, special attention should be devoted to people with multiple affiliations, since they are able to link different organisations and potentially “bridge” companies with external sources of legitimacy and power.

Operatively, such a kind of research requires a combination of several sources and techniques, and inevitably calls for some choices as for the number and type of companies examined: in fact, the names of boards’ members can easily be found in the national registers of companies and firms, but such an option is usually limited to companies listed in the stock market; for the other companies information may be collected through case studies or ad hoc surveys, which necessarily should be restricted to a limited amount of firms; finally, political connections may be identified through biographical analysis and/or cross-national surveys, or explored through the instruments typical of social network analyses, which in any case require some sampling operations to guarantee research feasibility.

6. Political bargaining between public authorities and local stakeholders

Politics, and local administrators, can enter the corporatisation game also through their participation (more or less active; more or less supportive) in the political bargaining between the public authorities (included the EU, the state and Regulatory bodies) and the interests/stakeholders affected by some specific services (e.g. political parties, NGOs, citizen groups, labour unions, representatives of firms involved in the delivery of services etc.). As it happens in other policy domains, albeit with some more complexity due to the multi-level nature of the game and its rules, municipalities and their representatives can participate in the formulation of proposals, can contribute to framing problems, can support one or another interest group, or can act themselves as interest groups through their associations or through the associations of municipal companies.
What is more, through their actions in the domain of local services they can work to maintain or increase political support and citizens' consensus, given the relevance of such services for the local community as a whole and the variety of stakes therein involved. Among the most relevant stakeholders we find of course the municipal private-law corporations (both mixed and totally public), which developed their own representative organisations in all the four countries, albeit with different timings and organisational strength: in Spain the association ELIGE (Red de Empresas Locales de Interés General), which represents local enterprises fully or in majority owned by local governments, had been created only in 2006, and groups together only 51 companies out of about 1,000 operating in the country (www.redelige.com). On the contrary, the equivalent associations in France and Germany have more than 50 years of experience: the French Fédération des Entreprises publiques locales (FEPL) exists since 1956 (formerly called Fédération des Sociétés d’Économie mixte – SEM; transformed into FEPL in 2008) and from then on it is acknowledged as the unique organisation entitled to represent the 1,148 municipal private-law companies operating in the country. It is internally articulated in sectoral branches and operates alongside other organisations representing direct public solutions of service delivery: the Association nationale des régies de services publics et des organismes constitués par les collectivités locales ou avec leur participation – ANROC (which aims to protect the interests of local public enterprises delivering electricity vis à vis the excessive power of the two national champions, EDF and GDF), and the Fédération nationale des collectivités concédantes et des régies – FNCCR, created in 1934. In Germany the employers’ association of municipal companies (Verband kommunaler Unternehmen, VKU), founded in 1949, represents over 1,380 member companies with 246,866 employees (in 2005) located throughout Germany. The companies organised within the Association of Municipal Companies are responsible for supplying electricity, gas, district heating and water. Many of them also run local public transport services. Other sectoral associations (such as VKS - Verband kommunaler Abfallwirtschaft und Stadtreinigung) have merged with VKU in the last decades. The representative action of VKU, albeit dominant, is however still accompanied by the presence of other sectoral associations – especially active in the water sector – which group together companies of different nature. In Italy as well the history of organised representation in the domain of public services dates back to the middle of the past century, and it is characterised by the confrontation between the organisations representing municipal companies and those representing private providers (in particular the Associazione Nazionale Industriali Gas ANIG, operating under the national association of employers Confindustria) (Carrozza 2011). Since 1947 Federutility (formerly FNAMGAV - Federazione delle aziende municipalizzate) is the association which represents the municipal companies operating in the sectors of water and energy. Today it groups 419 enterprises (both private-law companies and special undertakings, with more than 45,000 employed), which deliver water services to about 76% of the population, gas services to more than 35% and electricity to about 20%. Since July 2009, Federutility together with ASSTRA (the association of local transports providers) and Federambiente (association for environmental services) have merged under the broad umbrella of Confservizi, the national organisation providing general representation to SGI providers, in particular to companies totally or partially owned by public authorities. Private operators in fact are still represented through various sectoral associations belonging to the Confindustria system, concentrated in particular in the energy sector (Assogas for small and medium enterprises; Anigas for large industries and natural gas; Assoellettrica for electricity providers).

Besides organised interests, individual channels of lobbying are also largely exploited by the most prominent SGI industries in all four countries, which try (and are often able) to maintain their privileged position within the national markets. This is particularly evident in the domains of energy and electricity, whose markets are heavily concentrated especially in France, Spain and
Italy (see Fitch 2007; Arocena 2001; Carrozza 2011), and – albeit to a lesser extent – in the market of water supply, where the dominance of few European multinationals is also pursued through strategies of transnational cross-sharing (Citroni 2010), as well as through the maintenance of direct personal/political ties with local administrators (e.g. in Italy or France), or indirect access to the local arenas thanks to the mediation of national banks and financial organisations (e.g. in Spain).

Finally, among the stakeholders we must obviously include the ultimate recipients of public services, i.e. citizens. In the last two decades a mushrooming of citizens’ initiatives asking for the re-municipalisation of different services, and especially water, has developed in several European countries (Hall 2012), sometimes with the support of municipalities themselves, denouncing the opaque financial and accounting practices carried out by private operators, higher prices of private concessions, and poor accountability mechanisms. A good example to grasp this dimension is provided by the movement towards the re-municipalisation emerged in the last decade in several EU countries (Wollmann and Marcou 2010; Hall 2012), and in particular the reactions to the privatisation of water services and the liberalisation of the energy market. In France, for example, several cities have decided to re-municipalise water services: the first was Grenoble (2001), after a corruption scandal in the 1990s and a failed attempt to build on an institutional PPP (Hall and Lobina 2004), while the most famous case was the decision of the City of Paris to retake water provision into its own hands in 2009, after the expiration of the existing long-term concession contract with Suez and Veolia (Wollmann and Marcou 2010). In Germany as well several campaigns and referenda have been organised for the re-municipalisation of energy in various cities, “gaining strong support from a German public which is very critical of energy privatisation, especially because of price rises” (Hall 2012, 10), and obtaining the support of local authorities too (as well as the VKU), which have in an increasing number of cases turned to operate the local grids through their Stadtwerke, after the expiration of previous concession contracts to the external providers (ibidem). Also the water service in Berlin is now in the process of being remunicipalised, after widespread protest against price rise, and a referendum in which a huge majority demanded that the contract should be made public (Hall and Lobina 2012). In Italy, between 2006 and 2007 a coalition made of trade unions, NGOs and grassroots civic associations established the Italian Forum of Water Movements, proposing a law on water re-municipalisation supported by 406.000 signatures. Between April and July 2010 1.400.000 signatures were collected to request a referendum against water privatisation, which was held in June 2011. The victory of re-publicising was overwhelming (95% of participants), thus rejecting national legislation making water service privatisation and liberalisation compulsory (art. 23bis of the 2009 budget law), although no significant change in water services governance has occurred yet. It should be noted, in fact, that very few Italian municipalities were in support of re-municipalisation, and the most important associations representing municipal companies were against the referendum and the overall citizens’ campaign. In Spain citizens’ involvement in campaigns against privatisation is less evident, except the recent public opposition to the Madrid city council’s decision to partially privatise the public water company Canal Isabel II, including a non-binding referendum in March 2012, in which over 180.000 participated, with 99% voting in favour of keeping the company 100% public. In May 2012 the council’s decision of privatising the service was postponed because of unfavourable conditions on the stock market, but opposition is still active against a new project of creating a new management company (Hall and Lobina 2012).

Municipalities and local politicians, in their quality of decision-makers of last resort, occupy a central position in the network of stakes and actors potentially interested in the management and delivery of local services, playing a key role in the bargaining for the selection of management options and operators. Apart from sheer descriptive aims, a comparative analysis of municipalities
(and their companies) as actors of decision-making processes and political bargaining in the domain of local utilities may also represent a fertile ground to assess the relative weight of endogenous variables such as political orientations, demographic size, the socioeconomic characteristics of the local context, as well as the presence of policy entrepreneurs, in explaining municipal strategies towards corporatisation and privatisation of services.

Operatively, such an analysis should follow two distinct but complementary paths: on the one hand, an assessment of the structural characteristics (e.g. number of associations, concentration vs. sectoral fragmentation, membership etc.) of the interest representation system in each country should be made in order to understand the density of networks, the available room for manoeuvre of local elected politicians and the relevance of personal/individual contacts; on the other hand, only a structured and focused comparison of different case studies on local processes of privatisation and/or re-municipalisation in the various countries can allow to understand the role actually played by local administrators and the influence of local politics on the timing, outputs and outcomes of such processes.

7. Regulation, control and equitable access to quality services

Another way for local politicians and municipal administrations to have a say in the renewed context of service delivery could be the recourse to distributive policies to guarantee equitable access to quality services, and continuity in service delivery. This is a channel of political influence whose importance is less intuitive than those examined so far, but its relevance appears evident if one considers the necessity for municipalities to reinvent their role in the delivery of local services in a context of increasing, multi-level constraints. In fact, as for the activities of regulating providers and controlling the quality and standard of public services, the EU requirements for the liberalisation of services of general economic interest pushed towards organisational change in all the four countries, asking to replace the old mechanisms of control through public ownership and direct negotiation with a system of regulatory agencies independent from both the political power and service providers.

As we know, the model of independent regulatory agencies for utilities has been largely borrowed from Anglo-Saxon countries, and encountered several legacy constraints once transferred in continental Europe; however, the principle of full cost recovery (central to the EU driven reforms of services of general economic interest) together with the liberalisation and unbundling of some sectors such as energy, are more and more limiting municipal autonomy in setting prices for, and regulating the access to, service delivery, as well as their capacity to redistribute costs through cross-subsidising strategies between more and less profitable sectors and/or between different territorial areas. What is more, the responsibility to regulate providers, as well as to cap prices and regulate tariffs, or to fix special social tariffs for people in need (both “passport” tariffs and increasing block tariffs), is now often located at the central level, albeit with some differences among states due to their various institutional arrangements.

In this section we provide a brief overview of the organisational assets currently in use in the four countries as for the regulation and tariff setting in two utility sectors characterised by different degrees of liberalisation pressures, such as water and energy/electricity, trying to identify if, and by which means, municipalities and local politicians are able to keep some room for manoeuvre in the renewed context (table 2).

As a consequence of the federal structure of the state, in Germany regulation activities in both water and energy provision are strongly decentralised, with a prominent role exercised by the Länder. In the water sector, for example, there is not an autonomous regulatory agency: the Federal regulatory agency for network industries (FNA - Bundesnetzagentur), created in 2005 as a
response to several European solicitations, covers telecommunications, postal services, electricity, gas and rail, but not water supply and sanitation which remain responsibility of the states (Wackerbauer 2009). Also in the energy market the main regulatory and control responsibilities had traditionally been strict competence of the Länder authorities, albeit in a more complex fashion due to the various segments which compose the service (generation, transmission, distribution, and marketing4). The situation has partly changed after the creation of the above-mentioned FNA, whose main responsibilities are to approve and control the transmission net user fees and to ensure the discrimination-free access to the transmission grids. However, for energy enterprises with less than 100.000 clients and with transmissions grids within Länder boundaries regulation and control activities remain in the hands of the Länder authorities. This exception, which implies that most Stadtwerke would be exempted from unbundling, had been allowed after a strong protest carried out by several municipal companies and their associations, with the support of both the Federal government and the EU that tried to strengthen local energy companies to promote competition vis-à-vis the “Big Four”5 that dominated the national market (Wollmann et al. 2010, 178-79). In any case, and in spite of this exception, the establishment of the FNA strongly affects the municipalities’ leeway in the management and concession of grids, as well as in the use of cross-subsidising strategies to compensate deficits in some sectors (such as water or local transports) by the profits made in the energy sector: first, a German peculiarity is the right of municipalities to charge energy companies (included Stadtwerke) with a concession fee for the use of public space in setting up and operating transmission grids, which represents a no small source of revenue for local authorities. Obviously, FNA regulation asking for equalised access to the grids for all service providers limits the possibility of local authorities to privilege their Stadtwerke with more favourable fees. Second, after 2009 FNA has been given the possibility to check and eventually reduce grid user fees through benchmarking, privileging the least expensive providers; Stadtwerke are strongly opposing this provision, since the new instrument “may squeeze them out of the local energy market as it would not allow them to take specific local conditions and needs into account, for instance the cross-subsidising strategies pursued hitherto” (ibidem 178). These limitations to the municipalities’ room for manoeuvre are all the more important as in Germany there is not a well developed system of social tariffs for vulnerable people, and public/municipal intervention on this side is performed through indirect instruments such as the distribution of social benefits for low-income households (which needs, of course, the availability of financial resources) or the above-mentioned cross-subsidising strategies.

In Spain regulatory assets are instead very different when comparing a full liberalised sector such as electricity, and the sector of water and sanitation service. In the domain of water, most of the regulation is decentralised in the hands of the Autonomous Communities, whose intervention is particularly important in the wastewater treatment services. The Autonomous Administrations also exercise financial control in tariffs through the so-called Committee on Prices (dependent on the Autonomous Community), which establishes a system of authorised prices (Ruiz-Cañete and Dizy-Menéndez 2009). An independent authority at the national level does not exist yet, and no provision on social tariffs for vulnerable people is envisaged. On the contrary, the energy sector – at least formally – has been largely reformed under the impulse of the EU regulation: the national reform of 1994, also known as LOSEN, created a statutory independent regulatory agency, the Commission for the National Electricity Sector (CNSE; few years later it was substituted by the Comisión Nacional de la Energía – CNE – charged with the task of overseeing all energy industries),

4 For a detailed overview of regulatory competencies in all the market segments before and after the liberalisation process, see Brandt 2006)
5 I.e. the companies E.ON, EnBW, RWE and Vattenfall, which together provide more than 85% of the country’s power supply.
whose main task was to guarantee the transparency of the regulatory process and to safeguard consumer interests. “Although most final decision making remained with the Ministry, the creation of such an agency was an innovation for Spanish regulation, which had always been based exclusively on the prerogative of the Ministry of Industry to intervene at all times as well as on a close and opaque relationship between the ministry and incumbent electrical power companies” (Arocena, Kühn and Regibeau 1999, 391). However, in spite of the creation of CNSE as independent regulator, the key elements of the reform of the electricity sector passed in 1997 were actually negotiated between the Ministry of Industry, the lobbying power of banks and the most important energy companies represented through their association (UNESA) (Arocena 2001, 7); as a result, the pro-competitive potential of the reform and its innovations (e.g. the creation of spot market mechanism allowing for significant demand side bidding) were seriously reduced by allowing continued vertical integration between generation and distribution and by severely limiting the introduction of competition at the supply level (Arocena, Kühn and Regibeau 1999, 398). In such a system, very few national companies are now dominating the energy market, with no role left to municipalities in this sector. The only way they have to intervene is by means of distributive policies: since in Spain social tariffs for energy relate only to low consumption households and are not designed to guarantee access to most vulnerable people, each Spanish municipality devises its own guidelines for dealing with individuals who encounter difficulty in paying energy bills. For example, a low-income householder can request a “social emergency subsidy” from the municipality and, after the situation has been investigated, the householder can receive a grant to pay housing expenses in general (EPEE Report 2009).

Partly different is the regulation system in France: the French political model for the regulation of water services has in fact traditionally been defined as “regulation without a regulator” (Lorrain 2002), i.e. a kind of regulation based on “incomplete contracts, where local and incidental adjustments dominate” (Barraqué and Le Bris 2007). This legacy obviously reflects on the current regulatory asset, although some mechanisms for more transparency have been introduced in the 1990s. Regulation and control are shared by the different levels of the public administration, with a key role of local Préfets (who must enforce principles related to budgetary issues), regional accounting offices and the national Cour de Comptes, as well as six French water agencies entrusted with the tasks of helping reduce pollution from all sources. No independent regulatory agency has been introduced, although in 2000 the French Competition Council suggested “the creation of a monitoring body with the right to make public any information held by the various administrations and organizations already operating in the water sector [and] the power to refer cases of malpractice to the Competition Council” (Buby 2006). However, after the 2002 general elections, that project was shelved. As for tariffs, no social tariff is available for water services. On the other hand, social aid provided by departements and some municipalities can subsidize a part of the bill for poor households so that disconnections can be avoided (Barraqué and Le Bris 2007, 10). On the contrary, in the liberalised energy sector an independent authority has been created in 2000 (Commission de Régulation de l’Energie, CRE), with the task of regulating the electricity and natural gas markets which are open to competition. It aims also at guaranteeing the right to access the public electricity grid and networks of natural gas installations, and the independence of electricity and natural gas grid operators. The fees charged for transporting and distributing natural gas are fixed by order on the CRE’s recommendation, which apply to Gas De France-Suez as to other natural gas suppliers. The CRE issues also binding opinions on changes in the regulated tariffs for the sale of gas and electricity, and gives opinions on social tariffs (the “essential needs” tariff for electricity and the “social solidarity” tariff for gas) that have been recently introduced by the national legislation (in 2004 and 2008 respectively) (World Energy Council 2012).
In Italy as well the formulation of the regulatory frameworks for water and electricity followed two very different paths. Until 2012, the regulation and control of water and sanitation services basically resided between the regional and local level, with the Regions charged with the task of setting the organisational structure of the services, and the local Authorities (made of the municipalities belonging to the same “optimal district” - ATO) responsible for monitoring and controlling providers’ behaviour and the complying with concession contracts. Control over competition issues was (and still is) instead in the hands of the national Antitrust Authority. This system immediately showed several weaknesses: on the one hand, an informational asymmetry between municipalities and service providers (Massarutto, 2010); municipalities often lack specific instruments to inspect the companies’ activities, and the only effective way to control the company’s management is the use of informal channels and personal ties. On the other hand, in several cases municipalities and their representatives play the double role of regulator and shareholder in the company providing the service, with obvious consequences in term of effective and fair regulating behavior (Lippi et al. 2008). The overall organization of the water service is today under an ongoing process of restructuring: a law of 2010 provided for the abolition of local ATOs and their authorities by the end of 2011 (but the deadline has been continuously postponed), and with the law n.214/2011 the national Regulatory Authority for Electricity and Gas (AEEG) has been given competences also in regulating, controlling and monitoring water services. The creation of the AEEG in 1995 was the first step towards the liberalisation of the Italian electricity market. It is an independent body which regulates, controls and monitors the electricity and gas markets, promoting competition and ensuring cost-effective nationwide services. AEEG competences include also the definition of the tariff system. It provides an advisory and reporting service to the government and parliament, and formulates observations and recommendations concerning issues in the regulated sectors of electricity and gas. The creation of AEEG was accompanied by a series of laws introducing strong innovations in the energy market, which had been dominated by the national monopolist ENEL (whose partial privatisation had started in 1992) since 1962 (year of nationalisation). In 1999 the “Bersani” Decree implemented the 1996 EU Directive, “actually going beyond its requirements as to the pace, scope and intensity of liberalization” (Wollmann et al. 2010). It promoted in fact full liberalisation of electricity generation and import from 1999, full liberalisation of the wholesale markets from 2004, and full liberalisation of the retail markets from 2007. It also introduced third party access to the grid (TPA), that included fair and non-discriminatory terms and conditions for new connections; regulated and non-discriminatory grid tariffs; and fair and non-discriminatory dispatching activity. Finally, it aimed at guaranteeing independence between generation, trading activities and transmission and dispatching activities from 2005 ( unbundling). The existing municipal companies could again engage in transmission and sales (after the ENEL’s hegemony), and some of them (in particular those owned by larger and richer municipalities) also took the opportunity to buy significant interests in the power plants ENEL was forced to sell off (ibidem). At the same time, multinational corporations entered the Italian market, also through the acquisition of minority shares in the most prominent municipal companies, strengthening their capacity to stay in the market with the effect of weakening the smaller ones (Prontera and Citroni 2007). All in all, in the liberalisation process the Italian municipalities have thus had the opportunity to increase their role in the energy sector through their corporations. However, their role is limited to ownership, and does not invest regulation: in fact, according to the Bersani Decree, concessions for distribution of energy are issued by the Ministry of Industry for a term of thirty years, thus confirming the strongly centralized nature of energy policy in Italy (Wollmann et al. 2010). Also the solution to price problems for low-income families has been found at the national level, with the creation of a targeted, means-tested social tariff designed to guarantee an average saving of 20 % in electricity
bills for vulnerable customers (FSR report 2008). As for water, instead, according to the reform of the water and sanitation service of 1994, tariffs (which as in the other countries follow the full cost recovery principle) have to be established at local level by the district Authorities (within a reference rate provided by the Ministry of the Environment), and so do social/reduced tariffs, which thus largely vary across the country. The current reorganisation of the water sector governance would maybe change the state of the art in the next future.

The comparative study of the politics of corporatisation, and of the role local administrators may play therein, should thus also take into account the scope and limits of municipal action in every national regulatory assets, albeit – as we have seen – with some variations according to the different policy sectors (stronger constraints in fully liberalised sectors such as energy; more room for manoeuvre in sectors such as water and sanitation services); furthermore, since a an effective plan for social tariffs is not yet well developed in several EU countries, also the

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Table 2: Regulation and tariff systems in the four countries

<table>
<thead>
<tr>
<th>Water</th>
<th>Electricity</th>
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<tr>
<td><strong>Independent Regulatory Authority</strong></td>
<td><strong>Tariffs and social tariffs</strong>&lt;sup&gt;6&lt;/sup&gt;</td>
</tr>
<tr>
<td>FR</td>
<td>No. Shared responsibility among local and regional bodies (+ Cour de Comptes)</td>
</tr>
<tr>
<td>ES</td>
<td>No. Regulation in the hands of Autonomous communities</td>
</tr>
<tr>
<td>IT</td>
<td>Yes, since 2011 (AEEG). Until 2011 regulatory system shared between Regions and local ATO authorities.</td>
</tr>
<tr>
<td>DE</td>
<td>No. Responsibility of Länder and municipal supervisory bodies</td>
</tr>
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</table>

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<sup>6</sup> About tariffs, water service delivery in all four countries is affected by a national regulation more or less indirectly inspired by the EU legislation and providing for price cap. It means that the municipalities got an additional discretion to regulate tariffs and social tariff looking at the price cap established by national authorities.
financial/distributive policy tools municipalities are using to avoid discrimination and reduce unbalances in the access to quality services are worth to be investigated. This is of course a less direct channel of intervention in the management of services, but it is all the same very important for the accomplishment of a “public” and political mission.

8. Concluding remarks

The overview provided so far clearly shows that the puzzle of local services management in all four Napoleonic countries is rather complex and variegated, and so are the strategies that local administrators may adopt to cope with the problem of delivering services of general interest. In spite of the mushrooming of European rules and the increasing constraints for municipal companies due to the EU-driven liberalisation processes, the provisions envisaged in the formal rules and procedures established at the national levels have been coupled with some flexible adaptations which made them fit with central and local administrative traditions (e.g. the two steps procedure for tendering in France; the piecemeal legislation in Italy; the special conditions for Stadtwerke in Germany etc.). In fact in all four countries municipalities may still choose among several options as for the providers’ legal form and public-private balance, and their selection ultimately depends on local strategic choices (albeit sometimes influenced by mimetic pressures, policy legacies or contingent needs).

This is not to say that in these countries municipal choices are mainly governed by informal rules and practices; rather it can be said that, to a greater or lesser extent, municipalities have been allowed to perpetuate localisms and embark pragmatically on the corporatisation (or privatisation) path, trying to find a balance between exogenous requests and internal needs – although their practical choices have been often presented and justified with ideological/normative arguments, or alternatively as the result of unavoidable external pressures. Furthermore, in all four countries the pre-existing patterns of management, the characteristics of the political system and the structure of interest representation in the various sectors affected by managerialist reforms seem to have influenced local implementation strategies, revealing the importance of legacies and contextual factors in explaining the shape and intensity of corporatisation.

The complex interaction between administrative practices, contextual factors and political variables, as well as the search for appropriateness and for a flexible adaptation to the marketisation mainstream, which clearly emerge as key features of the corporatisation strand in all four countries, are no doubt grasped better by the public governance approach than by a pure managerialist view. In public governance, in fact, “interaction with the socio-political environment plays an important part. It is not merely an internal organizational matter, but a complex and externally oriented activity. Public governance is the ‘management’ of complex networks, consisting of many different actors from the national, provincial, and local government, political and societal groups, pressure, action and interest groups, societal institutions, private and business organizations” (Kickert 1997, 735).

In our view, understanding were and how politics may enter the corporatisation game requires thus a research design which focuses on both the structural characteristics of the phenomenon (e.g. the number of municipal companies, their financial dimension, their sectors of activity, the public-private mix in their capital share, their legal form etc.) and process-related features (leadership of privatization/re-municipalisation processes, interactions between local administrators, companies and interest groups, intergovernmental relations, characteristics of the local political systems etc.). This is all the more important when one is interested in understanding the current redefinition of the border between public and private in the domain of public service delivery, and of what today constitutes the idea of “public”: is it the object of activity, is it the
institution that performs it, is it the standards with which it is carried out, or the principles which uphold it? In each field we observe, the public may be stronger or weaker at any given time: what was dealt with in the public sphere may shift to logics of personal trust and affection, competition, or incentive; what was delivered by the public sector may be delivered by the private sector; what was conceived as a public utility may become a private good or service, and what was done in public may shift to more obscure arenas. An analysis of this kind is useful also to define what we mean by “privatisation”, which is indeed not exclusively a matter of ownership or profit maximisation (cfr similarly Feigenbaum et al. 1999).

From the perspective just outlined, in a recent research (Citroni, Lippi and Profeti 2012) we addressed the issue of the redefinition of the public-private balance in the Italian case, looking at to what extent municipal companies are owned by the public sector, to what extent their operations and activities are public (also in terms of “publicity”), to what extent their (public?) managers follow a public ethos, and by which means and channels political dynamics and interests representation may influence and determine the outcome of corporatisation processes. This kind of research, which required the combination of quantitative techniques and data collection (i.e. the creation of a database with the structural characteristics of the companies and of the municipalities) and classic instruments of qualitative analysis (interviews with local politicians, stakeholders and companies’ administrators; case studies focused on single companies and processes of privatisation etc.), revealed a situation of “ambivalent privatisation”, with a large presence of private heads sitting in the decisional bodies of private law companies, coupled with the absolute dominance of public financial resources in the nourishing of companies’ share capitals; and the relevance of municipal companies as “parallel” political arenas, since the composition of shareholders’ assemblies in companies dealing with specific subsectors of public services tends to replicate the network of stakeholders interested in such sectors and normally consulted (or directly involved) by public institutions in “ordinary” decision-making processes.

In this paper we have tried to make a first step towards the design of an analytical framework which could help to replicate such kind of research on a comparative level, individuating the dimensions through which local politics may play a role in corporatisation processes, and trying to identify – on the basis of the existing literature – differences and similarities among the various policy sectors and the different national cases. In a nutshell, we have tried to define some possible analytical dimensions of the politics of corporatisation intended as a dependent variable, which is just a very preliminary operation for any future cross-national and cross-sectoral comparison. Of course, comparative research will encounter several difficulties such as the absence of a common classification of municipal companies, the lack of systematic information on companies’ characteristics and on the members of the companies’ boards, and – last but not least – the necessity to integrate the analysis of “hard” data with the in-depth understanding of specific case studies. However, the development of cross-national partnerships among scholars interested in the topic, as well as the systematic discussion on innovative research strategies and methods within the academic community, could certainly help to overcome such difficulties and improve our understanding of a phenomenon whose relevance for the quality of citizenship is undeniable.
Bibliographical references

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