

Report to the 75th session of the UN General Assembly in 2020

Questionnaire - non-State actors

French Federation of Water Enterprises (FP2E) contribution



1. Please describe briefly the role and responsibilities of your organization in the water and sanitation sector, particularly concerning assessment or promotion of private provision.

The Professional Federation of Water Enterprises (FP2E) was created in 1938. It gathers almost all private companies managing water and sanitation services in France after competition. Its members are companies of all sizes : AQUALTER, DERICHEBOURG, SAUR, SEFO, SOGEDO, SUEZ, VEOLIA. They collectively employ 28,000 staff in France.

FP2E welcomes the initiative of the Special Rapporteur on the Human Right to Water and Sanitation - HRtWS- to focus his 2020 report on the private sector participation and the HRtWS: this report could allow states to better understand, frame and use the solutions offered by private operators to progress on the HRtWS.

France has clarified long ago that water and sanitation services rest with municipalities. French municipalities reach more than 99% coverage with water and sanitation, using, or not, competition as a common sense tool to face challenges. This contribution describes how it works.

Current situation and trends

2. In your view, what the role has the private sector played in the water and sanitation provision in the countries your organization works in (or at the global level)? How has this role evolved in recent decades? Please provide examples.

Contrary to a majority of countries, French municipalities are accountable of the HRtWS towards their citizens and the national authorities, and are therefore granted freedom to choose who operates and how, under their control. The proportion of population served by private operators are [2019 BIPE Report available on www.fp2e.org]:

- 64,7% for drinking water supply
- 54,0% for wastewater services.

Despite a short period of decline for potable water supply in the 2000's, the share of population served by private operators is stable with roughly 7,000 active contracts. Each year, hundreds of municipalities go from in-house to outsourced service provision and vice-versa, the movements compensating one another in number of contracts, with a slight growth of the population served by private operators/most specially in waste water services.

3. Why do public authorities allow or even attract privatization of water and sanitation services? What would be the alternatives for public authorities?

Privatization is a misleading terminology which is employed with political intentions: France does not allow the transfer of sovereign responsibilities, typically accountability on HRtWS criteria, tariff settings, investment policies, etc. The contracts are time-bound, never entail a transfer of ownership to the private party.

French Public authorities outsource the operations of their water/wastewater services to enhance their efficiency, transparency and innovation potential, and to mitigate some risks through transfer to a private operator.

4. In your view, have International Financial Institutions (IFIs) recently encouraged privatization? Could you provide concrete examples?

Not in France.

5. In case of economic crises, have the promotion of privatization increased?

Not in France.

Private provision

6. In your experience, if the private sector is involved in provision of water and sanitation services, what process was undertaken prior to the decision to adopt this model of provision? What types of concerns have been considered in such decisions?

Municipalities must freely exert sovereign duties like tariff setting, strategy, etc. They must also define the local Water or Waster service rules, setting the rights and obligations of the operator(s), users, and tenants (de-facto contract with users). These are legal obligations.

The recourse to private operators needs a vote on the principle by the municipal assembly. The tendering is strictly regulated [Law 93-122 of 29 January 1993 - articles 38 to 41, known as loi SAPIN, and the more recent French transcription of the EU Concessions Directive, order of January 29, 2016 and decree of February 1, 2016]. Tenders are monitored at State level and laundered at local level.

The key elements of choice must be clarified ahead of the tendering phase, and used to select candidates, to negotiate the contract terms, and to control the operator using set Key Performance Indicators. The impact of outsourced management on the Human Rights is what each municipality decides the operator must do: when the contract is about plant operations, the private operator impacts availability, quality and acceptability and indirectly affordability. Conversely, when the customer service is outsourced, the HRtWS impact is all the bigger. However, some tasks linked to the Human Rights (e.g. off-grid sanitation for homeless people) may rest with the social services of the municipality, the department, basin, or region.

French water companies , in collaboration with the French National Association of Mayors (AMF), have published a guide for elected officials on outsourcing water/wastewater services (La délégation de service public d'eau potable, Cahier du Réseau n° 19 - 2016).

7. How could public authorities use the features of private providers to foster the realization of the HRtWS (HRtWS)? Is private provision positive for the progressive realization of the HRtWS? If yes, in which circumstances?

Private water operators have innovated several major structures to allow their client-municipalities to better deliver against the HRtWS, which in-house services nowadays also use:

- Voluntary contribution to the *Fonds Solidarité Logement*: in 2000, the Federation of Private Water Operators (FP2E) has launched a fund to erase unpaid bills for households in difficult financial situations. This measure covers nowadays $\frac{3}{4}$ of French departments.
- In 1995, public and private bodies have together co-created the “Points d'Information Médiation Multi Services” -PIMMS (French State, the City of Lyon, EDF, La Poste, SNCF, GDF-SUEZ, Kéolis, Veolia): these multiutilities information desks are created in partnership with municipalities to enhance the social link and create local jobs. In 2019, 66 PIMMs have been installed throughout the territory. An estimated 1 million households were helped in 2018, including on water and sanitation aspects.

When bidding for contracts, private operators introduced social innovations:

- Since 2010, Veolia implements for the Suburbs of Paris Water Authority (SEDIF) the Water Solidarity Program: emergency assistance for water-related charges (“water voucher”) awareness raising programs with help of NGOs: 1% of the revenue of the dedicated company is directed to solidarity, benefiting 64,000 households since it began. The idea of the water-voucher is currently being considered for national application.
- Social tariffs were first spearheaded by the city of Dunkirk with Suez as operator (2012). Based on these positive examples, France adopted in 2013 a new law which provides for a much wider experimentation of Social tariffs: there are 50 such experimentations, benefiting to 15.5% of the served population (BIPE 2019).

Hence, there is multiple evidence that private operators’ involvement results in progress on the HRtWS and indeed, evidence of private operators being proactive and taking the initiative.

One recent adjustment dealt with cut-offs of individual housing in case of non-payment of water charges (does not apply to collective buildings): Many local water service rules (*règlement local de service des eaux*) allowed it in case of unjustified, durable, non-payment, also taking account of the *Fond Solidarité Logement*. The legislation in 2013, with further clarification recently, bans cut-offs, and operators (public and private) no more recourse to it. At the same time, municipalities observe a general raise in unpaid bills, challenging the public service finance.

FP2E constantly contributes to public debate. FP2E has supported the introduction of the Human Right to Water in France in 2006, the introduction of national Key Performance Indicators in 2007. During the last presidential elections in 2017, the FP2E published the five challenges of water and sanitation services by 2022, in order to combat climate change and promote transparency.

At international level, FP2E related organisations supported the HRtWS at United Nations Level. We equally believe the European Union should recognize the HRtWS, and FP2E publicly supports the introduction of access and transparency obligations in the proposed Drinking Water Directive (to be released in 2020).

8. How have instruments and mechanisms in place allowed the users (and non-users) to complaint and get remedy from private providers?

The number of complaints is a national indicator. The national database shows there are 3.2 complaints per 1,000 customers as national average for potable water supply, whereas there are only

1.1 complaints/1,000 customers when the service is outsourced; the same difference is observed for wastewater management (BIPE 2019): customer hence show less grievance towards outsourced services.

On the top of local settings foreseen by municipalities, including contractual clauses for answering users' complaints, FP2E launched a water ombudsman in 2009, in association with the federations of French Mayors (AMF) and Federation of French Inter Municipalities (AdCF). The *Mediation* (Water ombudsman) deals with litigations between operators and customer, settling an average 85% of cases without going to court. The French federation of in-house services (FEP-FNCCR) and the federation of mixed economy (Fed EPL) joined the *Mediation* in January 2016, which covers now 92% of the French population.

9. Do private providers advocate for stronger regulation? If so, why?

Yes, FP2E and its members advocate for stronger regulation, at the national level and at the municipal level, to nurture progress on all elements of the HRtWS.

During the "Assises de l'Eau" launched by the French Government in 2019, the FP2E was the only stakeholder to call for the generalization of water cheques to households in need. A law currently under discussion in the French Parliament provides for their adoption.

10. How has been the relationship between private providers and public authorities at the local level? What are potential concerns public authorities and users face vis-à-vis private providers?

The relationship between private providers and their awarding authority is contractually defined, using an array of key performance indicators spanning from real-time to annual data. Awarding authorities communicate with their private operator in real-time, with set appointments on a weekly, monthly or annual basis, as appropriate.

Litigations are used as a rule of law tool in case of disagreement, and are addressed by relevant courts (as opposed to in-house provision, where litigation and recourse are excluded by design).

11. How have private providers contributed to or harmed the realization of the HRtWS? Please give examples.

The HRtWS is defined by the normative terms of Availability, Quality, Acceptability, Accessibility, and Affordability, with cross-cutting elements: Equality and non-discrimination, Accountability, Sustainability, Participation, Access to Information and Transparency. They are all subjected to contractual indicators binding the private operator. Because of the progressive nature of the HRtWS, this assessment is put in the national context.

1) Availability: To secure the quantitative supply for the long term, FP2E members offer active leakage control options to their client municipalities, resulting in network leakage on average better or lower under outsourced management (see the national database and BIPE 2015 report).

For the availability of good quality water, FP2E has been engaged for the last 10 years in a partnership with the Standing Assembly of Chambers of Agriculture (APCA). This has so far facilitated the birth of a dozen of local partnerships between local suppliers and surrounding farmers pursuing the objective of protecting water quality through preventive actions. Since 2017 this action is taken up by the "territorial contracts", expanding geographical areas and relevant stakeholders.

For emergency situations, FP2E members supply bottled water or other means.

2) Quality is directly controlled by the regional health authorities, taking 300,000 samples annually independently of the operators (public or private) as recommended by the Committee on Economic, Social and Cultural Rights general comment No. 15 (2003) on the right to water, para. 24: The drinking water quality is superior in outsourced services [*La qualité de l'eau en France, données 2013, Ministère de la santé et des affaires sociales*].

3) Acceptability: the national, transparent benchmarking [See the Eau France Portal] shows that the rate of customer complaints is three times lower in outsourced services than the average [2019 BIPE Report available on www.fp2e.org].

4) Accessibility is defined and ensured by awarding authorities and tabled in the local water service rules, with no documented difference public/private management.

5) Affordability: In 2017 public water services represent an average 0.9% of household expenditure (excluding tax and benefit transfers), thus much less than telephone (1.9 %) and energy (3.9%) (BIPE 2019).

FP2E and its members have designed and implemented mechanisms to ensure affordability for least favoured households (see question n°7).

In terms of difference public/private, Le Lannier & Porcher (2012) have shown that price differences between private and public are explained by the complexity of the service (source water, density of population etc.). There is evidence that more recent data would result in an advantage to private service provision: for example, the regional court of auditors has shown that after the normal term of the outsourcing contracts by Eau de Paris (from 2010 to 2017) tariffs were down by 2.6% for the Eau de Paris, whereas surrounding outsourced services of SEDIF and SEPG were down by 21% and 18.7%, respectively [2017, *Enquête régionale sur l'alimentation en eau potable de la métropole du grand Paris*].

6) Equality and non-discrimination: The French law strictly prohibits any discrimination. There is no evidence of serious or systemic breach of these principles. Moreover, on a case-by-case basis, FP2E members use the service of local NGOs to facilitate contact with least-favoured households.

7) Accountability and Sustainability: Private operators have a duty to issue an annual Report on the Price and Quality of Service (RPQS), presenting the contract settings, performance, and bookkeeping. The analysis of such report allows the municipalities to formally check the accountability and sustainability of the outsourced service.

To anticipate on long-term needs, FP2E members together employ about 1,000 staff in R&D services. They spend 3.4% of their staff costs for training, as opposed to a national average of 2.7% for public and private services together.

8) Participation is statutory ensured by the *Commissions Consultatives des Services Publics Locaux* (CCSPL), created in 1992, and further defined by Law « *Démocratie de proximité* » in 2002. These CCSPLs are installed in 76% of local authorities when water services are outsourced, well over the national average of 51% for all services together: the consumer representation is hence much better when the services are outsourced.

9) Access to Information and Transparency: Water and wastewater services must upload their key performance indicators on the national portal which any citizen can visit to benchmark water services. Private operators provide 100% of the necessary data to their awarding authority. The above RPQS is

submitted to CCSPL and to the deliberation of the local assembly, as a basis for transparency and dialogue. This report must *inter alia* show the operating results account (CARE: *compte annuel des résultats d'exploitation*), whereas in-house operators may in practice cover some of their expenditures or tasks via other municipal services.

Hence, FP2E member companies contribute to all aspects to the realization of the HRtWS, equally or better than in-house services. The explanation rests with the binding nature of all standards and performance foreseen in the contract, with penalties in case of underperformance, and if relevant, loss of contract and possible prosecutions.

12. What is the nature of the information available on service provision? Does it allow for the adequate accountability of private providers and public authorities?

See points 7, 8 and 9 under question 11, demonstrating adequate accountability.

13. Who monitors the performance of private providers in respect to the normative content of the HRtWS and how? Who intervenes when there are risks of human rights violations and how is it done? Who imposes penalties in case violations occur?

The performance of providers is monitored, irrespective of the nature public or private of the operator, at 3 levels: municipality, *department*, and state levels, as per the table below:

items	Authority in charge
Quality of water, resource protection monitoring	<ul style="list-style-type: none"> • Min. of Environment & its local services • Min. of health & its local services • Municipality
Tariff policy and bookkeeping	<ul style="list-style-type: none"> • Min. of finances • Regional chamber of accounting • Municipality
Consumers protection	<ul style="list-style-type: none"> • DGCCRF (national competition office) • Water Ombudsman • Municipality

14. What are the main challenges public authorities face regarding availability, accessibility, quality and affordability when private actors provide water and sanitation services? Please give examples.

See responses 1 to 5 to question 11.

15. Do you know any case of corruption involving private provision of water and sanitation services? Please give the necessary details.

Not in France for water/wastewater service outsourcing since 2000, proving the current settings are effective.

16. Has the private sector shown more capacity to mobilize funds than the public sector? Could you please give concrete examples?

In the aftermath of the 2008 financial crisis, municipalities indeed met a finance shortage, whereas

specific project involving a private operator appeared more secure to money lenders. This preference for ear-marked finance is taken forward by the Banque des Territoires with the “Aqua-Prêt” to water-related infrastructure projects with measurable outcomes.

17. In your opinion, is there power imbalance in a public-private partnership? Could you please give concrete examples of effects of this relationship?

The higher the degree of delegation, the higher the risk transferred to the operator, the higher the need for specifications in the tender and for follow-up procedures (and team) by the awarding authority. For this reason, 93% of municipalities recourse to a consultant of national level, independent from the operators, for at least the tendering and in most cases follow-up [Les DSP de l’eau en France, 20 années de pratique encadrée, ONEMA, 2015]: the power imbalance in France hence appears more speculative than supported by facts. Another usual claim of the anti-private movements is the difficulty to take back the operations, but there have been several hundreds of return to in-house operations since 2010, showing this other speculation is not either supported by evidence.

18. When there is private participation in the water and sanitation sector, to what extent the private actor brings its own financial resources to the service?

“Public money” is often cheaper than “private money”, so the private operators do not present themselves as financiers: The rationale of outsourcing is in the technical performance, transparency and risk transfer, and the private operators cover only their own contractual expenditures, which are generally much lower than the overall cost of the water /wastewater service.

Remunicipalization

19. Have you studied any case of remunicipalization? Why and how has it occurred? What types of difficulties has the public authority faced to establish the new municipal provider? Please, provide details of those processes.

Remunicipalization is a terminology used by political parties opposed to outsourcing by principle.

In practice, municipalities anticipate on the term of contracts by commissioning a study on the comparative advantages of return to in-house operations versus renewal of the outsourcing. This is an important process that provides information and data for the debate and vote on the scope and principle of another outsourcing. The result of this rigorous assessment is an average 500 to 700 tenders annually, which in turn has actually led to a slight increase in people served by private providers since 2010 (2018, Eau France/Observatoire des services publics d’eau et d’assainissement, Panorama des services et de leur performance en 2015)