

MAPPING OF THE PUBLIC SERVICES

MAY 2010

PUBLIC SERVICES

IN THE EUROPEAN UNION & IN THE 27 MEMBER STATES

STATISTICS, ORGANISATION AND REGULATIONS



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MAPPING OF
THE PUBLIC SERVICES



PUBLIC SERVICES
IN THE EUROPEAN UNION &
IN THE 27 MEMBER STATES

COUNTRY SECTIONS

PART III - A



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PUBLIC SERVICES IN AUSTRIA

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Austria is a federal republic and a representative parliamentary democracy¹. The state's powers are separated between the federation (Bund) and nine autonomous provinces (Länder)². There are three levels of government: the government of the federation, the provinces' governments and 2359 local authorities (towns – Städtebund, and communes - Gemeinden).

There is a real dominance of the federal government in the national system and all lower governments depend on national planning and policy³; by longstanding tradition, people in the Länder have a solidly 'and centralist' attitude⁴. That explains the particularity of the Austrian federalism based on a constitutional system of close intra-governmental relations – "co-operative federalism" – consolidating the legal weakness of the states' political power and coordinating state administration in order to prevent overcentralisation. By formal public law treaties between state and federal governments or among the states themselves (art. 15a B-VG), by private law agreements and corporations among all three levels of government, and by political agreements, a great number of programs for special public tasks have been launched (hospitals, highways, education, traffic systems, etc.).

There are many sectoral laws on SGIs and also Verordnungen (ordinances, based on law, decreed mostly by the competent Minister) and collateral legislation. There is no general (horizontal) law on SGIs. In many sectors the legislative amendments are due to EU legislation/policies (telecommunications, postal services, production of electricity, energy, rail transport, regional and local transport of passengers, broadcasting, and higher education).

(1) We would like to thank M. Christopher Burchardt for his contribution to proofreading this part of the report.

From 1918 to 1920, following the collapse of the Austro-Hungarian Empire, Austria passed from being a decentralized unitary state into a federal state. The introduction of a constitutional system and the establishment of a democratic republic increased again the Länder powers enabling them to become the real federal states. (John Loughlin, Eliseo Aja, *Subnational democracy in the European Union. Challenges and opportunities*, Oxford University Press, 2001, p. 120, 121)

(2) Article 2 of the Federal Constitutional Law – B-VG 1920/1929,
http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Dokumentnummer=ERV_1930_1

(3) Peter Pernthaler, «Austrian Federalism», in Jürgen Rose, Johannes Ch. Traut (eds.), *Federalism and decentralization*, George C. Marshall European Center for Security Studies LIT Verlag Berlin-Hamburg-Münster, 2001, p. 137, 138. See also, Anna Gamper in Katy Le Roy, Cheryl Saunders (eds.), *Legislative, executive, and judicial governance in Federal Countries*, McGill-Queen's Press-MQUP, 2006

(4) John Loughlin, Eliseo Aja, *op.cit.*, p. 125, 127

The Austrian public administration⁵ is “rather become” an administration of services that has clear defined fields of activity such as social affairs, health, education, culture and a promotional administration.⁶ In practice, it is characterised by a strong legalistic approach – Rechtsstaat.

Some of the European Community terms, especially Dienstleistungen im allgemeinen Interesse/Service of general interest (DAI) and Dienstleistungen im allgemeinem, wirtschaftlichen Interesse/Service of general economic interest (DAWI) are used regularly in related scientific discussion and legislation. Daseinsvorsorge/ Provision of essential services - domestic concept - is used as well a lot, due to its broad meaning that includes aspects of SGI, NESGI, SSGI, but its outline is rather diffuse⁷.

The term soziale Dienstleistungen im allgemeinen Interesse/Social services of general interest is rarely used (probably due to the fact that social services are mostly provided by state institutions). The term nichtwirtschaftliche Dienstleistungen im allgemeinen Interesse/non-economic services of general interest (police, jurisdiction, etc.) are rarely discussed under this viewpoint or in connection with DAI and DAWI.

The term öffentliche Dienstleistungsverpflichtungen/Public service obligations is rarely used; more usual are terms like Staatsaufgaben and Staatliche Gewährleistungspflichten, but those mean state obligations in a broad sense, e.g. including guaranteeing human rights.

Terms in TEU and TFEU	German terms in TEU and TFEU ^{table01}
Services of general interest – SGIs	Dienste von allgemeinem Interesse
Services of general economic interest – SGEIs	Dienste von allgemeinem wirtschaftlichem Interesse
Non-economic services of general interest – NESGIs	nichtwirtschaftliche Dienste von allgemeinem Interesse
Public service	öffentlichen Dienstes

(5) The “spirit” of the Austrian administration dates back to Maria Theresa (Archduchess 1740–1780) and Joseph II (Archduke 1765–1790). Its organisation has its roots in the 19th century and was codified with the constitution of the first republic, which included most of the special forms as well. The influence of the ECHR led to the establishment of more independent administrative bodies, which act similarly to courts, but deal with administrative matters (especially as appellate courts, eg. UVS). The founding of public (private) companies was mainly done because of budget reasons (Maastricht criteria).

(6) Erich Pramböck, Association des villes autrichiennes, Structures communales et système financier des communes d’Autriche, <http://www.staedtebund.at/>

(7) Der Begriff Daseinsvorsorge umfasst die Schaffung, Bildung, Sicherung sowie Entwicklung notwendiger sozialer Lebensbedingungen der Bürger - The term Daseinsvorsorge includes the creation, formation, securing and development of essential social living conditions of the citizens. G. Pöschmann, Rechtliche Absicherung von Dienstleistungen im allgemeinen wirtschaftlichen Interesse in der österreichischen Rechtsordnung, Schriftenreihe des VÖWG Heft 1/2007:

Wasserversorgung, Abwasserentsorgung, Abfallbeseitigung, Straßeninstandhaltung, öffentliche Beleuchtung, Schulen und Kindergärten, Krankenanstalten und Fürsorgeheime, Friedhöfe, Feuerwehr und Rettung, Kultur- und Sporteinrichtungen - water supply, sewage disposal, waste disposal, road maintenance, street lighting, schools and kindergartens, hospitals and other health institutions, cemeteries, fire brigades and ambulances, culture and sports - B. Raschauer, Allgemeines Verwaltungsrecht, SpringerWienNewYork 2003, recital 322:

The term can also mean “ensuring survival” in certain contexts.

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs' organisation?

Federation	Länder	Local
Telecommunications	Production of electricity	Regional and local transport of passengers
Postal services	Transport-distribution of electricity	Primary and secondary education
Production of electricity	Regional and local transport of passengers	
Transport-distribution of electricity	Inland water transport	
Marketing of electricity	Heating	
Railway transport of passengers	Primary and secondary education	
Freight rail transport	Social housing	
Air transport	Childcare services (0-6 years)	
Maritime transport	Elderly care	
Inland water transport	Cultural services	
Water		
Wastewater		
Heating		
Broadcasting		
Hospital health services		
Ambulatory health services		
Primary and secondary education		
Higher education		
Vocational training		
Compulsory social protection		
Complementary social protection		
Care of disabled		
Cultural services		
Financial services		

B. Sectoral organisation and trends

Status of operators

National (Federal and Länder) public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
Broadcasting Hospital health services Ambulatory health services Primary and secondary education Higher education ^{table02} Vocational training ^{table03} Childcare services (0-6 years) Care of the disabled Elderly care Cultural services	Postal services Production of electricity Financial services	Production of electricity (companies owned by the Länder) Gas transport-distribution Regional and local transport of passengers Water Wastewater Heating Hospital health services Ambulatory health services Primary and secondary education Vocational training Social housing Cultural services		Water Waste-water Heating	Telecommunications Gas transport-distribution Air transport Heating	Telecommunications Postal services Regional and local transport of passengers Air transport Heating Broadcasting Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Complementary social protection Social housing Childcare services (0-6 years) Care of the disabled Elderly care Financial services Cultural services

SGI markets

Liberalised market and competition	Liberalised market Public operators dominant	Public monopoly	Liberalised market Private operators dominant	Private monopoly	No market
Telecommunications Postal services (partial liberalisation) Production of electricity Electric networks Marketing of electricity Transport-Distribution of gas Marketing of gas Regional and local transport of passengers Air transport Inland water transport Heating Broadcasting Higher education Vocational training Complementary social protection Care of the disabled Financial services Cultural services	Water Waste water? Broadcasting (radio) Hospital health services Ambulatory health services Primary and secondary education Social housing Childcare services (0-6 years) Elderly care	Postal services Railway transport of passengers Freight rail transport Lower secondary education	Telecommunications Postal services		National and Länder public administration Regional and local public administration Compulsory social protection ^{table04}

Main financing methods of SGLs

Fees/payment by users/clients	Public grants/aids	Taxes/contributions	Insurance funds	Incomes from the activity	Social tariffs/prices
Telecommunications Postal services Production of electricity Transport-distribution of electricity Gas transport-distribution Railway transport of passengers Freight rail transport Air transport Inland water transport Maritime transport Water (more than 99% cost coverage) Waste water Heating Broadcasting Primary and secondary education (private schools) Higher education Vocational training Complementary social protection Social housing Childcare services (0-6 years) Care of disabled Financial services Cultural services	Railway transport of passengers (overall, about 30-40% cost coverage) Freight rail transport (overall, about 30-40% cost coverage) Vocational training Social housing Childcare services (0-6 years) Care of disabled Cultural services	National public administration Regional and local public administration Hospital health services Ambulatory health services Primary and secondary education Higher education Compulsory social protection	Hospital health services Ambulatory health services	Broadcasting Higher education (research funding)	Production of electricity (ongoing discussions) Railway transport of passengers (students, pupils, families, apprentices, seniors, etc.) Heating Broadcasting (blind persons, persons receiving social welfare, etc.) National public administration Regional and local public administrations Higher education Vocational training (women, migrants, etc.) Childcare services (0-6 years) Care of disabled Elderly care Financial services ^{table05} Cultural services (seniors, students)

National authorities responsible for setting pricing and/or tariff policies

Central government	Länder	Local government	Regulatory agencies	Providers
National public administration	Heating Broadcasting National public administration Länder public administration Local public administration Childcare services (0-6 years)	National public administration Local public administration	Telecommunications Production-transport-distribution of electricity, Distribution of gas (network access; E-control sets tariffs for Ökostrom)	Railway transport of passengers (transport of passengers)

II/ Approaches

A. The model of public administration and national public companies

The public sector has traditionally played a strong role in the Austrian economy, as well as in issues of education, culture and law. In the post war period, Austria had one of the largest state sectors in Western Europe and the largest on some counts.⁸

After the Second World War a comprehensive programme of nationalisation was carried out in Austria in order to respond to the reconstruction needs⁹. The factors of nationalisation had also an ideological and a political nature. After regaining sovereignty (1955), Austria organised the nationalised industries into a holding company and privatisation was moderate¹⁰. During the following years the organisation of the nationalised sector was altered several times. However, no significant privatisation occurred and the questions of industrial ownership lost their importance in the political debates of the 1970s (having a substantial nationalised sector within the economy was accepted as one of the basic elements of the socio-economic consensus, underlying Austrian corporatist arrangements)¹¹.

The recent debate about privatisation began in the second half of the 1970s. At first, the discussion did not focus on the privatisation of nationalised industries but on municipal firms, (e.g. funeral services) for the reason of poor economic performance, or involvement in corruption scandals or to take into account the interests of those who promoted the discussion. At the beginning of the 1980s macro-economic performance deteriorated, and from 1982 began to articulate a fundamentally neo-liberal alternative for economic policy, consisting of cuts, shifts in budgetary priorities, a comprehensive tax reform including a substantial tax relief, flexibility, deregulation and privatisation.¹² The reasons for the new wave of privatisation, in the sense of

(8) Since 1960 Austria's economic landscape has changed fundamentally, with the primary and secondary sectors progressively declining in favour of the service segment. In 2006 the service sector (tertiary sector) contributed roughly 67% to gross value added (GVA) and some two thirds of all employed people work in the service sector (most employees work in commerce, in public administration, and in the educational as well as public health systems). Federal Chancellery of Austria, Austria in brief, <http://www.austria.gv.at/DocView.axd?CobId=27026>

(9) The first Nationalisation Act was passed in 1946 and formed the OIAG (Austrian Industry Holding). But the state took control of these enterprises (mainly in the manufacturing sector) only after the occupation forces left. It is to be noted the lack of large private companies and a very underdeveloped capital market that characterised Austria. The two largest banks (Creditanstalt and Länderbank) were owned by the government, electricity, post and telecommunications, broadcasting and large parts of the transportation sector (highway and railways) were owned by central or local governments. (Karl Aiginger, p. 71, 72). In 1993, the former OIAG, administrator of public companies, became a privatisation agency. See OIAG Österreichische Industrie-holding AG, <http://www.oeiag.at/english/oiag/geschichte.shtml>

(10) Many examples exist of cases in which the reforms were implemented through the formation of quasi independent agencies or independent companies under corporate law (corporatisation). In this form of restructuring, the government is still the owner, deciding in principle upon the goals, strategies and activities in the firm, selecting and monitoring the management. However, decisions regarding daily operations, financial details, and personnel are made at the level of the firm and operation is according to the rules of the private sector. See for example, Austrian Broadcasting Company (ORF), Austrian Central Bank (OeNB – a quasi-public agency with majority ownership by the central government), the Austrian Railways (organised as a separate company in 1993), the post and telecom company in 1996, air traffic control was corporatised in 1994. The corporatism has become even more popular recently because of the commitment to fulfil the Maastricht budgetary criteria, which favours off-budget practices. Especially since 1995, a number of Austrian government activities have changed organisational forms for two main reasons. First, in many public entities there was rising dissatisfaction with the lack of freedom of action resulting from rigid central directives, and inflexible financial and managerial routines including personnel and wage policies. Second, as the tax ratio is seen as much too high in Austria, down-sizing programmes have been popular. Other reasons for changing organisational forms are the shifting demand for public services (Karl Aiginger, op. cit. p. 72,73; Karl Aiginger, "The privatisation experiment in Austria", in Austrian Economic Quarterly, 4/1999, p. 93) http://www.wifo.ac.at/wwa/servlet/wwa.upload.DownloadServlet/bdoc/PRIVATE8630/qu_1999_04_05_privatisation.pdf

(11) Before the beginning of privatisation in 1987, most of the electric power industry belonged to the public sector: about 60 per cent was State-owned, the rest was owned by the nine Austrian provinces. See Wolfgang C. Müller, "Privatising in a corporatist economy: the politics of privatisation in Austria", in John Vickers, Vincent Wright, The politics of privatisation in Western Europe, Routledge, 1989, p. 103

(12) Wolfgang C. Müller, op.cit., p. 104

ownership transfer, were mixed: reducing the federal deficit, efficiency, political reasons. In the majority of cases, ownership changed from one public agent to another. The second largest action was the privatisation of 49% of the state-owned electrical utilities company.¹³

In the early 1990s privatisation developed through significant restructuring towards the private sector. Still, the Austrian government kept substantial shares of partly privatised enterprises. In 2004, considering all three administrative levels and including all public utilities, the federal government owned 62%, the city or province of Vienna 13%, the other provinces 14%, and the communes 11%¹⁴.

Compared to the SGI areas concerned in this study, the public capital is currently in a minority in the sectors of telecommunications (Telekom Austria, owned 27,37% by the ÖIAG-Austrian holding plc) and air transport (Austrian Airlines AG is owned 41,56% by ÖIAG). The privatisation was complete in inland water transport (DDSG, the first Danube transport company founded in 1829, split and completely privatized in 1991), and extensive in financial services (see previous).

As could be seen from a summary picture of the evolution of the forms of ownership of the main “historical” operators in Austria, even if the public shares in the SGIs companies diminished in the last period, it continues to have in many sectors a substantial role in many sectors. Telecommunications and Postal services. For almost a century these services were provided by the administration of post and telegraph (founded in 1887). The Post AG and Telekom AG were created in 1996 as public companies under private law owned by the Federal Government with various subsidiaries. Both were privatised after the start of the liberalisation process. The privatisation of Telekom AG started in 1998 and it remains the biggest provider of telecommunications services in Austria (it owns Mobilkom Austria, the biggest mobile phone service provider). Nowadays the Federation owns 27,37% of Telekom AG capital (through the ÖIAG). It is in competition with many private providers of telecommunications, most of them being subsidiaries of transnational companies (Orange, T-Mobile, UPC). Post AG was not privatised until 2006, when shares were sold via the stock market. Presently it is owned 51% by the Federation (through ÖIAG) and exercises the monopoly on letter delivery service (50g)¹⁵. Post AG also holds many shares in other postal companies. The Austrian postal market that will be fully liberalised in 2011. In the current market, ORF has about 40% TV share and about 80% radio share.

Broadcasting. RAVAG (Radio Verkehrs AG) was founded in 1924. In 1958, the ORF (Österreichische Rundfunk) became a GesmbH (Ltd.). Under political influence ORF was organised as a public company (Anstalt) by 1967. In 2001 it was transformed into a foundation (the current Stiftung) that owns itself. It operates 2 TV channels (and participates in others), numerous radio programmes and several other media related enterprises having about 40% of TV market share and 80% of radio market shares. Private TV providers were not allowed in Austria before 2001 (effectively in 2003). The state monopoly on radio fell in 1993 in the process of EC accession (effectively in 1997).

Electricity. Electricity companies were founded around 90-110 years ago and were run mainly as part of the administration. Mainly in the 1990s they were spun off into public companies owned by the Länder. Most

(13) Karl Aiginger, op.cit. p. 72,73

(14) Belke Ansgar, Schneider Friedrich, “Privatisation in Austria: Some Theoretical Reasons and First Results About the Privatisation Proceeds”, CESifo Working Paper No. 1123, Category 2: Public Choice, January 2004, Presented at CESifo Conference on Privatisation Experiences in the EU, November 2003, p. 18, cited in Public management reform in Austria, op. cit., p. 66

(15) 2007 Marketshare for Post AG besides monopoly: 99% letters overall, 98% addressed advertisements, 47% newspaper-delivery, 84% direct mail (Post AG owns Freibra, one of the biggest private direct mailing companies), 18% packages & express, 57% post market overall.

of these companies have 100% subsidiaries founded around 2005 (mostly due to EU specifications), which deal with the transport-distribution and marketing of electricity. The largest producer and transporter of electricity (Verbund – Österreichische Elektrizitätswirtschafts AG) is owned 51% by the Federation, about 25% by various Länder electricity companies and 24% private. The electricity market was liberalised in 2001.

Gas. In the gas sector, most gas services were private in the 19th century. They were acquired by the municipalities at the end of the 19th century and most of them were spun off in the 1990s. Some of the electricity producing companies owned by the Länder have subsidiaries or are part of Länder energy groups delivering gas as well. Some Länder have their own separate companies/groups dealing with Gas. There is also OMV founded in 1956 (other name - Österreichischen Mineralölverwaltung Aktiengesellschaft). Its privatisation started in 1987 and today ÖIAG owns 31,5% of its shares.

Transport. After the first private railroads, in 1854 about 70% of all railroads belonged to the State. Following a new period of private investments, after WWI only the state runs railroads with its company BBÖ. After WWII it is part of the administration again. In 1992 it was spun off and due to EU law it was transformed in 2004 into the current ÖBB group, until now the sole operator in the field of railway transport of passengers (at least one concession to a private operator is in process of being acquired). In the freight rail transport, Rail Cargo Austria AG is the subsidiary of ÖBB group. Besides the ÖBB providing this service in some areas (inter alia ÖBB-Postbus GmbH), many municipalities, especially bigger cities, own public transportation companies¹⁶.

Air transport. Austrian Airlines AG was founded in 1957. It bought several privately founded airlines (e.g. Lauda Air, Tyrolean) during the 1990s. At the end of the 1990s it was privatized by stock increase. Currently it is owned 41,56% by ÖIAG).

Financial services. Until the 1980s several banks were run by various corporate territorial bodies, e.g. Zentralsparkasse by Vienna, Creditanstalt by the Federation (originally founded in 1820 by the same Rothschild who built the railways). In the 1990s there have been numerous mergers and reorganisations, until in 1998 the banks were completely privatized. BAWAG was owned by the ÖGB (federation of trade unions), bought Postsparkasse, which was owned by the Federation as well, in 2000. Due to various scandals and troubles (former managers were convicted for embezzlement and defraud etc) it was sold in 2006. Currently, only Kommunalkredit Austria is owned 99,78 by the Federal Government (via Finanzmarktbeilegung Aktiengesellschaft des Bundes (FIMBAG), which in turn belongs to the ÖIAG, which is owned by the Federal Government) due to its almost bankruptcy.

No privatisation has been considered in relation to several sectors such as railway transport of passengers, freight rail transport, and broadcasting, although there have been restructurings in those sectors.

(16) e.g. Wiener Linien GesmbH & Co KG and Wiener Lokalbahnen AG (part of Wiener Stadtwerke Holding AG), Salzburg AG (which runs busses and trams, besides having various subsidiaries which provide gas and electricity) in Salzburg (it is owned 42,56% by Land Salzburg, 31,31% the municipality of Salzburg, and the rest by its Upper Austrian counterpart). Further there are several privately owned bus lines, the biggest being Dr Richard Linien GmbH & Co KG (800 busses, 1 200 employees), Blaguss and Sabtours. They all participate in the Verkehrsverbünde (transport associations), which are contract-based association of regional authorities and transport companies and aim at the integration of the existing transport companies into associations, at standardized fares and schedules and at the free choice of the means of transport within every association. There are 8 transport associations, which have from 13 to 64 transport companies as members.

B. Local autonomy

The federal Austrian Constitution regulates certain functions of sub-national administration. The tasks are not listed but generally described since the functions of the municipalities are determined by the needs of their inhabitants and the personal and financial resources of municipalities that are constantly subject to change¹⁷. The municipalities have the right to govern their local affairs under their own responsibilities within the limits set by the law and guaranteed by the constitution (local self-administration - kommunale Selbstverwaltung)¹⁸. The tasks assigned to the regional and local level of government have been expanding since the mid 1970s¹⁹. As part of their autonomous powers, local government bodies implement measures enacted by the federal government and the Länder (e.g., the inspection, at local level, of safety, public health, and building provisions or by setting up local government bodies or other bodies to carry out local government tasks).

As regard the delegated powers, local authorities set their own criteria. In addition to fulfilling their autonomous roles, local authorities are extensive providers of services (Daseinsvorsorge): as 'independent economic bodies' or through private enterprise bodies. Such services, some of which are mandatory, include the establishment and running of kindergartens²⁰, schools²¹, adult training facilities, sports facilities, public utilities, and waste disposal systems.²² Yet the division of competencies between the public and private is not rigid. In general: water supply²³ and sewage²⁴ are provided by municipalities, but waste management is less organised and charged for by them. Child care services are partly provided by municipalities, partly by

(17) See Federal Constitutional Law http://www.ris.bka.gv.at/Dokumente/Erv/ERV_1930_1/ERV_1930_1.pdf Article 118 (3) A municipality is guaranteed official responsibility in its own sphere of competence for performance of the following matters in particular: 1. appointment of the municipal authorities, notwithstanding the competence of supra-local election boards; settlement of the internal arrangements for performance of the municipal functions; 2. appointment of the municipal staff and exercise of the service prerogative over them, notwithstanding the competence of supra-local disciplinary, eligibility and exam commissions; 3. local public security police (Art. 15 para. 2), local events control; 4. administration of municipal traffic areas, local traffic police; 5. crops protection police; 6. local market police; 7. local sanitary police, especially in the field of emergency and first aid services as well as matters pertaining to deaths and interment; 8. public decency; 9. local building police excluding Federal-owned buildings which serve public purposes (Art. 15 para. 5); local fire control; local environment planning; 10. public institutions for extra-judicial settlement of disputes; 11. debtors' sale of goods.

(18) In the current sense of the term, the Austrian self-government as a long history, that goes back to the medieval 'free cities'. The present-day Austrian local authorities were set up on the basis of a Provisional Local Government Act of 1849. Effectively, self-government was introduced after the establishment of the constitutional monarchy (1860-1861), under which a Local Government Act was adopted in 1862. From the final quarter of the XIXth century onwards, the political importance of local authorities increased considerably as a result of economic development and immigration. In particular, the capital cities of the Länder and local authorities, situated in the most important industrial areas and at key intersections of traffic routes, set about establishing effective administrations for various services (gas and electricity supply, sewage, road building, education, etc.). (John Loughlin, Eliseo Aja, op.cit., p. 121, 122)

(19) John Loughlin, Eliseo Aja, op. cit., p. 135

(20) The Länder are responsible for childcare. Therefore fees and availability vary from Land to Land. Starting last autumn (2009) kindergartens in Vienna are free of charge. Private enterprises, NPOs and religious organisations can run kindergartens as well. Child minders are common outside cities in some Länder, Länder can support this. There are about 360 kindergartens and day nurseries in Vienna run by the municipality; about the same number is run by private companies. Day nurseries are not that common.

(21) Federation, Länder and municipalities run different kinds of schools and kindergartens. Financing and administration are very complicated (due to politics of the interwar period). Private firms, NGOs and religious groups may run schools as well. There are 3351 Volksschulen (primary schools, for children from 6-10 years), of which 2,7% are run privately. In 2003 there have been about 11.500 Hauptschulen (lower secondary school, 10-14 years), none of which are run privately.

(22) John Loughlin, Eliseo Aja, op. cit., p. 128, 129. See also B. Raschauer, *Allgemeines Verwaltungsrecht*, SpringerWienNewYork 2003, recital 322 – Daseinsvorsorge: Wasserversorgung, Abwasserentsorgung, Abfallbeseitigung, Straßeninstandhaltung, öffentliche Beleuchtung, Schulen und Kindergärten, Krankenanstalten und Fürsorgeheime, Friedhöfe, Feuerwehr und Rettung, Kultur- und Sporteinrichtungen (water supply, sewage disposal, waste disposal, road maintenance, street lighting, schools and kindergartens, hospitals and other health institutions, cemeteries, fire brigades and ambulances, culture and sports)

(23) Municipalities are responsible for water services. They can either provide them as part of their administration or found public (private) companies to do so (76%), found water associations (8%) or create PPPs (4%, founded mostly recently). The rest are special forms in sparsely populated areas.

(24) Municipalities are responsible for waste water services. They can either provide them as part of their administration or found public (private) companies to do so (74%), found waste water associations (19%) or create PPPs (2%). The rest are special forms in sparsely populated areas.

public utility organisations. Hospitals are managed only in a small proportion by municipalities; it is mainly the Länder who assume these activities; however, the municipalities must contribute to compensate for deficits. Only in big cities is transport (transport en commun) provided by the cities with their public transport companies. The social housing (Gemeindebauten) has been built by the municipalities after the Second World War. Since 1980 the non-profit utility housing enterprises have a bigger role, one of the reasons being that the need for flats rose dramatically in the 1980ies due to migration and changes in everyday life (one-person households).²⁵

As the Austrian municipalities are relatively small (3500 inhabitants on average), and in order to meet the needs of citizens more cost-effectively, several municipalities join themselves in associations. In 2002 there were 1400 companies mainly owned by municipalities and intermunicipal associations, whose main activities are supply of energy, water, wastewater management, waste disposal, operation of entertainment and conference centres and also the management of schools and administrative tasks such as, for example, the registry offices.²⁶ In 2005, 1413 intermunicipal associations were identified: 32% in the field of education, 28% in the field of environment, 7% in water, 4% in health services, 3% in social services, the others performing various functions.²⁷

C. The delegated management and externalisation

A part of these tasks of provision of services of general interest are handled by outsourced companies. According to assessments²⁸, the management of local public services in Austria is provided by around 1200 local companies.

D. The «New Public Management»

In the NPM reforms, as concerns SGI evaluation, it is to be noted that in Austria there is no institutionalised or compulsory evaluation of SGIs.

E. The Regulatory Agencies

There are laws dealing with monopolies, anti-trust matters and fair competition for all aspects of the economy. The general competent authorities are Anti-trust authority, courts of law, etc. For dealing with matters of safety, concessions, consumer protection, employment, price labelling, standard business conditions,

(25) For example, Wiener Wohnen, the Viennese public enterprise for this sector, has about 220 000 flats. The biggest non-profit enterprise is the SOZIALBAU AG, created in 1954, with more than 50 000 flats.

(26) Erich Pramböck, Association des villes autrichiennes, Structures communales et système financier des communes d'Autriche, <http://www.staedtebund.at/>

(27) Dominique Hoorens, Les collectivités territoriales dans l'Union européenne. Organisation, compétences et finances, Dexia, 2008, p. 188

(28) Idem, p. 187

sustainability etc., either Magistrat, ezirksverwaltungsbehörde (district administrative authority), Landesregierung (government of the Länder), courts of law or ministries are competent. For some sectors there is no specific regulation (regional and local transport of passengers, inland water transport, maritime transport, social protection, care of disabled, cultural services).

Specific regulators were instituted in several sectors. For telecommunication services, the Telecom Control Commission is in charge of competition regulation, frequency allocation procedures, the approval of general terms and conditions of business, as well as monitoring the fees charged. Regulation has developed from sector-specific regulation towards general competition law. In order to enable competition between alternative service providers and companies with significant market power on the relevant markets defined in the Telecommunications Markets Ordinance, it can subject SMP companies to an obligation to provide access to their telecommunications networks and to unbundled parts thereof on the basis of a market analysis procedure under the telecommunications Act. At the same time, the Act stipulates that every operator of a public communications network is obliged to provide other operators of such networks with an interconnection offer upon request. In electricity, E-Control GmbH is responsible for drawing up proposals for market rules and making them available to the market participants. They are either General Terms and Conditions, Technical and Organisational Rules, or Other Market Rules and can include the assignment of specific tasks to the respective market participants and system operators the design of the General Terms and Conditions for system access and the clearing and settlement agencies the implementation of the technical and organisational specifications hardware and software, data management, the standardisation of liability rules provisions about supplier switching, the authorisation of the system operator to influence the operation of power plants in case of network congestion. Grid tariffs are issued in the form of ordinances by the E-Control. Austria copied the Norwegian system. For gas services, E-Control issues market rules, similar to the electricity market. Assigned tasks concerning the market participants and network operators, general terms and conditions of distribution grid access, general terms and conditions concerning settlement agents and balancing group representatives implementation of the binding legal framework "Other Market Rules", e.g. schedule management, data formats. E-Control has to draw up the Market Rules in cooperation with market participants. E-Control issues the grid tariffs. In the sector of railway transports, regulations deals especially with safety, insurance matters and interoperability. Austro Control is responsible in the sector of air transport for supervision of flight operations, permission for entry, exit and transit of state aircraft, certification of civil aircraft and equipment, air-worthiness of aircraft, search and rescue, personnel licensing, aeronautical training facilities. Komm Austria is the responsible authority in the broadcasting sector of services. Regulation mainly deals with prevention of (even more) huge, all encompassing media networks. For the financial services there exist several regulatory authorities, e.g. the national bank, Austrian Financial Market Authority (FMA). There are ongoing discussions about changes. The assigning of contracts for ambulatory health services is done by the Chamber of Medical Doctors (Ärzttekammer) together with the respective Krankenkassa according to an ordinance by the ministry. Based on various qualification criteria a ranking of the applicants is done, the first one being offered the position and contract. In higher education, Accreditation for a private university is issued by the Akkreditierungsrat (which is an independent body, whose members are appointed by the federal government). Requirements are: a legal person with a registered office in Austria has to offer (post)graduate programmes which of a reasonable standard, has to dispose of premises and qualified personnel, has to respect human rights (freedom of research, speech etc) and must combine research, teaching, theory and practice. Similarly with Fach-

hochschulen, there is a Fachhochschulrat for these matters, and requirements include a needs test. Länder are regulators of water and waste water services, social housing, childcare services (0-6 years), elderly care.

III/ Social dialogue

Austria²⁹ is one of the European Member States whose social dialogue is characterised by close voluntary cooperation between employers, employees and the state, a specifically Austrian manifestation of corporatism ("social partnership").

The standard pattern in Austria is typically characterised by uniform collective settlements across a sector. Collective agreements are negotiated, almost without exception, at multi-employer sectoral level³⁰, since Austrian labour law significantly privileges multi-employer over single-employer bargaining. This is the case for example in the **electricity sector** where there are separate sectoral collective agreements for electricity generation and for supply and a single employer association responsible for collective bargaining in this sector. But in the case of municipal workers there is specific civil service regulation and for private employees the bargaining is either by firm-level collective agreement (Vienna) or by sectoral collective agreement for electricity retail. In fact, **in the fields of SGIs there are notable particularities and differences from the standard Austrian pattern of social dialogue.**

Thus, in the **postal services** sector, in contrast to the standard pattern of all-encompassing sectoral collective bargaining in Austria, **no sectoral agreement** exists for the post and courier services sector. The only relevant actor in the sector with respect to industrial relations is the former state monopoly provider, **the Austrian Post Company** (Österreichische Post AG), which employs about five-sixths of the sector's workforce, negotiates a **company agreement** with the GPF union, which is the only collective agreement in the sector covering only the private law employees with private law employment relationships of the former monopoly provider. The main reason for the lack of a sectoral collective agreement or the underdevelopment in terms of industrial relations seems to be the absence of a sector-related employer organisation performing any bargaining activities and the conflicting interests between the Austrian Post Company and most of the 'alternative' providers in the post and courier services sector.³¹ GPF and the Austrian Post Company (rather than any employer association) are regularly consulted by the national authorities in sector-specific matters; consultation procedures with regard to the Austrian Post Company are laid down in the 1997 Postal Services Act (Postgesetz). No tripartite body exists in the postal services sector.

In **air transport**, also in contrast to the standard Austrian pattern, **single-employer bargaining prevails. Only the airport branch is covered by multi-employer agreements.** The liberalisation and expansion of the air transport industry, accompanied by restructuring measures affecting the state-owned Austro-Control enterprise and, in particular, the former monopoly national air carrier – Austrian Airlines (AUA) led to the

(29) References: studies on representativeness of the European social partner organisations in Austria (<http://www.eurofound.europa.eu/eiro/>); Torsten Brandt, Thorsten Schulten, Liberalisation and privatisation of public services and the impact on labour relations: a comparative view from six countries in the postal, hospital, local public transport and electricity sectors, 2007, PIQUE Project, <http://www.pique.at>

(30) Collective agreements are legally binding and the coverage rate stands at between 98% and 99%. There are only a few areas of employment which are not covered by a collective agreement. The total number of agreements valid in 2008 is more than 500.

(31) Several distinct collective agreements applicable for sectors other than postal services may also cover some activities of postal services providers but these could concern few postal workers.

fragmentation of bargaining.

In the sector of **railway transport**, due to the considerable size of ÖBB (ÖBB is the Austrian Federal Railways, a holding company for railway services, owned by the state) and the small size of the rest of the few rail companies that provide only limited, regional transport services, **an overwhelming majority of the sector's workers are covered by special ÖBB service regulations**. Most of the ÖBB rail workers are still **public employees** with special service employment regulations (which are therefore excluded from formal bargaining).³² Although a kind of 'works agreement' has been concluded between the ÖBB management and the ÖBB employee representation but it is of only minor importance with regard to its current scope.

There is a similar situation in **the hospital sector** where about three quarters of employees are **public sector employees** (public servants in public-law hospitals owned and administered by one of the three levels of government – that is, the federal state, Länder and local authority) and therefore **excluded from formal bargaining; their working conditions are determined by statutory service regulations unilaterally determined by the responsible authorities** in particular at Land level. In practice, however, informal negotiations between the authorities and the relevant trade unions take place. The agreements resulting from these negotiations are then ratified by the authorities.

In **the private hospital sector**, a multiplicity of distinct legal entities operates with highly fragmented bargaining procedures and thus relatively unequal working conditions. The employees in the private sector are covered **by a variety of sectoral, branch and company agreements**. There is one sectoral collective agreement for the entire national territory but it covers only part of the sector. In addition, some regional-level collective agreements are concluded for some categories of ecclesiastical and secular private hospitals. Apart from these branch agreements covering only part of the private hospital sector, there is a multiplicity of company agreements.³³ **Sources of national law on SGIs**

Sector	Legal references	Web sites
Telecommunications	Telekommunikationsgesetz (telecommunications Act)	www.rtr.at
Postal services	Postgesetz (post Act)	www.post.at
Production of electricity	Elektrizitätswirtschafts- und –organisationsgesetz (electricity industry and organisation Act)	www.e-control.at
Electric networks (transport-distribution)	Elektrizitätswirtschafts- und –organisationsgesetz (electricity industry and organisation Act), Starkstromwegegesetz (electric power lines Act)	www.e-control.at
Marketing of electricity	Elektrizitätswirtschafts- und –organisationsgesetz (electricity industry and organisation Act)	www.e-control.at
Gas transport-distribution	Gaswirtschaftsgesetz (gas industry act)	http://www.e-control.at
Marketing of gas		http://www.e-control.at
Railway transport of passengers	Bundesbahngesetz (ÖBB Act), Eisenbahngesetz (railroads Act), Öffentlicher Personennah- und Regionalverkehrsgesetz (public passenger local and regional transport Act)	http://www.bmvit.gv.at/verkehr/eisenbahn/index.html
Freight rail transport	Bundesbahngesetz (ÖBB Act), Eisenbahngesetz (railroads Act)	http://www.bmvit.gv.at/verkehr/eisenbahn/index.html
Regional and local transport of passengers	Öffentlicher Personennah- und Regionalverkehrsgesetz (public passenger local and regional transport Act)	http://www.bmvit.gv.at/verkehr/nahverkehr/index.html
Air transport	Luftfahrtgesetz (air transport Act), Austro Control Gesetz (Austro Control Act)	http://www.austrocontrol.co.at
Inland water transport	Schifffahrtsgesetz (water transport Act)	http://www.bmvit.gv.at/verkehr/schifffahrt/binnen/index.html
Maritime transport	Seeschifffahrtsgesetz (maritime transport Act) Austria is a land-locked country and most sources of law are international law. There are about 10 maritime ships world wide under the Austrian flag, operated by a subsidiary of a transnational private company.	http://www.bmvit.gv.at/verkehr/schifffahrt/see/index.html

(32) In principle, public-sector employees do have the same right of association as private-sector employees. However, it is a general feature of the public sector in Austria that almost all its employees are excluded from the right to conclude collective agreements. Instead, the terms of employment for public servants are unilaterally determined by the responsible authorities. However, negotiations between public-sector trade unions and government representatives take place, with parliament eventually determining the terms of employment. Both types of employees of the Austrian public sector (career public servants (Beamte) and contract public employees (Vertragsbedienstete)) have special service regulations (Dienstrecht) which are laid down in detail by statute. See for example in education and vocational training, childcare services, for some employees of local transport of passengers.

(33) The reason for this is that the Austrian Federal Economic Chamber (Wirtschaftskammer Österreich, WKÖ) only plays a minor part in the private hospital sector's industrial relations system. Also, Section 6 of the ArbVG clearly prioritises collective agreements concluded by a voluntary association over those reached by an interest organisation established by statute law.

PUBLIC SERVICES IN BELGIUM

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Belgium became an independent state after the Revolution of 1830, which caused the split of the Kingdom of the Netherlands, which previously united in one State the Belgian and Dutch provinces. The structure of the Belgian state was determined by the Constitution of 7 February 1831 and revised in 1970, 1980, 1988-1989 and 1993. Belgium has a constitutional monarchy, representative and hereditary, and has taken the form of a federal state, since 1993. The country is linguistically divided into four regions: the French-speaking region, the Dutch-speaking region, the bilingual region of Brussels-Capital region and the German-speaking region.

The structure of the State and federal levels of governments may be viewed as a pyramid with three floors. The upper floor is occupied by the Federal government, the communities³⁴ and the regions. They operate as equal but in different areas. Thus, the Federal level is competent in foreign affairs, justice, finance, defense, home affairs and social security. The Communities (gemeenschappen) are in charge of cultural affairs, education, tourism, health and social affairs³⁵. The three regions (gewesten)³⁶ are competent with regard to the planning, housing, environment, employment, economic development, transport, agriculture, foreign trade, international cooperation, etc.

The next lower floor is occupied by the provinces (provincies). Belgium is divided into 10 provinces, which must operate within the federal, community or regional jurisdiction while being subject to any higher authorities.

At the base of the pyramid there are municipalities that are the level closest to the citizens. Belgium has 589 municipalities (gemeenten) which are, like the provinces, subject to higher authorities. According to their competences, there are issues of federal government, community of the region. They are financed and controlled by the regions. Thus, Belgium has a rather complex political organisation, which is reflected in part on the organisation of public services.

Traditionally, a legal concept of public service exists in Belgium, but it is not precisely defined; it is therefore not always well distinguished from the notions of public sector or Civil Service and it has an undeniable organic dimension. The proof is given by the disappearance of the word “ministry” after the “Copernicus” re-

(34) Belgium has three Communities: the French Community, the Flemish Community and the German Community.

(35) Often referred to as “customisable matters”/“matières personnalisables”

(36) Belgium has three regions: the Wallon Region, the Flemish Region and the Brussel Region. In Flanders, the region and the community have been merged into a single structure.

form of the structures of government in 2000, which are now renamed as “Federal Public Services” (with the exception of the Ministry of Defence). Besides these, several programming public services (SPP - services publics de programmation) have been created to address concrete specific issues related to social issues that require coordination between several federal public services, such as the policies of equal opportunity or sustainable development. The courts also refer to the concept of public service to deduct the applicable law, including the principles of regularity, adaptability and equality. The term also refers to a set of missions of general interest, which is to say to a functional perspective.³⁷ In some areas, these two dimensions are traditionally joined to implement the management of some activities of general interest by public entities, in particular by autonomous public enterprises, intervening in a monopolistic way. Such is the case for railway or air transport. The same goes for the direct management by public entities in the area of education or water management.

However, two characteristics should be emphasized: the possibility for enterprises to contract the service management with the State in order to perform their public service missions and the possibility for the legislator to impose on functional public services a set of obligations conferring to users and employees the same guarantees as those resulting from a public law status.

In this context of a quite strong public identity of the public services, EU directives have played a moving role in the transformation of structures by requiring openness to competition and liberalisation in some sectors such as telecommunications or that of the production and distribution of electricity or gas. Some Community concepts are settled in Belgian law and conquer new sectors, like that of universal service which, beyond its normal sphere of application, spread out to distribution through cable or local transportation. Clearly, some sectors are deeply affected by their historical structure and therefore lend themselves less easily to the changes promoted by the EU instances: in Belgium as in many countries, the logic of liberalisation was easily imposed on the network utilities (primarily in telecommunications, electricity, gas, currently in the postal sector and the rail), but it produced little echo in education or health.

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs' organisation?

(37) Ph. Vermeulen, «Service public, service universel, service réservé, service minimal : quel service pour le public ? L'eupéanisation des notions de service public et de fonctionnaire en Belgique», in H. PAULIAT, L'avenir des missions de service public en Europe, PULIM, 1998, p. 105 et s. ; N. Belloubet-Frier, «Les différentes conceptions du service public dans les pays de l'Union européenne», in H. PAULIAT, L'avenir des missions de service public en Europe, PULIM, 1998, p. 25 et s.

Federal state	Communities	Regions ^{table06}	Provinces	Municipalities
Telecommunications Railway transport Air transport Postal Services Freight rail transport Compulsory social protection Energy	Social Housing Health (some aspects are owned by the federal state) Social services (Centres publics d'aide sociale) Care of the disabled Elderly care Broadcasting Cultural services Higher education	Water Waste water Regional transport of passengers (excepting rail) Maritime transport Inland water transport Marketing of electricity Urban renewal Waste management Water waste management Distribution of energy District heating Renewable energy (with the exception of the nuclear) Gas distribution Police	Secondary education Local transport of passengers	Local transport of passengers Pre-primary education Primary education Secondary education Vocational training Cultural services Water Waste water Health services Social services

Note that the Belgian situation is very complex and the level of competence is often shared between various levels of powers.

B. Sectoral organisation and trends

Status of the operators

National (Federal) public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
Railway transport of passengers Freight rail transport	Telecommunication (Belgacom 50%+1) Train transport	Water Waste management Hospitals Education Cultural services Elderly care Care of the disabled Social housing Public transport	Public transport	Education Transport	Electricity	Telecommunications Waste water

SGI markets

Liberalised market and competition	Liberalised market Public operators dominant	Public monopoly(ies)	Liberalised market Private operators dominants	Private monopoly
	Electricity Public transport Railway sector (infrastructure and transport of passengers and freight) Telecommunication (Belgacom) Postal services	Water Waste water Hospital Health services Education Compulsory social services	Telecommunications Broadcasting Ambulatory health services Gas services ^{table07}	

Main financing methods of SGIs

Fees/payment by users/clients	Public grants	Insurance funds	Social tariffs/prices
Railway transport of passengers Freight rail transport Regional and local transport of passengers Water Waste water (in some parts of Flanders) Electricity Telecommunications Public transport Maritime transport Air transport Inland water transport	Water Waste water Waste management Public transport (partly) Education Health services Higher education (with some exceptions)	Social services	Water Waste water Public transport (in some cases)

II/ Approaches

A. The model of public administration and national public companies

Historically, the public services in Belgium could be considered from the perspectives of both major national public companies and, for some areas and more and more manifestly through the development of federalism, and of the local autonomy.

The Belgian State has always supported public involvement in important areas of economic activity (energy, communications, etc.). But more often, the State did not act alone. It intervened at the same time as other public authorities, in particular the local authorities. Insofar as economic services created by the Belgian State met collective needs, it promoted the establishment of monopolies in important sectors (post railways, broadcasting). It has assumed the service leadership or it created separate structures (régies - Régie des téléphones et des télégraphes, or public bodies – Belgian broadcasting). In the 1990s a new category of public companies was created (autonomous public companies – de autonome everheidsbedrijven/entreprises publiques autonomes) and consequently some existing companies were reformed and acquired a new legal status (e.g. post, railways³⁸, telecommunications³⁹ and Belgian Airways). The opening to competition of some activities led to their total or partial transfer to the private sector. For various public services operated as monopolies (telecommunications, post, rail, electricity), it was necessary to separate the regulatory and administrative functions and infrastructures.

B. Local autonomy

According to the Constitution, “Interests which are exclusively of a communal or provincial nature are ruled on by communal or provincial councils, according to the principles established by the Constitution” (Article 41)⁴⁰. However, there is no clear legislative definition of their competences.

The provinces have a relatively large range of activities, for example: secondary education, social and cultural infrastructure (vocational training centres, centres for the elderly), preventive health care.

The municipalities’ missions contain, on one hand, the missions assigned by higher authorities and, on the other hand, missions of local interest (urban transport, organisation of education, construction and maintenance of schools, libraries, museums, sports and cultural equipment), health and social action.⁴¹

(38) 1997: functional distinction between the management and the operation of the infrastructure in the framework of SNCB; 2004: organic distinction between the entity responsible for the infrastructure operation (Infrabel) and the commercial public or private companies (SNCB) provider.

(39) Federal Act of 21 March 1991 reforming economic public enterprises created Belgacom and the Sectoral regulator (IBPT).

(40) “Provincial and Communal institutions are governed by the law. The law applies the following principles: 1° the direct election of provincial and of communal council members; 2° the attribution to provincial and communal councils of all that is in the provincial or communal interest, without prejudice to the approval of their actions in cases and following that manner determined by law; 3° the decentralization of attributions in favour of provincial and communal institutions; 4° the publicizing of provincial and communal council meetings within the limits established by law; 5° the publicizing of accounts and budgets; 6° the intervention of overseeing authorities or of the federal legislative power, to prevent violations of the law or harm to public interests.” (Article 162 of the Constitution)

(41) Dominique Hoorens (dir.), Les collectivités territoriales dans l’Union européenne. Organisation, compétences et finances, Dexia, 2008, p. 211

In many areas, in order to satisfy certain specific needs organic public services are created, such as municipal/provincial régies (Wallonia) and agencies autonomisées internes ou externes (Flanders).

In the social action field, there is a particular model of public bodies (centres publics d'aide sociale/openbare centra voor maatschappelijk welzijn) and parochial associations (fabriques d'église/kerkfabrieken), which can be constituted either exclusively by public authorities or both by public authorities and private enterprises (joint stock companies – sociétés d'économie mixte/gemengde ondernemingen).

Specific services that are standard tasks for municipalities are organised together in “intercommunales” (de intercommunales – associations of municipalities; Article 162 of the Constitution). These services are provided in local monopoly. They are important in Belgium in terms of size and also in terms of services provided. Mostly, these intercommunales operate in several fields such as water and waste water management, distribution of water, cemeteries, distribution of electricity, economic development, distribution of gas, distribution of TV and sometimes Internet, Laboratory for Public health, public transport (only for Brussels), etc. They can take the form of société anonyme, société cooperative à responsabilité limitée or association sans but lucrative. They can also associate with private partners (intercommunales mixtes).

In the area of water and waste water, which are traditionally managed by organic public services (regional and intercommunal public corporations, some municipal régies⁴²), the delegated management has been developed from the 1990s but not much⁴³.

C. Delegated management and externalisation

The Belgian State has systematically organised competition between the public and the private sectors in non-market areas, such as education and broadcasting, and addressed in comparable manner these two similar types of institutions, one as an organic public service the other as a functional public service⁴⁴. The missions concerning energy distribution (electricity⁴⁵ and gas), social action, health, culture and education, etc., were not considered as they belong to the State monopoly. As for the social missions, structural cooperation between public and private is a historical tradition in Belgium; the Belgian municipalities keep a large degree of autonomy and they also work in close partnership with private institutions through public subsidies. The network of private education is funded on equal terms with public schools and the network of private hospitals represents a significant part of hospital supply.

(42) See for details, Aubry Collignon, Henri-Jean Gathon, Management of water services in Belgium, CIRIEC Papers n°2009/07, <http://www.ciriec.ulg.ac.be/fr/telechargements/WP09-07.pdf>

(43) Attempts at public-private partnerships in Flanders then re-nationalisation. Partial delegation of sewage to a private company in Brussels (BOOT contract).

(44) Francis Delpérée, «Le droit de la régulation, les services publics et l'intégration régionale – le cas de la Belgique», in G. Marcou, F. Moderne, Droit de la régulation, service public et intégration régionale, Tome 2 Expériences régionales, L'Harmattan, 2005

(45) The mixed intercommunales provide electricity for the majority of the population.

D. The «New Public Management»

Nowadays, Belgium is marked by the logics of the New Public Management and begins to see the development of autonomous regulatory agencies to support the liberalisation of certain sectors (post and telecommunications, audiovisual etc.).

Flanders has adopted a specific legislation to encourage and facilitate the public-private partnerships (18 July 2003⁴⁶). In 2005, less than 2% of Belgian public investment took the form of PPP (urban centres, schools, sport, and local transportation).

E. Regulatory Agencies

At the turn of the 21st century, in the context of the financial difficulties faced by some sectors of the public or mixed economy, the State has to review how it can participate in economic life. Also, regional integration at European level requires the State to divest all or part of a set of tasks it assumed before; the EC Treaty requires considering of other objectives such as competition, economic efficiency, consumer protection and social and territorial cohesion. To reconcile the respect of these various purposes, the State assumes the new task of ensuring the so-called “regulation” of key sectors of economic and social life.⁴⁷

Telecommunications: the Belgian Institute for Postal Services and Telecommunications (IBPT - www.ibpt.be) created in 1991 (with a new statute since 2003), supervises two economic sectors: the postal sector and the sector of electronic communications. BIPT exercises its powers through two kinds of activities in particular: the regulatory tasks in the liberalised telecommunications markets (compliance with the regulatory framework, fully and fairly development of the competition, carrying out tasks of public interest such protection of consumers) and the exercise of supreme authority in specific technical fields (e.g. electromagnetic spectrum); the regulator is required to share, regulate and monitor their use with accuracy). The Institute carries out yet more technical tasks of public interest.

Energy: There is a Federal regulator (Commission de Régulation de l'Electricité et du Gaz – CREG) and three regional regulators: Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt (VREG), Commission wallonne pour l'énergie (CWaPE), Commission de Régulation pour l'Energie en Région de Bruxelles-Capitale (BRUGEL). On the basis of the Act of 29 April 1999 on the organisation of the electricity market (Electricity Act) and the Law of 12 April 1965 on the transmission of gaseous and other substances by pipeline (Gas Act), the CREG is entrusted with an advisory task on behalf of the federal government regarding the organisation and functioning of the electricity and natural gas markets and a general task of supervision and monitoring of the application of the relevant laws and regulations. The approval of the law containing various provisions dated 8 June 2008 brought about a considerable expansion in the powers of the CREG by giving to it a further monitoring assignment and increased regulatory powers.

Broadcasting: In this area there are three regional regulators. The CSA (Conseil supérieur de l'audiovisuel) is

(46) http://www2.vlaanderen.be/pps/documenten/flemish_ppp_decree_english_version.pdf

(47) Francis Delpérée, op. cit., 2005

in charge of broadcasting regulation in the French Community. Its main tasks are to monitor the compliance with the obligations of service editors (RTBF, local television stations, private stations of television and radio), service distributors (cable operators, Belgacom, Be TV, Proximus, Mobistar, ...), and network operators (Cable operators, Belgacom, RTBF, ...). VRM (Vlaamse Regulator voor de Media) is the Flemish Regulator for the Media. Its mission is to enforce the media regulations in the Flemish Community, settle disputes related to the media regulations and issue media recognition and licences in accordance with the regulations. Medienrat is the independent regulation authority for the audio-visual media in the German speaking Community of Belgium and has been created following the directives of the EU by the decree of June 27th, 2005.

III/ Social dialogue

In Belgium⁴⁸, the system of social dialogue is organised around two main pillars: social dialogue and consultation. Every two years, the social partners negotiate a **national intersectoral agreement** (the most recent covers the years 2009-2010) that constitutes a framework for the negotiations of **collective agreements at both cross-industry and sectoral level**, depending on the issue concerned.⁴⁹ Collective agreements are also negotiated at company level by the local trade union delegates and the employer **but sectoral bargaining is the main bargaining level**. Most of the country's companies are members of an employer organisation, in particular larger companies employing a significant number of workers.

At national level, the "Conseil National du Travail" is the structure within which the national intersectoral agreement is concluded. It brings together employers and trade-unions. Employers' organisations are:

FEB – Fédération des entreprises de Belgique

UNIZO – UCM (SME and independent workers)

Boerenbond (Farmers)

UNISOC – Union des entreprises à profit social (Healthcare, education, social housing, care of disabled, etc.) (Member since 1st of January).

The Belgian "Commission paritaires" acts in every sector of activity. There are more than 150 commissions equally composed of employers and trade unions. Their main aims are to: conclude "Conventions collectives de travail (CCT)", prevent social conflict, and advise the government (the "Conseil national du travail" ou "Conseil central de l'économie").

There are three main CCTs:

at intersectoral level (within the "Conseil national du travail"),

at sectoral level,

at the level of the company.

(48) References: studies on representativeness of the European social partner organisations in Belgium (<http://www.eurofound.europa.eu/eiro/>)

(49) Although Belgium is a federal country divided in several administrative entities – regions and communities – the national labour law and social dialogue remain the centralised competence in implementing and shaping employment conditions in the country.

In the **public sector**, the main feature of the collective bargaining system in Belgium is its tiered structure, from federal state down to the local level (the collective labour agreement (CLA) legislation does not apply in the public sector). There are three negotiating levels:

Committee A: representatives of the federal government, the communities and the regional governments negotiate protocols with the 3 representative trade unions **for all public sector workers** in Belgium. The activity of Committee A is in this regard comparable with the intersectoral private sector bargaining in the National Labour Council and the intersectoral agreement represents for the public sector what the inter-professional agreement represents for the private sector; it includes all commitments which the government wants to make with respect to employees in the public sector over a two-year period but it is not legally enforceable. The commitments undertaken in the agreement must therefore be subsequently transposed by the government into legislation and decision-making processes. A well-defined number of issues of common interest to all **civil servants** are negotiated at national level and belong to the exclusive competences of the committee A (as for example employees' social security rights).

Committee B: the bargaining partners involved here are the Minister of Civil Service and Public Enterprises, the Ministers for the departments concerned, the officials in charge of the public bodies concerned and the trade unions. At this level the bargaining is done in different bargaining committees, known as **Sectoral Committees**.

Committee C: for **provincial and local public administrations** (government) issues; the committee is distinct for each of Belgium's three regions.

In the **post and courier services sector**, social dialogue takes place in **a specific joint committee** (commission paritaire/paritair comité - Joint Committee (JC) Post), where the sector's main employer, Belgian Post (La Poste/De Post⁵⁰) and the three representative trade unions negotiate collective agreements. It is **the only body where agreements are discussed and negotiated**; it is a totally autonomous body and only concerns the public postal services. In addition to the JC Post there is a JC for public companies (commission paritaire pour entreprises publiques/paritair comité voor economische overheidsbedrijven), which manages general aspects of the workers' status in all public companies, such as Belgian Post and the public telecommunications company. The JC for public companies is competent, for instance, to conclude collective agreements for all public companies in Belgium and the National Auxiliary Joint Committee is competent for white-collar workers (Commission Paritaire Nationale Auxiliaire pour Employés/Aanvullend Nationaal Paritair Comité voor Bedienden, CPNAE/ANPCB) – this JC is in charge of negotiations for employees working in private sector companies. **There is no collective agreement signed at other levels for this sector, such as at regional, local or company level.** The sector's collective bargaining coverage is 100%, as **the collective agreements are automatically extended to the whole workforce employed in the sector. The extension of collective agreements is a general rule of the Belgian industrial relations system.** No tripartite bodies dealing with sector-specific issues exist.

⁽⁵⁰⁾ In terms of employment, it is the country's biggest company.

In the sector of electricity⁵¹ there are **bargaining rules for public employees⁵²** and **sector level bargaining** (concluded at company/firm level) **for private employees** (within the recognised joint committee 326, which represents companies and workers of the **electricity and gas⁵³** sector in Belgium). The binding force of all collective agreements concluded in the joint sector committee 326 is extended by Royal Decree and so the multi-employer agreements of this joint sector committee apply to almost all employers and their employees of the sector concerned⁵⁴.

In the **railway transport sector**, only a small number of employees (the workers in the private railway sector) are not covered by a **specific sector-related collective bargaining** process, but by **inter-sectoral joint committees for workers who are not covered by a specific sector-related joint committee**. Here apart from the public group SNCB/NMBS, the private sector has a small size.

In **hospital health services, sectoral bargaining** is also most important. Collective bargaining is organised differently, but is **coordinated, for the private (mainly not-for-profit) hospitals and public hospitals⁵⁵**. However – compared with other sectors – the employers' side in particular has a fragmented organisational structure (especially in the private sector; every private hospital is a member of a signing employer organisation). Furthermore, agreements are normally always extended by Royal Decree and so they apply legally to all employers and their employees in the sectors concerned. Collective bargaining for **private hospitals** takes place in **joint committee 330** which covers all the Federal Health Services, not only the hospitals⁵⁶. The employment relationship in **public hospitals** is organised by legislation. Bargaining takes the form of negotiation or consultation; negotiation can lead to agreements that are laid down in protocols. These protocols are morally or politically binding for the government, but are not legally binding and the government can act unilaterally; this is the rule in the Belgian public sector⁵⁷.

Compared with other sectors, in **air transport, company bargaining is quite important. Collective bargaining** related to the civil aviation industry has a complex structure and **takes place at both sectoral and company level**. Multi-employer collective bargaining is legally organised by a range of specific joint sector committees (Joint Committee 315.02 is the sectoral committee). Control and infrastructure personnel still largely belong to the public sector. For these workers, the company level is mostly the main level of bargaining.⁵⁸

(51) Torsten Brandt, Thorsten Schulten, Liberalisation and privatisation of public services and the impact on labour relations: a comparative view from six countries in the postal, hospital, local public transport and electricity sectors, 2007, PIQUE Project, <http://www.pique.at>

(52) Traditionally, employment in the Belgian public sector has been organised by statute and a specific civil service law. Connected to this statutory employment, Belgium has a nationally applicable and rather detailed trade union statute regulating the industrial relations in the public service. This statute is applicable to all personnel, independent of their employment status as statutory civil servants or as contractual employees. As for central government, there is no organisational structure that brings central public sector employers together, coordination is organised at the political level. Political lobbying is still an important instrument for the trade unions to have an impact. The new two year collective agreement (protocol) 2009-2010 for the federal civil servants in Belgium was signed by the Minister of Civil Service and the public sector trade unions on 29 September 2009.

(53) Most of the companies in gas distribution have mixed activities. They are also involved in electricity distribution, which is their main activity.

(54) Data for 2006 showed that only 'cadres' or managerial staff are not covered by sector collective bargaining;

(55) About 60% of all Belgian hospitals are non-for-profit private institutions (the Belgian hospital law requires a not-for-profit statute for private hospitals) and the remainder are public institutions.

(56) Besides the trade unions, professional associations for nurses are also active in the sector. However, they do not participate in the system of collective bargaining but they are involved in some of the sectoral concertation bodies. Doctors in Belgium are self-employed. They also have their own interest groups and associations.

(57) However, the trade union statute stipulates that negotiations and consultations – in other words, the actual processes – are a legal pre-condition for measures to be valid. The topics requiring prior negotiation or consultation are defined in the trade union statute.

(58) In the supporting services, the situation is less clear due to outsourcing and changes in the company statute of (formerly) public enterprises.

Sources of national law on SGLs

Secteur	Références légales	Sites
Télécommunications	<ul style="list-style-type: none"> - loi du 13 juin 2005 relative aux communications électroniques - Accord de coopération du 17 novembre 2006 entre l'Etat fédéral, la Communauté flamande, la Communauté française et la Communauté germanophone relatif à la consultation mutuelle lors de l'élaboration d'une législation en matière de réseaux de communications électroniques, lors de l'échange d'informations et lors de l'exercice des compétences en matière de réseaux de communications électroniques par les autorités de régulation en charge des télécommunications ou de la radiodiffusion et la télévision - Loi du 18 mai 2009 portant des dispositions diverses en matière de communications électroniques - 17 JANVIER 2003. — Loi concernant les recours et le traitement des litiges à l'occasion de la loi du 17 janvier 2003 relative au statut du régulateur des secteurs des postes et télécommunications belges - 17 JANVIER 2003. — Loi relatif au statut du régulateur des secteurs des postes et des télécommunications belges 	www.ibpt.be
Production d'électricité	Federal Law of April 29th 1999 concerning the organization of the electricity sector	http://www.creg.be/fr/index_fr.html http://www.vreg.be/fr/index.asp http://www.cwape.be/
Réseaux électriques (transport-distribution)	<ul style="list-style-type: none"> Flemish Electricity Decree of July 17th 2000 Flemish Decree of April 30th 2004 (regulator) 	
Commercialisation d'électricité	<ul style="list-style-type: none"> Walloon Decree of April 12th 2001 concerning the organization of the electricity sector, modified by the Decree of July 17th 2008 Brussels Ordinance of July 19th 2001 concerning the organization of the electricity sector, amended by the Electricity Ordinance of December 14th 2006 	
Transport distribution de gaz	Federal Law of April 29th 1999 concerning the organization of the gas sector	http://www.brugel.be/Public/
Commercialisation de gaz	<ul style="list-style-type: none"> Flemish Gas Decree of September 17th 2000 Flemish Decree of April 30th 2004 (regulator) Walloon Decree of December 19th 2002 concerning the organization of the gas sector, modified by the Decree of July 17th 2008 Brussels Ordinance of April 1st 2004 concerning the organization of the gas sector, amended by the Gas Ordinance of December 14th 2006 	
Transports ferroviaires de passagers	<ul style="list-style-type: none"> Loi du 4 décembre 2006 relative à l'utilisation de l'infrastructure ferroviaire Loi du 21 mars 1991 portant réforme de certaines entreprises publiques économiques 	www.sncb.be www.infrabel.be
Transports ferroviaires de fret	Arrêté royal portant approbation du premier contrat de gestion de la Société nationale des Chemins de fer belges et fixant des mesures relatives à cette société	http://www.mobilit.fgov.be/fr/index.htm
Transports locaux ou régionaux de passagers		www.stib.be www.infotec.be www.delijn.be http://www.mobilit.fgov.be/fr/index.htm
Eau	<ul style="list-style-type: none"> Décret wallon du 15 avril 1999 relatif au cycle de l'eau et instituant une Société publique de gestion de l'eau Décret wallon du 19 juillet 2006 modifiant le Livre II du Code de l'Environnement, contenant le Code de l'Eau, en ce qui concerne la Société wallonne des eaux 	www.spge.be www.swde.be
Assainissement	<ul style="list-style-type: none"> Decreet betreffende het integraal waterbeleid van 18 juli 2003 (décret flamand relatif à la gestion intégrée de l'eau du 18 juillet 2003) Arrêté du Gouvernement flamand du 17 juillet 1985 relatif aux statuts de la Société flamande des eaux (besluit van 21 april 1993) 	http://www.ciwvlaanderen.be/ www.vmw.be
Education primaire et secondaire	Décret du 24 juillet 1997 définissant les missions prioritaires de l'enseignement fondamental et de l'enseignement secondaire et organisant les structures propres à les atteindre	

PUBLIC SERVICES IN BULGARIA

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Bulgaria is a unitary state. Following Bulgaria's accession to the EU in 2007, the 28 districts (oblasti - l'administration déconcentrée de l'Etat) were aggregated into 6 planning regions. They have no real competences and can only facilitate strategic planning in the country⁵⁹.

Bulgaria has one tier of local government, composed of 264 municipalities (obshtini), divided into sectors (kmeststva – localities with at least 250 inhabitants⁶⁰) or districts (rayoni – in 3 of the largest cities, with populations over 100 000 inhabitants⁶¹) (Law on territorial division of capital-city and major towns, 1995). The municipalities are defined as basic administrative territorial units at the level of which self-government shall be practised (Article 136 of the Constitution; Law on local self government and the local administration of 1991, modified in 1995, 1999, 2003).⁶²

Under the influence of the French doctrine, public service became in Bulgaria, before the totalitarian regime, an institution of the administrative law. Today, the concept of “public service” does not appear to be distinguished from the Community term of “services of general interest” from the viewpoint of the legal object; however, the EU terms are not usual in Bulgaria. In the legislation the organic meaning of the expression “public service” is used. Most services are subject to specific laws and regulations or they are organised as tasks of existing structures.

In Bulgaria, the most important reforms of public services have been determined by the transition to a market economy and accession to the European Union.

During the long period of post-totalitarian change, “public services” were defined as social care provided by the State, representing a significant part of its regular tasks. Now the difference seems very important because it is a fundamental change to the model existing before. Care is part of state obligations provided for all citizens, without reciprocal obligations. On the contrary, services are provided in relation to certain obligations of consumers. The fundamental transformation between the ideological ideas of social care and the political practice of social services is really at the heart of the transformation of Bulgarian public policies on services of general interest. It starts with the reforms of 1998 and following years, until the Act of 2005.

(59) Law on the regional development of 30 May 2008, in force since 31 August 2008

(60) On average, each municipality is divided in 25 sectors. There are 2554 sectors for a total of 5332 localities.

(61) In total, there are 34 districts. Almost one quarter of the population lives in one of these cities (Varna, Plovdiv, Sofia).

(62) A Decentralisation Strategy for 2006-2015 and the Action Plan for its implementation between 2006-2009 set out guidelines regarding the allocation of powers and financial resources between the central and municipal levels, in order to more efficiently provide services of better quality.

But for now, it is obvious that in Bulgaria the various services of general public interest are not sufficiently distinguished or practically satisfactorily consolidated.

We must emphasize the rapid and conflictual character of the transformation process of the last two decades. The ideology of absolute equality, composed with the aim of social care, provided for free to all by the People's State, remains at the bottom of any hostile feelings against private initiative, interpreted as a cause of economic and social inequalities with which there are often associated the post-totalitarian changes in Bulgaria, as well as in other countries of the Soviet zone. Actually, the evaluation of the quality of a public service provided by a private operator turns slowly to objective criteria. On the contrary, each time when quality is not satisfactory, one possible explanation continues to be the nature of the property, which means a lack of confidence in the case of operators of private companies. The liberal philosophy of outsourcing is often used politically, but poorly accepted and used in practice as a tool for efficiency and social good.

The concept employed in Bulgaria is usually **обществен интерес**, whose direct translation focuses on the social or common interest (= public interest). The concept used until the end of 1998 corresponds with the idea of social care and rejects implications given to the current concept of services. In some cases, the usual meaning attributed to the concept remains highly ideological, always linked with the idea of care provided by the State, for the well-being of society.

The Public Service Law of December 2005 defines the concept of public service by stating the sectors of to which this concepts applies to: education, health, water supply and sewerage, electricity, telecommunications, post and other services available to society.

Services of general economic interest are often interpreted in the context of dominant meaning of municipal services appropriated for a long time to craft services, provided by local workshops. The current meaning is given after the start of legislative reforms in Bulgaria, more precisely after 1997. Until now, this meaning is associated with the private sector and does not reflect social needs, despite the reform of Europeanisation and legislative harmonisation from the beginning of 1998.

As for the non-economic services of general interest, it remains unclear and inappropriate for Bulgarian laws and institutions. In this country, the idea of a general interest corresponds with the social sense, so it is considered to be non-economic in nature.

The social services of general interest are defined by the Bulgarian law. Apart from the social policy, these services are often associated with such amenities as services for children, elderly, sick people, etc.

In some cases, in recent years, the concept of utilities is used in Bulgaria as a synonym for public services. The use of this concept reflects foreign intervention on the Bulgarian public market since the beginning of privatisation and the use of concession in traditional sectors, corresponding with the meaning of the concept of public services of general economic interest.

Terms in TEU and TFEU	Bulgarian terms in TEU and TFEU ^{table08}
Services of general interest – SGIs	услугите от общ интерес
Services of general economic interest – SGEIs	услугите от общ икономически интерес
Non-economic services of general interest – NESGIs	нестопански услуги от общ интерес
Public service	публична услуга

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs' organisation?

Central government	Regional government	Local government
Telecommunications		Telecommunications
Postal services		Postal services
Production of electricity		Local transport of passengers
Transport-distribution of electricity		Water
Marketing of electricity		Wastewater
Transport-distribution of gas		Childcare services (0-6 years)
Marketing of gas		Health services
Railway transport of passengers		Compulsory social security
Freight rail transport		Social housing
Regional or local transport of passengers		Cultural services
Air transport		Radio services
Inland water transport		
Maritime transport		
Water		
Waste water		
Social housing		
Broadcasting		
Hospital health services		
Ambulatory health services		
Primary and secondary education		
Higher education		
Vocational training		
Compulsory social protection		
Complementary social protection		
Social housing		
Childcare services (0-6 years)		
Care of disabled		
Eldery care		
Financial services		
Cultural services		

B. Sectoral organisation and trends

Status of SGI operators

National public providers	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	Mixed providers (majority of private shares)	Private providers
Postal services Production of electricity Transport-distribution of gas Marketing of gas Railway transport of passengers Freight rail transport Inland water transport Broadcasting Hospital health services Compulsory social protection Complementary social protection Financial services Cultural services		Regional and local transport of passengers Water Waste water Heating Social housing Hospital health services Primary and secondary education Higher education Childcare services Elderly care Vocational training Cultural services	Heating	Telecommunications	Telecommunications Production of electricity Marketing of electricity Transmission and distribution of gas Marketing of gas Regional and local land transport of passengers Air transport Maritime transport Water, waste water Heating Broadcasting Hospital health services Ambulatory health services Primary and secondary education Higher education Complementary social protection Childcare services Elderly care Cultural services

SGL markets

Liberalised market and competition	Liberalised market Public operators dominants	Liberalised market Private operators dominants	Public monopoly	Private monopoly	No market
Telecommuni- cations Production of electricity Air transport Financial services Cultural services	Postal services Rail transport of passengers Freight transport of passengers Water Waste water Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Social housing Childcare services Care of disabled	Transmission and distribution of electricity Marketing of electricity Regional and local transport of passengers Inland water transport Maritime transport Heating Broadcasting Complementary social protection Eldery care	Transmission and distribution of gas Marketing of gas Compulsory social protection	Transmission and distribution of gas Marketing of gas	

Main financing methods of SGIs

Fees/payment by users	Public contributions	Private investments
Telecommunications	Postal services	Production of electricity
Postal services	Transport-distribution of gas	Transport-distribution of electricity
Transport-distribution of electricity	Railway transport of passengers	Marketing of electricity
Marketing of electricity	Freight rail transport	Marketing of gas
Transport-distribution of gas	Regional and local transport of passengers	Regional and local transport of passengers
Marketing of gas	Air transport	Air transport
Railway transport of passengers	Inland water transport	Maritime transport
Freight rail transport	Maritime transport	Water
Regional and local transport of passengers	Water	Waste water
Air transport	Heating	Broadcasting
Inland water transport	Hospital health services	Hospital health services
Maritime transport	Ambulatory health services	Ambulatory health services
Water	Primary and secondary education	Financial services
Waste water	Higher education	
Heating	Vocational training	
Broadcasting	Compulsory social protection	
Hospital health services	Complementary social protection	
Ambulatory health services	Social housing	
Primary and secondary education	Childcare services (0-6 years)	
Higher education	Care of disabled	
Vocational training	Eldery care	
Compulsory social protection	Cultural services	
Complementary social protection		
Social housing		
Financial services		
Cultural services		

Authorities responsible for setting pricing and/or tariff policies

Parliament	Central government	Local government	Regulatory agencies / bodies	Operators	Clients/Users
Compulsory social protection	Hospital health services	Inland water transport	Telecommunications	Telecommunications	Marketing of gas
Complementary social protection	Ambulatory health services	Social housing	Postal services	Postal services	Freight rail transport
Childcare services	Primary and secondary education		Electricity	Electricity	Air transport
Care of disabled	Higher education		Gas	Gas	Maritime transport
Elderly care	Vocational training		Railway transport of passengers	Rail transport of passengers	Water
			Water	Freight rail transport	Waste water
			Waste water	Air transport	Heating
			Heating	Maritime transport	
			Broadcasting	Water	
			Hospital health services	Waste water	
			Ambulatory health services	Heating	
			Financial services	Broadcasting	
				Primary and secondary education	
				Higher education	
				Complementary social protection	
				Financial services	

II/ Approaches

A. The model of public administration and national public companies

Bulgaria inherited from the totalitarian period large monopolies, which were state enterprises with many employees but low productivity and investments; private initiative and entrepreneurship were repressed.

Some of them continue to play a major role as providers of SGIs. It is the case of the National Railways Company, the main national operator, which operate the railway transports on the basis of a contract with the corresponding ministry. A separate company manages the railway infrastructure (the privatisation of the railway transport company was discussed).

In the postal sector the national company is owned 100% by the Bulgarian State (limited liability company); the Bulgarian postal market is liberalised since 2006.⁶³

B. “All public”

In the Popular State, according to Soviet meaning, set up and developed in Bulgaria since the year 1947, after the beginning of the process of nationalisation of industrial and agricultural property, everything became public property, of the State and local communities. During the period of the totalitarian regime, all goods and services were defined as popular acquis, provided by the State and its Communist power. Therefore, after the beginning of political and economic changes in Bulgaria from the beginning of the 1990s, it is almost everywhere a process of restoration and redesign of services of general interest.

The process of privatisation has succeeded the restoration of the private property nationalised since 1947. In fact, the true privatisation began with the restitution of property and of agricultural property. It began after 1992, followed by the mass privatisation during 1995-1996 and, finally, after 1998 a genuine privatisation of various economic sectors, including social services. But to understand the ambiguity of the process, must be added the phenomenon of concessions, which has been used in parallel with the instruments and the practice of direct privatisation.

State enterprises privatised or in process of privatisation: In the energy sector, the real process of privatisation began in 2003, so the national production company and its subsidiaries were privatised (bought by Czech companies, German E.ON and Austrian EVN). In the transport sectors, the privatisation of maritime and fluvial companies took place after air transport. In air transport, the national carrier Bulgaria Air was privatised in 2000; after its bankruptcy, a new public company was created in 2004 that was privatised in 2006. The national maritime company was privatised in 2003. In the sector of fixed telephony, the national company BTC was privatised during 2004-2007 (the Bulgarian State has retained 1% of its shares).

⁶³ The state monopolies in the field of telecommunications and postal services were abolished respectively in 2002 and 2006.

C. Local autonomy

In Bulgaria, one of the important goals of the local government reforms developed after 1990 was to set the appropriate balance between central state power and the local self-governments with respect to, among other things, the provision of public services.⁶⁴

The principle of local autonomy is recognised by Article 136 of the Constitution of 13 July 1991⁶⁵. The Constitution gives no indication on competences or rules for the division of authorities' responsibilities but several rights are explicitly mentioned as fundamental rights of the citizen.

In the context of financial decentralisation, in 2003 the municipal responsibilities have been classified into two categories: **services delegated by the State** (education – preschool education, elementary and secondary education; social action – assistance to families and children, elderly care, health⁶⁶) and **local public services and distribution networks** (heating, electricity, water supply and waste water treatment, waste collection, urban public transports, construction and maintenance of roads, etc.) and **leisure** (tourism, municipal libraries, cultural activities, sport facilities, etc.).

Although the state engages in the financing of a number of different public services, the municipalities are considered as responsible for their actual provision to the public and they enjoy great freedom in deciding the way in which the services should be provided.⁶⁷

Municipalities may assume the management of local public services directly, by an internal budgetary institution (for administrative and technical services) or a municipal enterprise (whose budget is approved by the municipal council; in general, for the management of municipal infrastructure in areas such as education, culture, sport and public transport⁶⁸) or by a public company. They can also delegate the management of the service (to private companies, foundations and associations) by concession or licence. Although municipal privatisation practices vary substantially, Bulgarian municipalities prefer to joint municipal companies and concession contracts as legal instruments for attracting private participation. The municipal enterprise is the commonly used form for delivery of public services, especially in the field of public transport, street cleaning and refuse collection⁶⁹.

Intermunicipal cooperation for the provision of public services has been rather encouraged by the central authorities and has emerged in the field of waste but also in sectors such as education, leisure (sport, tourism, and culture), health care, protection of environment, etc. They are mainly financed by membership fees and tariff revenue collected on services provided.

The services delegated by the State are financed by transfers from the State, the local services by the resources of the municipalities.

(64) Maria Schueler, «Bulgaria», in Markus Krajewski, Ulla Neergaard, J. van de Gronden (eds.), *The Changing Legal Framework for Services of General interest in Europe*, TMC Asser Press, The Hague, 2009, p. 474

(65) Amended in 2007 to allow municipalities to establish not only the amount of tariff revenue but also local taxes.

(66) The reform of the health system in 2001 has transformed the municipal health institutions into municipal business enterprises.

(67) Maria Schueler, *op.cit.*, p. 478

(68) Municipal Ownership Act, of 21 May 1996 states the areas in which these enterprises can engage themselves to provide public services.

(69) P. Nenkova, in Maria Schueler, *op.cit.*, p. 479

D. Delegated management and externalisation

From 1998, after the beginning of the privatisation process of public property, the procedure most often used for re-development of public enterprises and infrastructure used to provide public services, is the procedure of concession.⁷⁰

In a relatively short period, between 1998 and 2000, concessions were concluded in the area of water, heating, electricity, and also functions relating to waste treatment and transport. Currently, most of economic and non economic services of general interest are run by private or mixed companies. In the field of services of general economic interest, the involvement of the private sector often results from the privatisation of commercial companies established by the state or the municipalities for the purpose of the delivery of public services. Also, the provision of public services by the private sector is governed not only by the concession regime but also by a set of sectoral laws and regulations.

In the water sector, the concession granted for the provision of water supply services in Sofia is the only delegated management in this sector⁷¹.

E. “New Public Management”

In 2006, an initiative of the Ministry of Finance formally announced the support of public-private partnerships in order to improve the quality of public services and investments in national infrastructure. However, the concept of PPP is not enshrined in the legislation, PPP practices being developed on the basis of concession regime and commercial law.

Regarding the evaluation of public services, until now no system of evaluation of services of general interest has been established. In some areas some ideas were recently discussed a precise system has not yet been adopted. Thus, the effectiveness of the social dialogue on SGIs deeply depends on the willingness of participants in the Council of social partnership.

F. Regulatory Agencies

As a rule, the regulatory bodies in Bulgaria are established on a national level, thus preventing the local governments from implementing their own policies. Services which are not subject to regulation by a special sector are supervised by the respective sector ministries⁷².

The economic sectors of public services are opened to competition and the private initiative by licence controlled by special regulatory bodies (in energy and water sectors – State Energy and Water Regulatory Commission; in telecommunications and postal services – the Communications Regulation Commission).

(70) Concession Act of 2005

(71) In Bulgaria, the water supply companies are jointly owned by the municipalities and the state and remain in the majority of cases under state control.

(72) Maria Schueler, *op.cit.*, p. 481

The Regulatory Commission on Energy and Water has been operational since 2005. It was established to issue licences in the energy sector, control prices, and regulate the activity of private operators. It exercises its powers at both national and municipal level.

Some services are supervised by the respective sector ministries (public health services, education, and transportation).

The Commission on Protection of Competition exercises general control under the Law on protection of competition and in the field of control over the implementation of the public procurement framework.

III/ Social dialogue

Scope and dynamic of social dialogue in Bulgaria - overview

The essence of tripartite cooperation in Bulgaria is regulated by the Labour Code and covers the following three issues: labour and related issues (working hours, pay, rest, leave, working conditions, etc.); social insurance issues; living standards. We would like to underline one of the characteristics of social dialogue i.e. that the law provides for cooperation and consultation and not the direct participation of the representative organisations of trade unions and employers in decision-making. In other words, the state is obliged to listen to their opinions but does not have to take them into account. This is due to the fact that the state bodies – parliament, government, etc – take the final decision.

Secondly, we would like to mention another characteristic of the dialogue: ‘in cases when the government bodies have not consulted the representative organisations of employers and trade unions, with regard to law or other regulations, concerning any of the above-mentioned issues, the lawfulness of such law or decision may be disputed’. If the social partners have been invited by the government to participate in such negotiations, but refused to participate, it is assumed that the government bodies are entitled to approve the respective piece of legislation. Another specific feature of social dialogue in Bulgaria is the participation of social partners in the management of social insurance funds. (Capacity Building for Social Dialogue in Bulgaria. European Foundation for the Improvement of Living and Working Conditions).

The social dialogue on SGIs is run in the same way as all other issues and priorities of social policy – under the National Council for Tripartite Cooperation (NCTC) created in 1993, between entrepreneurs, trade unions and representatives of the State. The members and most important actors of NCTC, including the Chairman of NCTC – Vice-Prime Minister and Minister of Finance, are representatives of:

01. Confederation of Independent Trade Unions in Bulgaria
02. Confederation of Labour Podkrepa (Support)
03. Bulgarian Industrial Association (BIA)
04. Bulgarian Chamber of Commerce and Industry (BCCI)
05. Bulgarian Industrial Capital Association (BICA)

06. Bulgarian Union of Private Entrepreneurs 'Vuzrazdane' (BUPE)

07. Union for Private Economic Enterprise (UPEE)

08. Employers Association in Bulgaria (EABG).

Both the employers and trade unions consider that there is still much to be done so that collective bargaining at sector and branch level can achieve an efficient dialogue. The reasons for this may be summarised as follows:

01. the existence of more than one organisation per branch due to lack of criteria for representativeness of such organisations,

02. the employers' preference to bargain at company level and non-delegation of the rights of branch organisations to negotiate with the trade unions;

03. the problems of the non-compliance of previously signed CLAs in companies, who have since become private monopolies e.g. the Bulgarian telecommunications company, where there is an unconditional legal strike ban.

Similar problems are expected with regard to power distribution companies. Both employers and trade unions mention sectors and branches where dialogue is efficient, people listen to each other and agreements are kept. The two main reasons for difficult dialogue are strong employer resistance and a lack of strong and efficient (or any other) trade union structure.

Regional bargaining is not well developed and practically non-existent. Both representative trade unions CL Podkrepa and CITUB are in negotiations with the municipalities' association of the Republic of Bulgaria to work together in the bargaining process. All mayors in the country are members of this association and a similar step may be considered as an attempt to start a mechanism, the efficiency and consequences of which are yet to be observed. It is worth mentioning the opinion of some of the partners on the necessity for a new legal framework for regional bargaining in the profit sector; in order to 'cover' the workers in small and medium- sized enterprises.

Only organisations recognised at national level as representative are recognised at lower levels too. Collective bargaining is best regulated at company level, where both employers and trade unions state they work hardest. The trade unions state that this is a priority for multinational companies. The expectations are to increase the importance of dialogue, and the Employers' Association for Bulgaria speaks about the leading role of the work councils yet-to-be established for the future of company level dialogue.

Permanent commissions to the NCTC:

01. Incomes policy and living standards

02. Social security issues

03. Labour legislation

04. Social consequences from restructuring and privatisation

05. Budget policy

Each commission consists of two representatives of each of the three groups. Working groups can be cre-

ated if there are questions beyond the scope of the above issues. The work of the NCTC is supported by a secretariat with four members – a secretary, technical staff and two advisors.

The work rules of the NCTC foresee the establishment of industry, sector and regional social cooperation councils based on the same principle. Such councils have not yet been established everywhere, and some of the existing councils operate on a too formal basis, in the opinion of the social partners.

Social Dialogue in SGIs

In Bulgaria⁷³, in many SGI areas, the most important bargaining level is the level of company or establishment⁷⁴. Within an enterprise a collective agreement shall be concluded between the employer and a trade union organisation(s)⁷⁵.

In the sphere of Education, for example, one of the principal social dialogue mechanisms is the Branch Council for Tripartite Cooperation (BCTC), established to deal with issues related to secondary education. The main function of the BCTC is to discuss, develop and propose positions on education-specific draft legislation related to labour relations and social security issues, among others. Passing an Act or regulation without carrying out these preliminary consultations is an infringement of statutory regulations. There are similar bodies, the Municipal Councils for Tripartite Cooperation, which carry out the same function at the municipal level.

While there are certainly social dialogue mechanisms in place in Bulgaria, these need to be strengthened and made more effective. Reforms and privatisation in sensitive areas such as health care must be introduced very carefully, with the participation of all concerned. The principles of the development of the health-care system should be adopted by national consensus of all interested parties and not just by one political force or another. The establishment of a meaningful consultation process and dialogue with the unions and civil society organisations, mainly patient organisations, is very important for the reforms to continue successfully.

Thus, in the **postal services** collective bargaining is decentralised and is carried out only at **company level for the public operator Bulgarian Posts Plc** (BG Posts) (the state-owned company), so the labour agreement is also concluded at this level. According to Bulgarian legislation, collective bargaining can only be carried out by trade union organisations - in the post and courier services sector, trade union organisations have only been established in the state-owned company BG Posts, which allows for single-employer bargaining. According to the Labour Code, **the collective agreement is applicable for members of trade**

(73) References: studies on representativeness of the European social partner organisations in Bulgaria (<http://www.eurofound.europa.eu/eiro/>)

(74) Under Bulgaria's Labour Code, all trade unions at enterprise level have the right to conclude collective agreements. At sectoral/branch level, only national representative organisations of employees can conclude collective agreements. According to Bulgaria's Labour Code, collective bargaining is a trade union right and an employers' obligation. The system of collective bargaining is organised at three levels: branch/sector level; municipal level; company level (the most important level). The role of sector/branch collective bargaining is also growing. Since 2003, collective bargaining at sector/branch level is being extended to include annual negotiations on minimum social security thresholds. In 2007–2008, some 10 sectoral collective agreements were in force. Moreover, 58 branch-level agreements and 2,000 company-level collective agreements and annexes to existing agreements were also registered. The collective agreements are binding. Since 2001, Bulgaria has introduced regulations allowing that when a collective agreement at sectoral or branch level has been concluded between all representative organisations of employees and the employers in that sector or branch, upon their request, the Minister of Labour and Social Policy may extend the application of the agreement or provisions to all companies in the sector or branch. So far this opportunity has not been applied in practice.

(75) Where more than one trade union organizations exist within one enterprise they shall submit a common draft. Where a trade union organisation fails to submit a common draft, the employer shall conclude the collective agreement with that trade union organisation, the draft of which has been approved by the general meeting of the employees (the meeting of proxies) by a majority of more than half of the members thereof.

The National Institute for Conciliation and Arbitration (Националният институт за помирение и арбитраж, NICA) is responsible for establishing and maintaining the information system of collective agreements.

union organisations which are party to the agreement (employees who are not trade union members can join the collective agreement under certain conditions). Because no **employers' associations operate in the sector** so far, **no bipartite or tripartite bodies exist at sectoral level and so there is no sectoral collective bargaining**⁷⁶. In the **private postal sector** there is **no collective bargaining** because of the lack of trade union organisations in the private companies.

A similar situation exists in **railway transport**; collective bargaining is implemented at company level, that is, **single-employer bargaining**, involving the Bulgarian State Railways (Български държавни железници, BDZ). At company level, a bipartite body for cooperation is established. There is also a collective bargaining at sectoral level and a collective sectoral agreement between several unions but which is not valid at railway company level, because the employer is not a member of an employer organisation (**no employer organisation is present in the sector**).

In the Bulgarian **aviation industry**, as in the above mentioned sectors, **only single-employer bargaining takes place** (in companies where trade union organisations are present). It is estimated that company-level collective agreements cover more than half of the employees in the civil aviation industry.

In the **gas sector**, only **the state-owned company** – Bulgargas – has concluded a **company-level collective agreement** which covers some 30 percent of workers in the field of gas transportation and distribution (data 2006). There is no independent trade union structure in Bulgaria to represent the interests of the workers in the gas industry and no employers associations⁷⁷.

Sectoral level bargaining is important in the **health services sector**. The most part of Bulgaria's hospital sector consists of state and municipal hospitals. A part of the largest state hospitals and emergency aid centres are members of an **employer organisation**. On the trade union side, two **representative national-level trade union organisations** cover about 105 state and municipal hospitals (of a total of 277 in 2006), while **representation in the private health sector remains weak** (some 12.6% of hospitals – employing 21% of employees in the sector – are in private ownership). There is **a strong decentralisation of collective bargaining** as a result of the different statuses of hospitals with regard to their financial basis - that is, state and municipality hospitals, or private medical institutions. Two types of negotiation rounds exist in the sector – that is, collective bargaining with the participation of the social partners; and negotiations between the National Health Insurance Fund and occupational organisations where the social partners are not involved. As a result, some employers are not interested in participating in employer organisations and collective bargaining. **Multi-employer bargaining** for the sectoral collective agreement is launched every year between the nationally representative employer organisation and trade unions. **The sectoral collective agreement covers all employees working in healthcare and hospital units**, regardless of how they are administered and owned.

In **central government**, there are two types of employees, with different legal positions concerning the collective bargaining and the right to strike: employees under labour contract and civil servants. The civil servants' status was implemented in 1999 according to the Civil Service Act. According to the all employees in Bulgaria have the

(76) In contrast to the trade unions, which have a long tradition before the recent changes, there was no genuine employer organisation in existence in 1989. Three dynamics have driven all of the organisational processes of employer organisations since 1990: the liquidation of loss-making state-owned enterprises; the emergence of new enterprises, mainly SMEs; and the privatisation of state-owned enterprises. The combination of these processes has led to a significant increase in the number of economic entities. Statistics show that more than 95% of all Bulgarian enterprises employ fewer than 10 employees.

See industrial relations country profile <http://www.eurofound.europa.eu/eiro/country/bulgaria.pdf>

(77) There is no clearly differentiated gas sector in the Bulgarian economy.

rights of association, to collective bargaining and to strike (in the Civil Service Act the right of civil servants to collective bargaining). Thus, the collective bargaining takes place in the structures where trade union organisations exist (at agency level and also in individual ministries and units): in 2006, in all 226 central government structures only 20 had trade union organisations with negotiating rights⁷⁸, so the implementation of the Civil Service Act is more advanced compared with collective bargaining. Also, in the central government sector there is no collective bargaining on pay; pay is defined by the council of ministers' order each year⁷⁹. At the level of **regional and local administration** the specific status of some employees (civil servants) is not subject to bargaining but is determined unilaterally by the state, while other employees are covered by collective bargaining.

The efficiency of the different tripartite structures varies. The employer and trade union organisations have different opinions on their level of success in social dialogue. There is a common view that certain structures are designed so as to be advantageous to one organisation and disadvantageous to the other. The overall assessment, though, should be based on the tripartite structure mentioned. According to everyone the National Council on Working Conditions is an example of successful social dialogue. Another successful variant according to the trade unions is the Economic and Social Council where the state is not represented. The Assembly of Representatives of the NHIF is not regarded as successful, because the opinion of the social partners and in particular the trade unions is considered irrelevant, since the state has enough votes to carry its own decisions. The expectations are that the role of the bipartite dialogue will increase and the direct participation of the state in the process will decrease and take on the role of a moderator.

Sources of national law on SGIs

Secteur	Références légales	Sites ⁹
Télécommunications	Loi des télécommunications, adoptée le 7 octobre 2003	www.vivacom.bg www.globul.bg www.mtel.bg
Services postaux		www.bgpost.bg
Production d'électricité	Loi de l'énergie, 9 décembre 2003	www.bgenh.com
Réseaux électriques (transport-distribution)		www.cez.bg www.eon-bulgaria.com www.evn-ec.bg
Commercialisation d'électricité	Loi de l'énergie, 9 décembre 2003	www.eso.bg www.utilities.bg www.cez.bg www.eon-bulgaria.com www.evn-ec.bg
Transport distribution de gaz	Loi de l'énergie, 9 décembre 2003	www.bulgargaz.bg www.bulgartransgaz.bg
Commercialisation de gaz	Loi de l'énergie, 9 décembre 2003	www.bulgargaz.bg
Transports ferroviaires de passagers		http://www.mttc.government.bg www.bdz.bg
Transports ferroviaires de fret		http://www.mttc.government.bg www.bdz.bg http://www.rail-infra.bg/cms/opencms/menu/bg/
Transports locaux ou régionaux de passagers		www.bdz.bg www.mt.government.bg
Transport aérien		www.air.bg
Transport fluvial		http://www.brp.bg/
Transport maritime		http://www.navbul.com/
Eau		www.mosv.government.bg
Assainissement		www.zavodata.com www.mosv.government.bg
Chauffage urbain	Loi de la propriété communale 21 mai 1996	www.dker.bg

(78) 12 in agencies, 7 in structural units of the individual ministries and one at national level – Ministry of defence

(79) The negotiations concerning the wage growth of the entire sector are conducted at the National Council for Tripartite Cooperation (NCTC), consisting of equal numbers of representatives of the national organisations of workers and employees (trade union organisations) employers' associations and government representatives.

Radio-télévision	Loi sur la Radio et la Télévision, 5 juillet 1999	www.bnt.bg www.cem.bg
Administrations publiques nationales		www.mdaar.government.bg www.government.bg
Administrations publiques régionales ou locales	Loi sur l'autonomie locale et l'administration locale, 1991	Association Nationale des Pouvoirs Régionales et Locales en Bulgarie http://www.namrb.org/
Services de santé hospitaliers	Loi sur la Santé, 10 août 2004	www.mh.government.bg http://www.nhit.bg
Services de santé ambulatoires		www.mh.government.bg
Education primaire et secondaire	Loi de l'Education Populaire de 18 octobre 1991	www.minedu.government.bg
Enseignement supérieur	Loi de l'Education Populaire de 18 octobre 1991	www.minedu.government.bg
Formation professionnelle	Loi de l'Education Populaire	www.minedu.government.bg www.navet.government.bg
Protection sociale obligatoire	Code d'Assurance Sociale, 1 janvier 2000.	http://www.noi.bg/ http://www.nssi.bg
Protection sociale complémentaire	Code d'Assurance Sociale, 1 janvier 2000.	http://www.noi.bg/ http://www.nssi.bg
Logement social	Loi sur l'autonomie locale et l'administration locale, 1991	
Aide à la petite enfance (0 à 6 ans)	Arrêter ministériel N° 226 du 30 octobre 2000	Agence pour la Protection des Enfants www.sqcp.government.bg
Aide aux handicapés	Loi pour l'Intégration des Gens Handicapés du 17 décembre 2004	http://ahu.mlsp.government.bg/
Aide aux personnes âgées	Loi d'Assistance Sociale du 19 mai 1998	www.mtsp.government.bg
Services financiers	Loi sur la Banque Nationale de la Bulgarie du 10 juin 1997	www.minfin.bg http://bnbank.org
Services culturels	Loi pour la Sauvegarde et le Développement de la Culture du 1 juin 1999	www.mc.government.bg

PUBLIC SERVICES IN CYPRUS

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Cyprus is a unitary state, the third smallest Member State of the European Union. It has a devolved administration composed of six districts (eparchies). The local communities are the municipalities (dimarxia) and the rural communities (koinotites).

Cyprus has been a candidate member of the European Union since 1990. EU accession has been a powerful incentive for Cyprus to promptly modernise its legal system and regulatory institutions.

An organic conception of services of general interest is prevalent in Cyprus. These services are intrinsically linked to “semi-public” companies (electricity, telecommunications, water, etc.). The term “semi” does not refer to the companies’ stock (which belongs entirely to the State) but their mode of operation, which is more flexible than that of the administrative sector organisations.

The functional conception of services of general interest (Ipiressies Kinis Ofelias) is much less present; it is mainly presented as an EU acquis. The Community concepts of SGIs and SGEIs are even less apparent, in both national law and public discussions about these services.

The notion matching the best with the Community concept of **Service of general interest** is Υπηρεσίες Κοινής Ωφέλειας or Ipiresies Koinis Ofeleias (pronounced [Ipiressies Kinis Ofelias](#)). The literal translation (and official) is Υπηρεσίες Γενικού Συμφέροντος/ Ενδιαφέροντος or Ipiresies Yenikou Simferondos / Endiaferondos pronounced [Ipiressies Yenikou Simferondos / Endiaferondos](#).

The notion matching the best with the concept of **Services of general economic interest** is Υπηρεσίες Κοινής Ωφέλειας or, Ipiresies Koinis Ofeleias, pronounced [Ipiressies Kinis Ofelias](#). The literal translation is Υπηρεσίες Γενικού Οικονομικού Συμφέροντος/ Ενδιαφέροντος or Ipiresies Yenikou Oikonomikou Simferondos / Endiaferondos pronounced [Ipiressies Yenikou Ikonomikou Simferondos / Endiaferondos](#). The network services are associated with the “semi-governmental” (semi-public) sector, in Greek Ημικρατικός Τομέας or [Imikraticos Tomeas](#). The organisations of this sector have some autonomy from the public sector – hence administrative use of the prefix “semi”. Generally, the ownership of these organisations is entirely public.

The notion matching the best with the Community concept **Non-economic services of general interest** is Υπηρεσίες Κοινής Ωφέλειας or, Ipiresies Koinis Ofeleias, pronounced **Ipiressies Kinis Ofelias**. Literally, the translation is Υπηρεσίες Μη Γενικού Οικονομικού Συμφέροντος/ Ενδιαφέροντος or Ipiresies Mi Yenikou Oikonomikou Simferondos / Endiaferondos pronounced Ipiressies Mi Yenikou Ikonomikou [Simferondos /](#)

Endiaferondos. These are the official translations of the EU texts. Meanwhile, as in the case of SGEIs, it is an organic approach that is prevalent in Cyprus, these services being provided mainly by the public or “governmental” sector, **Κυβερνητικός Τομέας**, pronounced **Kivernitikos Tomeas**.

The term matching the best with the concept of **Social services of general interest** is **Κοινωνικές Υπηρεσίες** (Social services), or **Koinonikes Ipiresies**, pronounced **Kinonikes Ipiressies** or, in case of services falling to goals of social cohesion, **Υπηρεσίες Κοινωνικής Ευημερίας** (Services of social welfare), or **Ipiresies Koinonikis Evimerias**, pronounced **Ipiressies Kinonikis Evimerias**. In this case, these services are provided by a department of Ministry of Labour and Social Security. Finally, it is also possible to mention the more general concept of Social Protection (related to the notion of Welfare State), or **Κοινωνική Πρόνοια** - **Koinoniki Pronoia**, pronounced **Kinoniki Pronia**. The Departments of social welfare of the Ministry of Labour and Social Security are responsible for providing social services (childcare assistance, services for disabled, elderly care, social exclusion, etc.).

There is no horizontal law on SGIs but there are specific laws for each organisation of the semi-governmental sector that regulate their operation. However, these laws have many common aspects.

Terms in TEU and TFEU	Greek terms in TEU and TFEU ^{table10}
Services of general interest – SGIs	με τις υπηρεσίες γενικού συμφέροντος
Services of general economic interest – SGEIs	υπηρεσίες γενικού οικονομικού συμφέροντος
Non-economic services of general interest – NESGIs	υπηρεσιών γενικού συμφέροντος μη οικονομικού χαρακτήρα
Public service	της δημοσίας υπηρεσίας

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs' organisation?

Central	Regional	Local
Telecommunications	Water	
Postal services	Waste water	
Production of electricity		
Electricity networks (transport-distribution)		
Marketing of electricity		
Transport of gas		
Marketing of gas		
Air transport		
Maritime transport		
Water		
Waste water		
Broadcasting		
Vocational training		
Social housing		
Childcare services (0-6 years)		
Care of the disabled		
Elderly care		
Financial services		
Cultural services		

B. Sectoral organisation and trends

Status of the operators

National public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
Telecommunications Postal services Production of electricity Marketing of electricity Networks of electricity Transport and distribution of gas (to be created) Air transport Broadcasting Water Waste water Primary and secondary education Higher education	Air transport	Water Waste water		Water production		Telecommunications Maritime transport Broadcasting Financial services (banques coopératives) Primary and secondary education Higher education

SGI markets

Liberalised market and competition	Liberalised market Public operators dominant	Liberalised market Private operators dominant	Public monopoly	Private monopoly	No market
Broadcasting	Telecommunications Postal services ^{table11} Air transport Financial services	Financial services (and cooperative banks)	Postal services (for universal service) Production and marketing of electricity ^{table12} Transport and distribution of gas (to be created) Networks of electricity Water (local monopoly) Waste water (local monopoly)		

Financing methods of SGIs in some sectors

Telecommunications – The liberalisation has brought an end to cross-subsidies (péréquation) between international and national calls. The regulator imposed some increase of the fixed costs. The tariff policies of the state-owned company CYTA are questioned as part of an “asymmetric” regulation for the development of competition. Prices are still quite affordable for households. Special tariffs have been introduced in 2005, in the frame of the Universal Service, for disabled persons and persons with low income under the poverty threshold.

Marketing of electricity – The prices are set by EAC. However, the Ministry of Commerce, Industry and Tourism intervenes in setting prices (affordability). The regulator has put in place social tariffs for low income households (families with more than 3 children with an annual income lower than EUR 51.258 and for disabled individuals). For the government, an approach to ensure affordable prices for all households (right to energy) is prevalent today while the Regulatory Authority logic has been rather in the sense of a “social aid” for poor households (for eventual elimination of cross subsidies when competitors will emerge in order to foster competition).

Water – The reformed price of 2004 has «improved» the recovery of costs for water distribution both for households and for irrigations tariffs. In order to meet the commitments of the Framework Directive on Water, the Water Development Department envisages a new pricing policy which aims to bring closer the tariffs of the total cost of water (financial cost, environmental cost and cost of resources).

Social housing - Affordable prices to low income households.

II/ Approaches

A. The model of public administration and national public companies

The public companies dominate the SGIs sectors in Cyprus. Following the process of liberalisation in the sectors regulated by Community law, the private providers increased in the sectors of international and express postal services, air transport, and broadcasting.

Reorganisation and/or privatisation of public enterprises:

Cyprus Airways is the national airline of Cyprus. The State owns almost 70% of its shares (publicly traded company). A major restructuring plan for Cyprus Airways has been applied due to the problems of competitiveness caused by the liberalisation of the air sector.

Financial services – an important cooperative sector exists in the financial sector of Cyprus. The Central Cooperative Bank holds a prominent place in the coordination of cooperative banks in the country. The new competitive and regulatory environment in the banking sector after the accession of Cyprus to the EU brings into question the mode of functioning of cooperative banks.

Public companies for which no privatisation process envisaged:

In the telecommunication sector, the state-owned company CYTA (Cyprus Telecommunications Authority 100% state-owned capital) and other enterprises of network public services. The market is (artificially) in competition; the state-owned company CYTA maintains almost 70% of the market on fixed network in 2007.

The postal services in Cyprus are part of the administrative sector. The Department of Postal Services is part of the Ministry of Communications and Public Works (public company - «semi-public organisation»).

The State of Cyprus holds the entire share capital of the EAC (Electricity Communication Authority). There are no private companies in the sector of production of electricity (except for some small units of self-supply, the industrial plants and power generators based on renewable energy). The electric network belongs to EAC. TSO has been legally unbundled and separate accounts are published. DSO is maintained under the responsibility of EAC but separate accounts are published (unbundling of accounts).

Transport and distribution of gas – a company is about to emerge in Cyprus in the sector of gas transport and distribution; Public Company of Natural Gas (DEFA) will be a private undertaking in which EAC (Electric Authority of Cyprus) will own 44% of the capital and the state 56%.

Air transport - Eurocypria is a charter company entirely public.

Broadcasting - CyBC (Cyprus Broadcast of Cyprus) is the public organisation of Radio-Television. CyBC maintains two national channels.

Vocational training – the Human Resources Development Authority is responsible for vocational training in Cyprus. The Board of Directors is tripartite. This organisation is linked to the Ministry of Employment.

Social housing - the Cyprus Development Land Corporation is responsible for assisting low income households to acquire their own housing. This organisation built apartments that are available to the public at affordable prices.

B. Local autonomy

Article 178 of the Constitution recognises the principle of local autonomy. Municipalities are organised and operate on the basis of the provisions of the Municipal Act of 1985 whose amendments are discussed in order to accentuate decentralisation. Some proposals seek to create a sub-national regional decentralisation.

As for rural communities, it is only the law on rural communities of 1999 which established a single operating mode for all rural communities. They have powers similar to those of municipalities⁸⁰ but in practice they are often services provided by the district because of their financial resources and limited staff.

The main local public services are principally provided by semi-governmental agencies owned by a local community. The water supply and wastewater are principally provided by specific agencies; there is a central management for water management and a regional and local management for distribution services. The integration of the Water Supply Councils in a National Authority (Water Supply Authority of Cyprus) would

⁽⁸⁰⁾ Public lighting, waste, public health and according to the financial capacities, social services, sport.

however be considered in the medium term (rationalisation of activities). Local authorities (Water Supply Council) keep the ownership and management of distribution network. They (Sewage and Drainage Councils) own and manage the wastewater network. A public-private partnership has been concluded in the field of water desalination (contract BOT).

C. “New Public Management”

It is possible to discern three main types of evaluation of SGEIs in Cyprus:

> **Evaluation realised by the regulatory authorities (telecom, electricity).** As concerns telecommunications, the evaluation focuses primarily on the development of competition (market shares, etc.). Some information on the quality of services is available as well as information on universal service. As concerns the electricity sector, the report of CERA is largely limited to questions concerning the development of the market (e.g. Licensing new producers). In general, the evaluations conducted by regulatory authorities do not lead to a plural evaluation able to understand all social, economic and territorial challenges linked to the management of SGEIs.

> **The evaluation realised by the public providers themselves as part of their annual report.** A section (or a note) on the social responsibility of these companies has been included in these reports in recent years. However, these notes are confined to a charitable approach to social roles unrelated to dimensions of general interest related to modes of management and regulation of SGEIs. It is also possible to draw vital information on issues relating to price, quality, continuity and accessibility of services in various sections of the annual reports of these two companies.

> Finally, a multidimensional evaluation of public companies of telecommunication and electricity has been achieved in recent years by the Cyprus Labour Institute of the Pan Cyprian Federation of Labour (INEK-PEO)⁸¹.

D. Regulatory Agencies

In the telecommunications and postal services sectors, the “asymmetric” regulation is exercised by the Office of Regulator of the Telecommunications and Postal Services⁸² (independent organisation seeking to develop competition).

An independent regulation is also provided in the energy sectors (production and marketing of electricity, transport-distribution and marketing of gas) by CERA (Cyprus Energy Regulation Authority)⁸³. The networks of electricity the regulation is ensured by TSO, independent authority⁸⁴.

(81) It used an evaluation grid proposed by CEEP- CIRIEC for SGEIs.

(82) <http://www.ocecp.r.org.cy> The Ministry of Finance is responsible for the supervision of the public company CYTA
http://www.mof.gov.cy/mof/mof.nsf/DMLindex_en/DMLindex_en?OpenDocument

(83) <http://www.cera.org.cy>

(84) <http://www.dsm.org.cy>

The Cyprus Radion Television Authority⁸⁵ – independent body linked to the Ministry of Internal Affairs, is responsible for regulating the operation of the private radio-television.

The regulation of air transport is ensured by the Department of Civil Aviation of the Ministry of Communication and Public Works⁸⁶.

The sector of maritime transport is regulated by the Ministry of Communications and Works (Department of Merchant Shipping)⁸⁷.

The Cooperative Banks⁸⁸ are supervised by the Supervisory Authority for the Development of the Cooperative Companies (Central State / Ministry of Commerce, Industry and Tourism).

The Cyprus Land Development Corporation is responsible for achieving the government's policy on housing (aspects concerning the housing loans). This authority is under the supervision of the Central Bank of Cyprus.

III/ Social dialogue

In Cyprus⁸⁹, the right to bargain collectively is an inalienable right of all employees, irrespective of the manner in which it is enforced, or of whether employees are employed in the private or the **public sector** (with some exceptions⁹⁰). In general, the public sector is well represented in the social dialogue, while the **private sphere is characterised by low union density and low coverage**.

In **the public sector**, the first collective bargaining mechanism was established during colonial rule in 1947, with the Joint Consultative Committee (MEP) as the official bargaining body. The MEP has been operating ever since on the same principles, although with various modifications made for restructuring purposes. Together with its permanent sub-committee, the MEP is the official agency for collective bargaining between the **government** as employer and all **public servants**, for the regulation of the general terms and conditions of employment in the public service sector, through their trade union organisation PASYDY. In this context, the employment status of central government employees, and employees throughout the public sector (with the exception of the broader public sector, e.g. the semi-governmental organisations mentioned below, which are covered by the regulations applying to the private sector, on the basis of the provisions of the Industrial Relations Code⁹¹), is to a large extent determined via collective bargaining. Employees of central government also include various categories of employees who are covered by distinctive laws: the Educational Service

(85) <http://www.crtv.org.cy>

(86) http://www.mcw.gov.cy/mcw/mcw.nsf/dmldca_en/dmldca_en?OpenDocument

(87) http://www.mcw.gov.cy/mcw/mcw.nsf/dmlports_en/dmlports_en?OpenDocument

(88) However, locally and regionally, there are a large number of cooperative banks.

(89) References: studies on representativeness of the European social partner organisations in Cyprus (<http://www.eurofound.europa.eu/eiro/>)

(90) Neither employees in the Security Forces (Fire Brigade and Police) nor employees in the National Guard have the right to join unions or the right to strike.

(91) There is no organisation representing the companies of the semi-public sector. The participation of both employers' organisations from the private sector (Cyprus Employers and Industrialists Federation – OEB, and Cyprus Chamber of Commerce and Industry - CCCI) is very limited. The unions then deploy into direct negotiations with the board of various organisations of the semi-governmental sector.

Law, the Police Law and the National Guard Law⁹².

Regarding the semi-governmental sector organisations (providing SGEIs), the **system of social dialogue is quite similar to the private sector** (tripartite representation). Labour relations are therefore governed by the provisions of the Industrial Relations Code. In all economic sectors in Cyprus, the right to collective bargaining is an indisputable right of all workers. This right holds regardless of the way it is implemented or whether the workers are employed in the private or public sector.

Company-level level bargaining is most important in Cyprus. However, for example, in **the water sector**, negotiations are conducted at **regional level** (bringing together municipal organisations) and it is envisaged that this will lead to a national collective agreement in the coming years.

In **the sectors of telecom and energy**, the dialogue is conducted at national level because of the existence of a large public company in both sectors; in fact, it is **collective bargaining at company level**.

In **the sector of postal services**, no **national industry-wide collective labour agreement** covering all employees has been reached. However, collective bargaining is decentralised and **all collective labour agreements**, although very few in number, **are concluded at enterprise level**. The partially monopolistic nature of the market is dominant (Cyprus Post) and therefore employee representation and organisation is defined mainly according to the **public postal services**⁹³ (trade union density is very high in Cyprus Post). In terms of **private sector** employees, it should be noted that the sector is for the most part not unionised, with the exception of companies such as the largest domestic courier and logistic company in Cyprus GAP AKIS and the Pancyprian Parcel Conveyance Company Ltd⁹⁴. As far as Cyprus Post is concerned, since the state is the main employer in post and courier services, no employer organisation as such is present in the sector. In the private sector, one employer organisation with some representation in the post and courier services sector is the Cyprus Employers' and Industrialists' Federation (Ομοσπονδία Εργοδοτών και Βιομηχάνων Κύπρου, ΟΕ). No tripartite body dealing with sector-specific issues exists.

No national sectoral collective agreement has been reached in **air transport**. Collective bargaining is decentralised and **all collective agreements are concluded at company level** between the company's management and the trade unions. Nonetheless, as there are only two national companies in the sector (Cyprus Airways and Eurocypria), collective agreements in these two companies cover almost all of the employees in the sector. No employer organisation as such is present in the sector.

In **the hospital health services sector**, there is no national sectoral collective agreement covering all em-

(92) In the public or state sector, four trade unions bargain independently with the government: Pancyprian Public Employees Trade Union (Παγκύπρια Συντεχνία Δημοσίων Υπαλλήλων, PASYDY), representing the civil servants and by far the biggest and strongest trade union in terms of membership and power in the public sector; Pancyprian Organisation of Greek Teachers (Παγκύπρια Οργάνωση Ελλήνων Δασκάλων, POED), representing primary school teachers; Organisation of Greek Secondary Education Teachers (Οργάνωση Ελλήνων Λειτουργών Μέσης Εκπαίδευσης Κύπρου, OELMEK), representing secondary school teachers; Organisation of Greek Technical Education Teachers (Οργάνωση Λειτουργών Τεχνικής Εκπαίδευσης Κύπρου, OLTEK), representing teachers in technical schools.

(93) For the majority of Cyprus Post employees who are employed as public servants, the system of industrial relations is exactly the same as that applying to the wider public sector. In this context, the employment status of public servants at Cyprus Post is to a large extent determined by collective bargaining, with the Joint Staff Committee as the official agent of collective bargaining. Special matters which do not affect general principles and do not impact on other services may be discussed in the relevant departmental joint staff committees, which have been set up in all of the ministries, provided that their findings will be submitted to the Joint Staff Committee in order to make a final decision on certain issues. First, however, the matter for discussion must be submitted to the permanent sub-committee which will subsequently decide whether to refer the matter to the departmental joint staff committees.

(94) The unions highlight that, of the 12 private companies operating in the sector (in 2006), only two companies have negotiated a collective agreement.

ployees. Collective bargaining is decentralised and **all collective agreements** – albeit very few in number – are concluded **at company level**. As in other sectors of the economy, the **public part of the sector** is well represented (almost 100% of permanent employees are covered by collective agreements), while the private sphere is characterised by low union density and low coverage (according to the social partners, bargaining coverage is estimated at around 30%). Out of the 77 private clinics operating in the sector, only 3 have negotiated a collective agreement⁹⁵. All doctors in private clinics are self-employed, while many of them are also shareholders. Regarding the employees who are employed under the status of public servant in the public hospitals, including the public psychiatric hospital, the system of collective bargaining is exactly the same as that applying to the whole public sector (by collective bargaining, through the Joint Staff Committee as the official agent of collective bargaining).

Sources of national law on SGIs

Sector	Legal references	Sites web
Telecommunications	Regulation of Electronic Communications and Postal Services Law of 2004	http://www.ocecp.org.cy/nqcontent.cfm?a_id=767&t=ocecp&lang=gr
Postal services	Regulation of Electronic Communications and Postal Services Law of 2004	http://www.ocecp.org.cy/nqcontent.cfm?a_id=767&t=ocecp&lang=gr
Production of electricity	Law Regulating the Electricity Market of 2003 and 2004, N° 122 (I) of 2003	http://www.cera.org.cy/main/data/law122_2003.pdf
Electric networks (transport-distribution)	Law Regulating the Electricity Market of 2003 and 2004, N° 122 (I) of 2003	http://www.cera.org.cy/main/data/law122_2003.pdf
Marketing of electricity	Law Regulating the Electricity Market of 2003 and 2004, N° 122 (I) of 2003	http://www.cera.org.cy/main/data/law122_2003.pdf
Transport distribution of gas	Law Regulating the Gas Market of 2004, N° 183 (I) / 2004	http://www.cera.org.cy/main/data/n183i-2004.pdf
Marketing of gas	Law Regulating the Gas Market of 2004, N° 183 (I) / 2004	http://www.cera.org.cy/main/data/n183i-2004.pdf
Rail transport of passengers	It doesn't exist in Cyprus	-
Freight rail transport	It doesn't exist in Cyprus	-
Local and regional transport of passengers	There is no system of public transport in Cyprus	-
Air transport	The Civil Aviation Law of 2002 (213(I)/2002)	http://www.mcw.gov.cy/mcw/dca/dca.nsf/DML/legislation_gr/DML/legislation_gr?OpenDocument
Inland water transport	It doesn't exist in Cyprus	-
Maritime transport	The Cyprus Port Authority Law of 1973 (N° 38/73)	http://www.mcw.gov.cy/mcw/dms/dms.nsf/All/AE473FEFB4A3E5AAC22574BA003408FB/\$file/Legislation%20List%2030-06-09-GR.pdf?OpenElement
Water	Water Supply (Municipal and Other Areas) Law (Cap 350)	http://www.wbn.org.cy/images/wbn/files/1.Nomos.pdf http://www.cyprus.gov.cy/moa/wdd/wdd.nsf/All/254D394E0948A917C2256E4A00339D5C/\$file/legislation.pdf?OpenElement
Waste water	The Sewage and Drainage Law (n° 1/71)	http://www.cyprus.gov.cy/moa/wdd/wdd.nsf/All/254D394E0948A917C2256E4A00339D5C/\$file/legislation.pdf?OpenElement http://www.ermwis.net/countries/fol135532/semide/PDF/Sogesid-cyprus
Heating		-
Broadcasting	The Radio and Television Channels Law of 1998 (N° 7(I)/1998)	http://www.cra.org.cy/arxeio_nomothesia_nomoi.shtml
National public administration	-	-
Regional and local public administration	Municipal Law n° 11/1985 Communities Law n°86/1999	http://www.ucm.org.cy/ENG/Documents/Document_List.aspx?DocumentCategoryCode=10
Hospital health services	-	-
Ambulatory health services	-	-
Primary and secondary education	-	-
Higher education	-	-
Vocational training	The Human Resources Development Authority Law of 1999, N.125 (I) /99	http://www.hrdauth.org.cy/AnadMatia/Nomothesia/Eggrafa/Nomos125.pdf
Compulsory social protection	-	-
Complementary social protection	-	-
Social housing	The Cyprus Land Development Corporation Law of 1980 (42/1980)	http://www.cidc.org.cy/gr_cldc.shtml?gr_legislation
Childcare services (0-6years)	Law for Public Aid and Services (95(I)2006)	http://www.mlsi.gov.cy/mlsi/sws/sws.nsf/dmlindex_en/dmlindex_en?OpenDocument
Care of disabled	Law for Public Aid and Services (95(I)2006)	http://www.mlsi.gov.cy/mlsi/sws/sws.nsf/dmlindex_en/dmlindex_en?OpenDocument
Elderly care	Law for Public Aid and Services (95(I)2006)	http://www.mlsi.gov.cy/mlsi/sws/sws.nsf/dmlindex_en/dmlindex_en?OpenDocument
Financial services	The Housing Finance Corporation Law of 1980 (43/1980) The Cooperative Banks Laws of 1985 until 2004 (unified text)	http://www.cssda.gov.cy/cssda/cssda.nsf/All/1ACEE88F918E6509C2256F430031C8F7?OpenDocument
Cultural services	Theatre / The Cyprus Theatre Organisation Law (71/1970)	

(95) In Nicosia district, the one agreement in place in 2007 was applied by the majority of private clinics, covering all employees irrespective of whether they are members of a trade union; in other districts the number of clinics that apply the collective agreement is limited to eight out of a total of 58 clinics.

PUBLIC SERVICES IN THE CZECH REPUBLIC

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

The Czech Republic is a unitary state. The right of autonomous territorial units to self-government is guaranteed by the Constitution of 16 December 1992 (Article 8)⁹⁶.

After the dissolution of Czechoslovakia at the end of 1992, the new Government was committed to the introduction of a market economy and continued to focus heavily on macroeconomic reform and private sector development.⁹⁷ The structure of the central state administration authorities was changed significantly, they were reduced noticeably in terms of the number, and their function was modified in terms of competences, which are ordinary for state administration, and in connection with gradual termination of the economic management functions.⁹⁸ Significant changes occurred on the division of powers and responsibilities for the provision of public services through decentralisation and deconcentration of services provided by the State. The regional reform of the public administration and the creation of regions have been crucial for public services.

Currently, the Czech Republic is subdivided in two levels of territorial units: 6249 municipalities (obce), which are the basic territorial self-governing units, and 14 regions (regiony/kraj – created on 1st January 2000), which are the higher territorial self-governing units. The city capital - Prague, has a special status, being at the same time municipality and region. Since 2003, there is no level of a deconcentrated state administration (administrative districts - okres), a large part of their competences being transferred to a group of 205 “municipalities with extended powers”, which exercise delegate competences for several municipalities.

The current legislation contains no definition of public services. The recent legislative projects illustrate the tendency to conceptualise under the influence of Community law/jurisprudence. The public services are created, organised and controlled by a public body to ensure that the service is provided in a manner that may be considered necessary to meet the needs of society, while respecting the principle of subsidiarity⁹⁹. Some services are considered of general economic interest, they are created to generate profit but serve the public

(96) http://angl.concourt.cz/angl_verze/constitution.php

(97) *** Czech Republic. Toward EU Accession, World Bank, 1999, p. 198

(98) Public administration in the Czech Republic, Ministry of the Interior of the Czech Republic, Section for Public Administration Reform, 2004 p. 7

(99) Veřejné služby se definují jako služby vytvořené, organizované nebo regulované orgánem veřejné správy k zajištění, aby byla služba poskytována způsobem, který lze považovat za nezbytný pro uspokojení společenských potřeb - při respektování principu subsidiarity.

interest and must satisfy the specific requirement of the public authorities¹⁰⁰.

The Community terms are not generalised or common. The law of 17 June 2009 on the free movement of services defines the services of general interest as services which are provided in a universal and permanent manner conferring specific rights and obligations to the service provider by a specific Act; such services are, in particular, postal services, electricity or gas, operation of airports or ports, public transport, water supply and drainage and waste water treatment or disposal of municipal wastes (Article 3 (e)).¹⁰¹

The general legal framework for the distribution of competences in the field of public services is mainly constitutional (Article 101 (4) of the Czech Constitution, Chapter 7 Territorial Self-government¹⁰²). The common legal framework is also foreseen in particular by the Municipal Act¹⁰³ and the Act on Regions¹⁰⁴. There is no transversal law on public services in Czech Republic, the conditions and rules for different types of public services are regulated by laws and specific regulations.

Terms in TEU and TFEU	Czech terms in TEU and TFEU ^{table13}
Services of general interest – SGIs	službách obecného zájmu
Services of general economic interest – SGEIs	služeb obecného hospodářského zájmu
Non-economic services of general interest – NESGIs	nehospodářské služby obecného zájmu
Public service	veřejné služby

(100) Mezi služby ve veřejném zájmu jsou zařazeny i služby ve veřejném (obecném) ekonomickém zájmu, což jsou služby, které jsou vytvořeny za účelem tvorby zisku, ale plní úkoly ve veřejném zájmu a jako takové musí uspokojovat specifické požadavky kladené orgány veřejné správy.

Project of law on the standardisation of some public services, first version, February 2002 - Věcný záměr zákona o standardizaci VYBRANÝCH veřejných služeb

http://web.mvcr.cz/archiv2008/odbor/moderniz/koncepce/v_sluzby/vec_zam.html

In a report of September 2003, the definition and „identification“ of public services are mentioned as a fundamental problem for their analysis. http://web.mvcr.cz/archiv2008/odbor/moderniz/koncepce/v_sluzby/analy_vs.html#1

(101) „Službou obecného zájmu hospodářské povahy taková služba, která je poskytována univerzálním a trvalým způsobem a jejímuž poskytovateli zvláštní právní akt přiznává zvláštní práva a povinnosti; takovou službou je zejména poštovní služba, dodávka elektrické energie nebo plynu, provozování letišť nebo přístavů, veřejná doprava, zásobování vodou a odvádění a čištění odpadních vod nebo nakládání s komunálními odpady.“

(102) “(4) The State may intervene in the activities of self-governing territorial divisions only if such intervention is required by protection of the law and only in a manner defined by law” http://www.senat.cz/informace/zadosti/ustava-eng.php?ke_dni=&O=

(103) Law n° 128 of 12 April 2000 [Zákon o obcích (obecní zřízení)] http://portal.gov.cz/wps/portal/_s.155/699/place

(104) Idem

Competences of definition and organisation of SGLs

What is the level of government that actually defines the public service obligations and decides the modes of SGLs' organisation?

Central	Regional	Local
Telecommunications	Railway transport of passengers	Local transport of passengers
Postal services	Regional transport of passengers	Water
Production of electricity	Heating	Waste water
Transport-distribution of electricity	Water	Hospital health services
Marketing of electricity	Waste water	Ambulatory health services
Transport-distribution and marketing of gas	Hospital health services	Primary and secondary education
Railway transport of passengers	Ambulatory health services	Complementary social protection
Freight rail transport	Primary and secondary education	Social housing
Air transport	Higher education (partly)	Childcare services (0-6 years) (1)
Maritime transport	Vocational training	
Inland transport	Compulsory social protection	
Water	Complementary social protection (1)	
Waste water	Social housing	
Broadcasting	Care of disabled	
Hospital health services (2)	Elderly care	
Ambulatory health services (2)		
Higher education		
Compulsory social protection (1)		
Social housing (1)		
Care of disabled (1)		
Elderly care (1)		

(1) Competences are shared – Act on Social Services – State defines the types of services and allocates subsidies through regional authorities. Regional and Local authorities make decisions on the allocation of those subsidies within their area.

(2) Health services are regulated by laws and by agreements with Health Insurance Companies, which are independent Public Bodies founded by Act, but regional and local authorities could take part in negotiation on activities and the future of many of these institutions, some of them founded by regional or local authorities.

B. Sectoral organisation and trends

Status of the operators

National public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	Mixed providers (majority of private shares)	Private providers
Postal services Electric networks Railway transport of passengers Freight rail transport Broadcasting Hospital health services Higher education Compulsory social protection Financial services Cultural services	Production of electricity Heating (minor role on the market)	Distribution of electricity (Prague) Distribution of gas (Prague) Regional and local transport of passengers Water Waste water Hospital health services Primary and secondary education Higher education Vocational training Compulsory social protection Social housing Childcare services (0-6 years) Care of the disabled Elderly care Cultural services	n.a.	n.a.	Telecommunications Production of electricity Gas transport Distribution of gas Railway transport of passengers Freight rail transport Regional transport of passengers Local transport of passengers Inland water transport Maritime transport Water (majority) Waste water (majority) Heating Broadcasting Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Complementary social protection Social housing Childcare services (0-6 years) Care of the disabled Financial services Cultural services

SGI markets

No market	Liberalised market and competition	Liberalised market Public operators dominant	Public monopoly	Liberalised market Private operators dominant	Private monopoly
Sectors	Sectors	Sectors	Sectors	Sectors	Sectors
National public administration Regional and local public administration Compulsory social protection	Telecommunications Regional transport of passengers Air transport Maritime transport Heating Broadcasting Higher education Complementary social protection Financial services	Postal services Production of electricity Distribution of electricity Railway transport of passengers Freight rail transport Local transport of passengers Hospital health services Primary and secondary education Social housing Childcare services (4-6 years) Elderly care Cultural services	Electric networks Water (local monopoly) Wastewater (local monopoly)	Distribution of gas Ambulatory health services Vocational training Childcare services (0-3 years) Care of disabled Elderly care	Gas transport Water (local monopoly) Wastewater (local monopoly)

Main financing methods of SGIs

Fees/payment by users/clients	Universal service fund	Public grants	Insurance funds	Incomes from the activity	Sponsorship
Telecommunications Postal services Production of electricity Electric networks Distribution of electricity Gas transport Distribution of gas Railway transport of passengers Freight rail transport Regional and local transport of passengers Air transport Inland water transport Maritime transport Water Waste water Heating Broadcasting National, regional and local public administration Hospital health services Ambulatory health services Primary and secondary education (private schools) Higher education Vocational training Social housing Childcare services Care of disabled Elderly care Financial services Cultural services	Telecommunications	Railway transport of passengers Regional and local transport of passengers Primary and secondary education (public and private schools) Higher education Vocational training Social housing Childcare services Care of disabled Elderly care Cultural services	Hospital health services Ambulatory health services Compulsory social protection Complementary social protection	Production of electricity Broadcasting	Complementary social protection

Authorities responsible for setting pricing and/or tariff policies

Parliament	Central government	Regional and local government	Regulatory agencies
Broadcasting	Railway transport of passengers	Regional and local transport of passengers	Telecommunications
National public administration	Freight rail transport	Water	Postal services
Regional and local public administration	Regional and local transport of passengers	Waste water	Electricity
Primary and secondary education	Hospital health services		Gas transport-distribution
Higher education	Ambulatory health services		Heating
Compulsory social protection	Social housing		Financial services
	Childcare services		
	Care of disabled		
	Elderly care		

II/ Approaches

A. The model of public administration and national public companies

Even with the important political and economical changes that occurred from 1989, the Czech state remains the main public service provider in several sectors through national companies owned 100% by the state:

In the market of postal services, the main provider is Czech Post, 100% state-owned company (about 80% of the national market).

In the national market of electricity transport, the CEPS Ltd. – Czech Electricity Transmission Company, 100% state-owned company, is the only provider; the Czech Energy Companies – CEZ Ltd., whose 70% shares are owned by the Czech state, covers about 50% of the market of the production of electricity, about 60% of the market of electricity distribution, and a minor position in the market of heating services.

The railway transport of passengers and the freight rail transport in the Czech Republic are ensured mainly by the state-owned companies Czeske drahy Ltd. and Czeske drahy Cargo Ltd. (about 99%, respectively 95% of the Czech market).

In the air transport sector, the national company CSA Czech Airlines Ltd. (92% of its shares are owned by the state), covers about 80% of the market; however, there are discussions about its privatisation.

In the financial sector, the state plays a minor role as a shareholders; it owns the Postal Saving-Banks, through Czech Post, a state-owned company.

B. “All Public”

After the Second World War and the Sovietisation of the country, a wide process of nationalisation has been established. Municipal property became State property and all previous laws on the municipal management were repealed¹⁰⁵.

A broad privatisation process was initiated in 1990 and continues today. However, in SGI sectors the public operators dominate the majority of the sectors reviewed by this project, excepting some sectors, such as telecommunications, gas transport, inland water transport, heating, vocational training, childcare services (0-3 years).

Until now, the total privatisation of state-owned enterprises was realised mainly in the sectors of telecommunications and regional and local transport of passengers. Some municipalities also privatised the water and waste water infrastructure (about 35%).

C. Local autonomy

The emergence of the municipal administration is reestablished by the Law n° 367/1990 on municipalities. The municipalities are recognised as legal persons and the constitutional amendment by Law n° 294/1990 provides the basis for the economic foundations of local communities, a preliminary essential prerequisite for distinct local activities.

Presently, the areas of competence of the sub-national governments are governed by Law n° 128/2000 on municipalities¹⁰⁶ and Law n° 129/2000 on regions, amended by the Law n° 213/2000, which distinguishes the autonomous powers (*samostatna pusobnost* – Chapter II of the law¹⁰⁷) and the delegates powers (*pre-nesena pusobnost*)¹⁰⁸.

The local services are ensured by the municipal technical services – direct production by the municipality and its employees, by municipal utilities (*régies*)¹⁰⁹, by local public companies (companies with more than 50 per cent municipal ownership) or by outsourcing to private companies based on a delegation.¹¹⁰ Direct production is important form for management of cemeteries, local communications and public lighting. Combinations are frequently used for local communication and for public parks and open spaces, and in 96% of

(105) Law n° 279/1949

(106) Act n 128/2000 on Municipalities (the Municipal order)

(107) Section 35 “(2) The independent competence of a municipality includes, in particular, the matters stipulated under sections 84, 85 and 102, with the exception of the issue of municipal ordinances. In the independent competence in its territorial district, and in accordance with the local conditions and local customs, the municipality also attends to the fostering of conditions for the development of social care and to the satisfaction of the needs of its citizens. This includes, in particular, meeting the needs for housing, the protection and development of health care, transport and communications, information, education and training, general cultural development, and the protection of public order.”

(108) “Section 7§1 A municipality attends to its affairs independently. State bodies and regional bodies may intervene in independent competence only where required for the protection of the law and only in a manner stipulated by law. The scope of independent competence may only be restricted by law. (2) A municipal body entrusted with the performance of state administration shall perform such state administration as delegated competence (section 61 et seq.).”

(109) As “budgetary organisations” or organisations partially financed by municipal funds (cinema, theatre, libraries, primary schools). Dominique Hoorens (dir.), *Les collectivités territoriales dans l’Union européenne. Organisation, compétence et finances*, Dexia Editions, 2008, p. 571

(110) Law n° 139/2006 on concessions; it also regulates the PPP

cases or either external delivery or municipal companies were involved. Smaller municipalities below 5000 inhabitants frequently use direct production and external contracts, larger municipalities rely on municipal companies¹¹¹.

Municipalities may co-operate with other municipalities in the performance of their independent competence on the basis of an agreement concluded for the purpose of fulfilling a specific task, or of an agreement on the creation of a voluntary association of municipalities¹¹², or by the establishment, by two or more municipalities, of legal persons in accordance with the Commercial Code (section 46 of the Act on municipalities). There are about 748 intermunicipal cooperatives involving approximately 3000 municipalities. They operate mainly in the field of water supply (69%), housing (10%) and public transport.

D. Delegated management and externalisation

The reform and modernisation of the functioning of Czech administration is accomplished at all territorial levels. The implementation of the regional reform and the delegation of some State powers to local authorities are considered opportunities to develop new methods of public service delivery by different levels of administration through horizontal and vertical cooperation, and partnership with the third sector.¹¹³

External forms of delivery dominate particularly in the areas of waste and sewerage, municipal transport, cleaning, street lighting and municipal housing. 70% of the population receives water services from private companies, the highest percentage of the new EU Member States. Compared to the Slovak situation, internal forms in Slovakia are more a frequent solution than in the Czech Republic and the frequency of use of municipal firms is much higher in the Czech Republic (Czech municipal firms were dominantly established by privatisation of former communal services organizations). Because municipal companies are not very frequently found in Slovakia, the proportion of external forms of delivery is higher than in the Czech Republic¹¹⁴.

(111) Markéta Fantová Šumpíková, František Ochrana, Beáta Meri ková, "Local public services delivery arrangements – evidence from the Czech Republic", paper Nispacee annual conference

(112) Sections 49-53. According to Section 50 of the Act on municipalities, "(1) The subject of activity of an association of municipalities may be, in particular, the following: a) tasks in the field of education, welfare, health care, the arts, fire prevention, public order, environmental protection, tourism, and animal welfare; b) ensuring the cleanliness of a municipality, management of public greenery and public lighting, collection and removal of municipal waste and the safe processing, recovery or disposal thereof, water supplies, wastewater drainage and treatment; c) implementing, extending and improving networks of technical amenities underground services and systems of public passenger transport in order to ensure a transport service within the given territory; d) tasks in the field of air protection, tasks related to the conversion of heating or water heating using solid fuels to the use of environmentally friendly sources of thermal energy in residential and other buildings which are owned by municipalities; e) the operation of quarries, sand quarries and equipment for mining and processing mineral resources; f) management of the property of municipalities, in particular local roads, forests, the housing fund and housing stock, sports and cultural facilities, and other facilities managed by municipalities.»

(113) OECD, Examens territoriaux de l'OCDE. République tchèque, p. 121-122

(114) Pavel, 2007, cited by Markéta Fantová Šumpíková, František Ochrana, Beáta Meri ková, "Local public services delivery arrangements – evidence from the Czech Republic", paper Nispacee annual conference

E. “New Public Management”

The Czech Government adopted in 2004 a policy introducing public private partnership (PPP) as a standard tool for the provision of public services and public infrastructure. In practice, PPPs are less developed.¹¹⁵ There is no comprehensive legal regulation governing the preparatory process and implementation rules of PPP projects but instead there is a range of EU and Czech legal regulations¹¹⁶.

The analysis of the real needs of people/customers and the subsequent measurement of their satisfaction with the quality of services is made only in certain types of services or in some offices. The principle of balance between need (demand) and services (offer) is not systematically applied in the public sector. The quality of public services is controlled and provided, inter alia, by the traditional systems of the ministries, such as inspection and supervision. The quality is defined in terms imposed by the service providers and focuses on workers' professionalism. These approaches are particularly common in education, health and social services in the regions. The economic changes have put pressure on pricing flexibility and the capacity to improve the quality of public services. These systems incorporate particularly comprehensive quality management standard of CAF, TQM, EFQM, etc, whose importance lies in the fact that they allow the combination of quality and personal responsibility with the capacity to pay most of attention to services in order to meet the needs of the customers/users and competitiveness. The control of quality of public service is the subject of national policies on the promotion and development of quality management in education and training, health and safety and consumer protection. Civic control of public services is less developed in practice.¹¹⁷

F. Regulatory Agencies

Independent authorities of regulation are created in the sectors of telecommunication and post (Telecommunication Office) and energy (Energy Regulator Office). The Czech National Bank is the regulator for financial services.

The majority of SGI services are regulated by central authorities (subordinated to Government/ministries) - Rail Authority (rail transport), Civil Aviation Authority (air transport), State Navigation Authority (Inland water transport and maritime transport), Council for Radio and TV Broadcasting, Accreditation Commission (higher education) - or directly by ministries - Ministry of Health, Ministry of Education.

The Regional Office is the regulator for emergency ambulatory health services, care of disabled and elderly care services.

The municipalities regulate the services of water and waste water.

(115) For information about some important PPP projects see http://www.mfcr.cz/cps/rde/xchg/mfcr/xsl/en_ppp_czech_republic_47747.html

(116) Act n° 137/2006 on public contracts and Act n° 139/2006 on concession contracts and concession procedures <http://www.portal-vz.cz/Legislation/National-Legislation>, <http://www.portal-vz.cz/Public-private-partnership/National-documents/Pravni-predpisy-a-usneseni-vlady>

(117) The public services (3 June 2003) http://web.mvcr.cz/archiv2008/odbor/moderniz/koncepce/v_sluzby/prehl_ab.html

III/ Social dialogue

In the Czech Republic¹¹⁸, the law distinguishes between enterprise-level collective agreements (ELCAs), concluded between the relevant trade union body and an employer, and HLCAs (high-level collective agreements) concluded for a greater number of employees by the relevant higher-level trade union body and an organisation or organisations of employers. **The most prevalent level of collective bargaining in the Czech Republic is the enterprise level** (including in SGI sectors). For collective bargaining at company level, the legally binding minimum is – if an HLCA applies to the relevant employer – the value of obligations negotiated in the higher-level agreement.

In the public sector, even if central state administration employees do not possess a special employee status and the universally binding legislation on labour relations and working conditions applies universally, **some categories of employees are treated differently from other employees**. Thus, the general labour legislation (Labour Code) does not apply to **security forces** personnel (Police of the Czech Republic, Fire Rescue Service, Customs Administration, Prison Service, Security Information Service and Office for Foreign Relations and Information), which is governed by a special act. Soldiers in active service may not form or join trade unions and the legislation lays down a minimum representativeness level for the activity of trade union organisations in the police, fire service and customs administration. The legislation also awards a special status to staff of territorial self-governing units. **Public sector staff pay** is also treated differently from other employees. The legislation on pay in **the non-enterprise sphere** is prescriptive and leaves no room or only very little room for pay demands to be governed by an individual contract or for collective bargaining. Pay demands may be negotiated in a collective agreement or defined by an employer's internal regulation solely under the terms defined by the act on pay and the relevant government implementing decree. Moreover, for collective bargaining in the non-enterprise sphere it is prescribed that the only employee labour entitlements that may be so regulated (increased or broadened) are those that the law directly specifies¹¹⁹. As far as pay is concerned, judges' and state prosecutors' pay is subject to special legislation.

At government level, the Council of Economic and Social Agreement (Rada hospodářské a sociální dohody České republiky, RHSD ČR) was established in 1990. This is the forum for **tripartite social dialogue** at high level among state, employers and employees (trade union), as a forum that could help to preserve social peace during the economic transformation. The task of the RHSD is strictly **consultative**. There is a plenary session of the Council in principle every two months. Statute defines the composition of delegation. Permanent expert committees and temporary working groups discuss documents prepared for the plenary sessions. The regional councils could have a similar position at regional level, but regional and government levels are not interconnected. In a European perspective, the Czech Republic is one of the countries in which

(118) References: studies on representativeness of the European social partner organisations in Czech Republic (<http://www.eurofound.europa.eu/eiro/>)

(119) In the public sector (non-enterprise sphere), the government is the trade unions' partner for pay bargaining. These negotiations between public sector and services trade union representatives (including central state administration) and government representatives are not collective bargaining as regulated by law, i.e. they cannot lead to a collective agreement and any arrangements are political in nature rather than legal and are not enforceable through the courts. As a rule, negotiations are conducted on behalf of government by the minister of labour and social affairs in coordination with the finance minister. These informal negotiations are conducted on behalf of the entire area of public services and administration financed out of the state budget. No independent agencies and other bodies are established for negotiating on pay in central state administration but public sphere pay tends to be a negotiation point in the national tripartite system.

tripartite concertation covers a particularly wide array of issues activities.

The Union of Employers' Associations is one of the employers' representatives in the Council. SGI providers such as education, culture, health care, and social services are members of the Union and the Union is their representative in Council. Similarly the Confederation of Industry of the Czech Republic has among its members service of general economic interest providers (energy supply, etc.).

In the railway transport sector only company-level collective agreements are concluded. There is only one employers' association in the sector and the sector's rate of collective bargaining coverage is estimated to be about 95%. Both the employer association and unions are consulted by the authorities – that is, the Ministry of Transport, the Ministry of Labour and Social Affairs and the government – especially in the field of transport policy and transport tariffs. The tripartite bodies deal with sector-specific issues, especially those including the organisation of working hours, corporate social policy measures, the working environment and occupational safety.

Only **company collective agreements** are concluded in the **air transport sector**. There is a single strong employer in civil aviation, with several smaller trade unions representing the sector's employees and so there is only **single-employer agreement** in the sector. All collective agreements are for the period 2008–2010. The sector's rate of collective bargaining coverage is estimated to be very high.

The Czech Republic's **post services sector** primarily consists of the state company Czech Post, which maintains a dominant and sometimes monopoly-like position since its origins in early 1993. This company is accompanied by other, predominantly specialised distributors and carriers which hold a smaller share of the market. There is one trade union operating in the sector, namely the Trade Union of Workers in Postal, Telecommunications and Newspaper Services (Odborový svaz zaměstnanců poštovních, telekomunikačních a novinových služeb, OSZPTNS), along with one employer organisation – the Czech Union of Postal, Telecommunications and Print Distribution Sector Employers (úeský svaz zaměstnavatelů v poště, telekomunikacích a distribuci tisku). Together, these two organisations conclude **higher-level collective agreements** on a regular basis. The multi-employer agreement concluded by OSZPTNS and the Czech Union of Postal, Telecommunications and Print Distribution Sector Employers also covers employees of employers that conclude **single-employer agreements**¹²⁰ (OSZPTNS also concludes company-level collective agreements). Therefore, there is no difference in the relative importance of multi-employer agreements and single-employer agreements. No specific tripartite body exists in the post and courier services sector (only a national tripartite body).

A collective agreement at a level above the company is concluded in **the gas sector** and according to estimations all employees are covered by a collective agreement.

The sector of hospital health services is characterised by the fact that **no collective agreement at a higher level** exists due to the fact that **no employer organisation** exists in the sector to allow for collective bargaining to take place. There are four trade unions active in this sector that **only** concludes **company-level agreements**. The sector's rate of collective bargaining was estimated to be high (employees covered by company-level collective agreements, including healthcare (medical) workers from other branches of the

(120) Collective agreements concluded in the Czech Republic cover all employees of the relevant employer, regardless of their trade union membership.

health sector and not just hospital activities).

Sources of national law on SGIs

Sector	Legal references	Web sites
Telecommunications	231/2001 coll. on radio and TV broadcasting 127/2005 coll. on electronic communications 162/2005 coll. on setting-up of universal service quality parameters	www.ceskatelevize.cz http://www.rozhlas.cz
Postal services	29/2000 coll. on postal services	http://www.cpost.cz
Production of electricity Electric networks (transport) Distribution of electricity to consumers	458/2000 coll. on energy	http://www.cez.cz/en/home.html
Gas transport Distribution of gas to consumers (households and industries)	458/2000 coll. on energy	http://www.cpu.cz
Railway transports of passengers Freight rail transport	266/1994 coll. on railways 1/2000 coll. on transport rules for public freight rail transport	http://www.cd.cz
Regional and local transport of passengers	129/2000 coll. on regions § 35 128/2000 coll. on municipalities 131/2000 coll. on Prague, capital	
Air transport	49/1997 coll. on civil aviation	
Inland water transport	114/1995 coll. on inland water transport	
Maritime transport	61/2000 coll. on maritime transport	
Water	274/2001 coll. on water pipes and canalization	
Waste water	274/2001 coll. on water pipes and canalization	
Heating	406/2000 coll. on energy management	
Broadcasting	231/2001 coll. on radio and TV broadcasting	
National public administration	1/1993 coll. Constitution of the Czech Republic 2/1969 coll. on setting up ministries and other central administrative bodies of the Czech Republic 500/2004 coll. Administrative procedure Act	
Regional or local public administration	128/2000 coll. on municipalities 129/2000 coll. on regions 131/2000 coll. on Prague, the capital	
Hospital health services	242/1991 coll. on system of health institutions based on municipalities and districts 394/1991 coll. on role, organization and activities of teaching hospitals 245/2006 coll. on public non-profit health institutions	
Ambulatory health services	548/1991 coll. New Act on care of health of Nation 48/1997 coll. on public health insurance 258/2000 coll. on public health protection	
Primary and secondary education	561/2004 coll. on education (Act on schools)	
Higher education	111/1998 coll. on universities 10/2005 coll. on higher professional education	
Vocational training	519/2004 coll. on professional re-qualification of job applicants	
Compulsory social protection	108/2006 coll. on social services	
Complementary social protection	108/2006 coll. on social services	http://www.mpsv.cz/en/
Childcare services (0-6 years)	14/2005 coll. on preschool education	
Care of the disabled	108/2006 coll. on social services	http://portal.gov.cz/wps/portal/_s_155/701/_s_155/19105?clk=107327&toP=1876&ks=1714
Elderly care	108/2006 coll. on social services	http://www.mpsv.cz/en/1613#toss
Cultural services	257/2001 coll. on public librarian and information services	www.gov.cz

PUBLIC SERVICES IN GERMANY

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Germany is a Federal State, the largest country in EU in terms of its size of population and economic power and the fourth country in terms of area. At territorial level, there is no central state administration but three levels of sub-national governments: the federal states (Länder) and local governments: districts (Kreise) and municipalities (Gemeinden). The 116 largest municipalities which are not attached to any district are each a city district *Kreisfreie Städte*. The municipalities of Berlin, Bremen and Hamburg also have the status of Länder.

In the German federal system, the administration is more a responsibility of sub-national levels; the federation has its own administration only in some sectors well defined in the Constitution such as the army, customs, and finance. Municipalities have some large powers: they implement about 80% of laws and most EU directives. They are responsible for implementing not only their own tasks but also those of the state. There are 12 312 municipalities (in 2006; fewer and larger in the north, according to the territorial profile of North Europe, more and smaller in the south, according to the territorial profile of Southern Europe).

The Länder, which are the higher sub-national level, share with the Central State the competencies in fields such as social assistance, health, data collection, higher education and other fields, according to the Constitution (the federalism reform of July 2006). All areas that are not the responsibility of the federal government fall within the legislative competence of the Federal States – education, internal administration, cultural affairs, protection of the environment, internal affairs and police¹²¹.

There are also different traditions between West Germany and East Germany (for example in the sector of childcare services, there is a tradition of delegation to religious associations in West Germany and to public bodies in East Germany).

The recognition of activities of general interest is based on sectoral regulations and the concept of services of general interest / public service is not imposed as a legal transversal concept. There is no general law on SGIs in Germany. One of the reasons is that in a federal system the legislative competences for all SGIs are not “in one hand”.

(121) Dominique Hoorens, *Les collectivités territoriales dans l'Union européenne. Organisation, compétences et finances*, Dexia, 2008, p. 161

The community concept of SGI is quite different from the traditional German concept of “Daseinsvorsorge”¹²². The concept introduced by Ernst Forsthoff in 1938 describes the public mission to satisfy the citizens’ demand for securing the material basis of their lives. The demand is directed especially to the municipalities which derive their institutional autonomy and tasks from Article 28 (“Länd constitutions – Autonomy of municipalities”¹²³) of the Federal Fundamental Law. In Germany the administration, especially at municipal level, is aware of a fairly developed system of “Daseinsvorsorge”, element of municipal autonomy, and the municipalities and their citizens have decided to defend the position they have acquired in this field.

Because of the conceptual differences, the notions used by the EU cannot very easily be translated into German:

Services of general interest / Daseinsvorsorge / Dienstleistungen von allgemeinem Interesse (in the documents of European Commission)¹²⁴

Services of general economic interest / Wirtschaftliche Dienstleistungen or Dienstleistungen von allgemeinem wirtschaftlichen Interesse (in the documents of European Commission)

Non-economic services of general interest / Gemeinwohlorientierte Dienstleistungen or Nichtwirtschaftliche Dienste von allgemeinem Interesse (in the documents of European Commission)

Social services of general interest / Soziale Dienstleistungen or Sozialdienstleistungen von allgemeinem Interesse (in the documents of European Commission)

Public service obligations / Sorgfaltspflichten bei Erfüllung öffentlicher Dienstleistungen (traduction ad litteram „Due diligence in the performance of public services“) or Gemeinwirtschaftlichen Verpflichtungen / Gemeinwohlverpflichtungen / Verpflichtungen des öffentlichen Dienstes (in the documents of European Commission)

Terms in TEU and TFEU	German terms in in TEU and TFEU ^{table14}
Services of general interest – SGIs	Dienste von allgemeinem Interesse
Services of general economic interest – SGEIs	Dienste von allgemeinem wirtschaftlichem Interesse
Non-economic services of general interest – NESGIs	nichtwirtschaftliche Dienste von allgemeinem Interesse
Public service (public service obligations)	öffentlichen Dienstes

(122) The literal translation would be something like “providing for the every-day existence” Conceptually the activities of the local governments in Daseinsvorsorge were premised on the idea that the local authorities were called upon to provide such services and utilities in the best (“common good”) interest of the local community (örtliche Gemeinschaft) which was seen as a justification for establishing “protected local markets” and “quasi-monopolies” for the local administrative units or municipal corporations providing such services and utilities. The sector of these Daseinsvorsorge-related activities has traditionally been significant. Hellmut Wollmann, Paper prepared for the International Conference on Reforming local government: Closing the gap between democracy and efficiency, University of Stuttgart on September 26-27, 2002

(123) “(2) Municipalities must be guaranteed the right to regulate all local affairs on their own responsibility, within the limits prescribed by the laws. Within the limits of their functions designated by a law, associations of municipalities shall also have the right of self-government according to the laws. The guarantee of self-government shall extend to the bases of financial autonomy; these bases shall include the right of municipalities to a source of tax revenues based upon economic ability and the right to establish the rates at which these sources shall be taxed.” <https://www.btg-bestellservice.de/pdf/80201000.pdf>

(124) KOM(2007) 725 endgültig MITTEILUNG DER KOMMISSION Dienstleistungen von allgemeinem Interesse unter Einschluss von Sozialdienstleistungen: Europas neues Engagement / COM(2007) 725 final COMMUNICATION FROM THE COMMISSION, Services of general interest, including social services of general interest: a new European commitment

Competences of definition and organisation of SGLs

What is the level of government that actually defines the public service obligations and decides the modes of SGLs' organisation?

Federal government	Länder	Local governments
Telecommunications	Regional and local transport of passengers (regional and local governments)	Regional and local transport of passengers (regional and local governments)
Postal services		
Production of electricity	Water (regional and local governments) (quality standards)	Water (regional and local governments) (quality standards)
Electricity networks (transport-distribution)	Waste water (regional and local governments) (quality standards)	Waste water (regional and local governments) (quality standards)
Marketing of electricity		
Gas transport-distribution	Broadcasting	Vocational training
Marketing of gas	National public administration	Cultural services (1), like theatres and opera houses (Regional and local administration)
Railway transport of passengers	Regional or local public administration	
Freight rail transport	Hospital health services	
Air transport	Ambulatory health services	
Inland water transport	Primary and secondary education	
Maritime transport	Higher education	
Water	Childcare services (0-6 years)	
Heating	Care of the disabled	
National public administration	Elderly care	
Compulsory social protection	Financial services (1), like saving banks	
Complementary social protection	Cultural services (1), like theatres and opera houses	
Social housing		
Childcare services (0-6 years)		
Care of the disabled		
Elderly care		
Financial services, like savings banks		

B. Sectoral organisation and trends

Status of the operators

National (Federation) public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
Postal services Freight rail transport		Marketing/distribution of electricity Marketing of gas Water Waste water (Heating) Broadcasting Hospital health services Ambulatory health services Higher education Compulsory social protection Social housing Childcare services (0-6 years) Care of the disabled Elderly care Financial services Cultural services	Marketing of electricity Marketing of gas Regional and local transport of passengers	Vocational training Complementary social protection	Production of electricity Electricity networks (transport-distribution) Gas transport-distribution Regional and local transport of passengers	Telecommunications Postal services Production of electricity (big private companies) Electricity networks (transport-distribution) (big private companies) Gas transport-distribution Freight rail transport Air transport Inland water transport Maritime transport Water Broadcasting Ambulatory health services Higher education Care of the disabled Elderly care

SGI markets

Liberalised market and competition	Liberalised market. Public operators dominant	Liberalised market Private operators dominant	Public monopoly	Private monopoly	No market
Telecommunications Postal services (partial liberalisation) Electricity networks Marketing of electricity ^{table15} Transport-distribution of gas Marketing of gas Regional and local transport of passengers Air transport Inland water transport Broadcasting Higher education Vocational training Complementary social protection Care of the disabled Financial services Cultural services	Waste water? Broadcasting (radio) Hospital health services ^{table16} Ambulatory health services Primary and secondary education Social housing Childcare services (0-6 years) Elderly care	Production of electricity ^{table17} Telecommunications Postal services Water	Postal services Railway transport of passengers Freight rail transport Heating Lower secondary education		National and Länder public administration Regional and local public administration Compulsory social protection

Financing methods of SGIs

Fees/payment by users	Price	Free of charge	Public contributions	Reduced contribution of the concerned persons
Telecommunications Postal services Broadcasting National public administration Regional or local public administration Hospital health services ^{table18} Ambulatory health services Private primary and secondary education Fees according to consumption: Marketing of electricity Marketing of gas Water Waste water Heating Childcare services (0-6 years) Elderly care Financial services Cultural services	Payment on private regulation basis: Railway transport of passengers Freight rail transport Regional and local transport of passengers Air transport Inland water transport Maritime transport	National public administration Regional or local public administration Primary and secondary education Higher education Vocational public service Compulsory social protection Complementary social protection Care of the disabled	Higher education Cultural services	Social housing

Authorities responsible for setting pricing and/or tariff policies

Central government	Länder	Local governments	Regulatory agencies	Providers
Telecommunications Postal services Transport-distribution of electricity Marketing of electricity Gas transport-distribution Marketing of gas	Hospital health services		Telecommunications Postal services Electricity Gas Railroad services	Postal services (private tariffs) Ambulatory health services

Public-law utilities are subject to the Local Tax Laws of the federal states. According to these laws, the utilities are legally bound to comply with the cost recovery principle, including the costs for preservation of real-asset values and refinancing of the facilities. According to the provisions of the Local Tax Laws, the following principles have to be adhered to for the **calculation of prices and charges**:

The principle of equivalence, i.e. prices or charges, respectively, may not be significantly higher than the value of the service provided to citizens, irrespective of the costs of the service;

The cost recovery principle, i.e. all costs incurred for the provision of water supply and wastewater management services must be recovered through prices or charges, respectively; neither is a long-term cost overcompensation allowed;

The prohibition of cost overrun;

Taking the principle of preservation of net real-asset values into consideration;

Breakdown of the fees of the consumer groups according to the costs incurred by type-classified customer groups

Wastewater charges can be levied separately for wastewater and precipitation water (split charges standard). The wastewater charge is determined according to the freshwater consumed. Supply from rainwater utilization facilities must be taken into account for the calculation of wastewater charges. The precipitation water charge is calculated on the basis of drained areas. Alternatively, wastewater charges may be calculated only on the basis of the freshwater consumed (freshwater standard).

Taking account of the cost structure in fixing the base price and the volumetric price;

Adequate interest for equity capital;

The share of fixed costs amounts to about 80 percent.

II/ Approaches

A. The model of public administration and national public companies

After the Second World War, in West Germany, the central government's public sector was smaller than that of many European countries where extensive nationalisation programmes were introduced. The Germany's nationalisations concerned just major sectors or firms in difficulty. Still, the West German Constitution protected until 1996, in Article 87, state monopolies for the Federal railway system, the postal and telecommunication sectors, and inland navigable waterways. Government intentions to reduce the activity of the state and its influence on the private economy, to strengthen market forces, to transfer public services to the private sector and to privatise public goods were emphasised in 1982-1983, but in the first decade after that, State activities were reduced only to a very small extent. According to a source¹²⁵, in 1988, the nominal shares of the Länder in the capital of public enterprises were double than those of the Federal Government (the banking sector was the most important element).

In East Germany, after the collapse of the communist regime and the process of reunification, and in spite of the new policy that intended to convert the enterprises of the vast public sector of East Germany into competitive private enterprises, privatisation remains more of an objective than a reality. New pressures for deregulation and privatisation in telecommunications, postal services, energy supply and transport were shaped by the

(125) Josef Esser, "Privatisation in Germany. Symbolism in the social market economy?", in David Parker (ed.), *Privatisation in the European Union: theory and policy perspective*, Routledge, p. 103

creation of a common internal market within EU, economic globalisation, and NIC technologies¹²⁶.

Even though most of SGLs are the responsibility of Länder and municipalities, in several fields the federal public operators remains important:

Deutsche Post, in the sector of postal services, and

Deutsche Bahn, holding a quasi monopoly in the sector of railway transport of passengers.

Both were subject to reorganisation of their status.

From 1989 to 1996¹²⁷, Deutsche Post was subject to the restructuring process of the telecommunications sector and liberalisation of the market. Federal postal services (Deutsche Bundespost) were subdivided into three relatively autonomous state-owned enterprises responsible respectively for postal services (since 1998, organised as Deutsche Post AG), financial services (Postbank), and telecommunications (Deutsche Telecom – 40% of its stocks were sold to private investors).

Railway system reform from 1993. The privatisation of 25% of the stocks of Deutsche Bahn was planned for 2008 but because of the financial crisis, has not been realised.

In other liberalised sectors, the public/semi-private operators run in competition with private providers:

in the sector of freight rail transport, the former monopoly of “Deutsche Bahn” concerning freight transport has been broken; Deutsche Bahn and some 5 private companies (like “railion”) share the market;

in the sector of air transport, the biggest supplier of air transport is the “Deutsche Lufthansa” a semi-private company; there also exist some other private companies, “BerlinAir” etc. and competition between about 10 private providers.

Currently, only some services such as inland water transport and maritime transport are completely in the hands of a multitude of private companies; in the later, the market is dominated by some operators (e.g. the Oetker company). The telecommunications and financial markets are also in competition between private providers.

B. “All public”

In East Germany, following German Unification, the entire constitutional and legal structure of the West Federal Republic replaced the legal order of the German Democratic Republic and within a short time the GDR's state-owned and state-run economy was dismantled and privatised.

In general, compared to other European countries, in Germany the development of private management has been more moderate, rather in the form of formal privatisations – changes of the legal status of public entities that begin in the 1990s (with the transformation of the federal railway administration (by January 1994 the railway system turned into a state-owned autonomous corporation) and those of post and telecommuni-

(126) *Idem*, p. 101-122

(127) Act of 1 July 1989 on the structure of postal services

cations in limited companies but half of shareholders remain public, January 1995).¹²⁸

C. Local autonomy

Since the 19th century the municipalities have engaged themselves in a broad spectrum of public services and public utilities. Nowadays, public administration is primarily a local government tasks. There are some rare national and regional services which are normally carry out by the municipality acting on behalf of the federal government (e.g. the handing out of passports) or on behalf of the regional governments. The Federal Constitution (Grundgesetz), ratified on 8 May 1949, provides the municipalities' right to autonomy (Article 28, paragraph 2). According to article 33, the division of competencies between Central State, Länder¹²⁹ and local communities is based on the principle of subsidiarity according to which the higher level exercises a competence only if it cannot be assumed by the lower level. The local authorities traditionally operate on a politically as well as (multi-)functionally strong local government model.¹³⁰ In the constitutional law doctrine and in judiciary practice this constitutional provision has been interpreted as an "institutional guarantee" which gives the local government the right to appeal to the federal constitutional court or a Land constitutional court with the allegation that this "right to local self-government" was infringed (for instance through Land legislation).¹³¹

The local public companies (Stadtwerke) are organised mainly as SARL (under private law), for their flexibility of statute, organisation and subsequent choice of the management – public company under private law (formal privatisation) or mixed/private companies (in fact, privatisation). The local companies are majority owned by the municipality: 45% are its unique property, 16% in co-management between public actors, and about 40% involve private participation, majority or minority. In half of the cities, in infrastructure services (transport, waste, for example), the municipality holds a minority of the capital of public enterprises. It is especially the services of sectors of infrastructure, and network services, which are outsourced.¹³²

The municipalities' competences vary considerably from one Länd to another and mainly concern:

Water supply is a standard responsibility of municipalities ("Stadtwerke")¹³³. Local public companies ensure

(128) M. Manganot, p. 81

(129) In East Germany, the five Länder that had been abolished by the communist regime at the beginning of the 1950s were reinstated after 3 October 1990 when the GDR's.

(130) Internationally German's local government system is counted, along with the Scandinavian countries, among these countries with strong local government. Hellmut Wollmann, "Evaluation and public-sector reform in Germany: Leaps and lags", in Hellmut Wollmann (ed.), Evaluation in public-sector reform: concepts and practice in international perspective, Edward Elgar Publishing, UK, 2003, p. 119

(131) Hellmut Wollmann, Paper prepared for the International Conference on Reforming local government: Closing the gap between democracy and efficiency, University of Stuttgart on September 26-27, 2002

(132) Sabine Kuhlmann, in J.-C. Boual et al., Les services publics en Europe, 2007, p. 13, 14

(133) Germany has a decentralised water supply and wastewater management structure. In total, there are approx. 6,400 water supply utilities in Germany. Most of them (about 5,000) are small publicly owned utilities at municipal level which account for approx. 21 percent of total water provision. 79 percent of water provided to private households and small trades is delivered by 1.300 undertakings. During the past few years, the share of municipal utilities decreased considerably: from 29 percent in 1993 to 4 percent in 2005. Control of water prices resides with the municipal control authority (Kommunalaufsichtsbehörde) or the competition authorities (Kartellbehörde), depending on the institutional arrangement for water service provision. Municipalities are free to choose the institutional arrangement of service provision and may opt for an organisational structure under public or under private law. The organisational arrangements under public law include (in order of decreasing integration into municipal administration): direct labour (Regiebetrieb), semi-autonomous municipal agency (Eigenbetrieb); inter-municipal associations (Zweckverband); public law corporation (Anstalt öffentlichen Rechts); and water and soil management associations (Wasser- und Bodenverbände). Organisational arrangements under private law include: municipal enterprise (Kommunale Eigengesellschaft); public enterprise (öffentliche Gesellschaft); delegation to a private enterprise (Beauftragung privater Unternehmen); operator Model (Betreibermodelle); concession agreement (Konzessionsmodell).

most of water delivery.

Waste water management services constitute a sovereign obligation of municipalities and are therefore dominated by local public companies¹³⁴.

Marketing of electricity¹³⁵ - Regional and local companies ensure the supply with little competition¹³⁶ In the sector of electricity production, transport and distribution, following a strong concentration process, there is a very strong position for about five big private and semi-private companies like “Vattenfall” or “Rheinisch-Westfälische Elektrizitätswerke–RWE” or EnBW compared to the multitude of former independent local “Stadtwerke” and so there is little competition.

Marketing of gas - Local public companies (Stadtwerke) ensure the supply with small scale competition. Local (urban) gas networks are the property of the municipalities or their public service companies (Stadtwerke). Big private and semi-private energy companies own the regional gas pipelines; about five companies share the market with little competition.

Heating service is offered by local public companies in middle sized and big cities.

Regional railway transport of passengers is ensured by Deutsche Bahn and regional public companies/semi-private companies without competition.

Regional and local passenger transport by bus or tramway is ensured by regional and local semi-public companies (“Stadtwerke”, e.g.: BVG - Berliner Verkehrs Gesellschaft) (for the local bus services, with competition when tendering for a license).

Hospital health services are a typical responsibility of local administration. Still there exist some regional specialized university hospitals (e.g.: centres for cancer treatment). There is little competition because of restrictions by public health assurance. Recently, private companies entered the health market (there is a trend that public hospitals are taken over by private companies e.g. Bertelsmann company). Ambulatory health services are the prime competence of doctors in their private capacity. Hospitals offer this service too, but on a smaller scale.

In the field of primary and secondary education public administration regulates the pupil's affiliation to a school (little private influence in that respect). But parents can choose a private school, which is an exception. Curricula are in the competence of regional governments, while the construction and maintenance of school buildings are a local competence. Teachers are normally regional public servants. The public schools are institutions without legal personality and autonomy.

The sector of childcare services (0-6 years), a voluntary competence of municipalities, is also characterised

(134) The largest share is held by municipal utilities as well as by inter-municipal associations. In total, there are more than 6,900 wastewater service providers in Germany. Private wastewater utilities mainly use management or operator contracts. The share of institutional arrangements under private law in wastewater discharge is 10 percent and in wastewater treatment 12 percent. The provision of wastewater management services in Germany is dominated by public enterprises. This is attributable to the classification of wastewater management as a sovereign obligation of the municipalities. The responsibility for service provision remains with the municipality. Control over wastewater charges is guaranteed by the municipal control authority (Kommunalaufsichtsbehörde)

(135) Production of gas and electricity has traditionally been a municipal competence from the 19th century. They have been an important pillar of the “Daseinsvorsorge” concept.

(136) Germany has a pluralistic (decentralised) structure with about 1.000 companies in the electricity market. Approx. 800 undertakings are Stadtwerke (local utilities) with diverse ownership structure. Approximately half of these are owned by one or several communes. The rest have public and private ownership. Share of local utilities end customers: 57%; during the past few years several new local utilities have been founded. This trend is likely to continue.

by a small amount of competition between municipal services and private and charity institutions; the public/mixed operators are the majority; as municipal institutions, kindergartens do not have legal personality and autonomy. Since 2005, the day nursery has become an important issue in family policy.

In higher education the universities are a regional competence. Their autonomy and legal personality are guaranteed by the Constitution. There are few private universities. In most subjects the student is free to choose his/her university; in some subjects like medicine there is a system of centrally assigned study places.

Schools for vocational training are a voluntary local government competence and are mainly provided in co-operation with private companies as schools are without legal personality and autonomy; the same applies to cultural services, such as theatres or opera houses; when public, cultural services are managed as municipal institutions without legal personality and autonomy.

Compulsory and social housing are regional competences executed by the municipalities; complementary social protection is a voluntary competence of municipalities; it is mainly provided by PPP between private companies and charity organisations.

The services of elderly care and care of the disabled are voluntary competences of municipalities. There is a very small amount of competition in this field; services are mostly provided by regional or municipal institutions but private enterprises are advancing in the market of elderly care; charity organisations are important mostly in the field of disabled care.

There are local public corporations in the financial sector; the warranty of local governments for the saving banks has been abolished under EU measures.

D. Delegated management and externalisation

For the management of public services, the infranational authorities or their associations (mostly unions of municipalities - Zweckverbände, but also associations of municipalities and regional associations) tend to have recourse to local public companies subject to company law. In practice, the vast majority of local public companies are still owned by the local communities (mainly in the sectors of water supply and energy, waste treatment, transport, housing, cultural services and hospitals).

The debate on the virtues of public-private partnership, inspired by the British and American models, started in the 1990s. The causes of this debate included the high cost of reunification, the new competition between local authorities across Europe to attract investment from international corporations, economic pressures from the rising costs of social benefits and the costs of modernising local infrastructure. The Law on acceleration of PPP (ÖPP Beschleunigungsgesetz) entered into force in 2005 and legislative initiatives also exist in some federal states.

Recent assessments indicate about 5% of PPP projects in the total local investment (school, transport, culture, urban development).¹³⁷

(137) Dominique Hoorens, *Les collectivités territoriales dans l'Union européenne. Organisation, compétences et finances*, Dexia, 2008, p. 163

E. “New Public Management”

Germany has been “a conspicuous latecomer to international NPM-guided modernisation discourse and practice”. Several reasons explain this situation: the “modern” aspects of the Federal Republic’s intergovernmental administrative system (multi-level government - very few executive functions at federal level and implementation of federal policies, legislation and administrative functions by the Länder, mostly by the local authorities, a certain ‘agencification’ both in federal/Länder relations as well as in the Länder/local government interface; subsidiarity - the delivery of personal social services has been left, under the traditional ‘subsidiarity’ principle, to a large extent to NGOs), and also a good record of administrative reforms over the years (particularly, the “planning era” of the 1960s and 1970s including the introduction of evaluation as an essential modernisation tool). When, in the early 1990s, Germany rapidly opened up to NPM this was essentially because of the public debts incurred by German Unification of 3 October 1990, the pressure to meet the budgetary parameters set by the Treaty of Maastricht and a local movement that propagated the managerial modernisation concept of New Steering Model (Neues Steuerungsmodell) meant to reshape the relations between local politics and administration and to apply to the public sector micro-economic concepts and instruments from private sector and private business managerialism. It is only in the late 1990s that the NPM modernisation movement reached the federal government level.¹³⁸

Important progress was made at the federal level within the modernisation programme “Modern State – Modern Administration” of December 1999, that proposed the introduction of “modern management which creates innovation by delegating responsibility and creates scope for performance through results-oriented monitoring: cost-to-performance accounting at federal level, ‘product budgets’ to federal authorities, inter-ministerial benchmarking, target-setting tool for steering at ministerial level and for steering their subordinate authorities, the use of the modern information technology. Meanwhile, at the Länder’s level the modernisation measures have been directed particularly at reducing costs and expenditures of administration rather than increasing its performance¹³⁹.

At the local government level, which filled for the New Steering Model-driven modernisation a growing number of communities have started employing management concepts. Currently, there is a general reference model for the modernisation of municipalities issued by the Centre for Management of Local Communities. The external dimension of this model is especially customer orientation and good practices. The internal dimension aims at the modernisation of structures and processes and the relationship between the board and the political and administrative level¹⁴⁰.

Evaluations of SGIs are not compulsory. From time to time there may be voluntary evaluations. There are also voluntary benchmarking efforts between several municipalities, but results are rarely published. The only policy field where compulsory evaluations are systematically applied is development aid. So, Germany lacks an evaluation culture.

(138) Hellmut Wollmann, “Evaluation and public-sector reform in Germany: Leaps and lags”, in Hellmut Wollmann (ed.), *Evaluation in public-sector reform: concepts and practice in international perspective*, Edward Elgar Publishing, UK, 2003, p. 118-139

(139) Hellmut Wollmann, *op. cit.*, 2003, p. 120-123

(140) Sabine Kuhlmann, in J.-C. Boual et al., *Les services publics en Europe*, 2007, p. 16, 17

F. Regulatory Agencies

In Germany, the Rechtsstaat principles and strong local self-government are institutionally and culturally entrenched in the country's tradition by the importance of the legal regulation of administrative activities and the application of law in the public administration's operations and the political and democratic responsibility of the local governments. The state's direct influence on the power sector is hence restricted to regulative action and promotion of new energy technologies, whereas investment decisions crucially depend on private enterprise and on local utilities.

In 2005 an independent regulator (Bundesnetzagentur, Federal Network Agency¹⁴¹) was established for supervision, regulation and customer rights referring to telecommunication, postal services, electricity, gas, and railroad services, which implemented an incentive oriented regulation by 1 January 2009.

Following the re-entry into force in 2004 of the Modernization Act on compulsory health insurance an independent agency for public health quality and effectiveness is being created.

III/ Social dialogue

In Germany¹⁴², social relations are characterised by the tradition of consensus¹⁴³, a veritable dialogue between the social partners and a 'dual system of interest representation' based on trade unions and employers who are solely responsible for collective bargaining¹⁴⁴. A specific social dialogue on SGIs does not exist in Germany. Since 2001, a number of occupational trade unions active in SGI fields – notably trade unions organising pilots, medical doctors or train drivers – have departed from joint bargaining associations and entered into separate collective bargaining. The dominant pattern since 1949 has been sectoral collective bargaining at industry level between trade unions and employer organisations¹⁴⁵; there are particular exceptions in some SGI sectors.

Industrial relations **in the public administration**¹⁴⁶ are shaped by the fact that a considerable number of employees (Beamte, career **public servants** that enjoy a special status determined unilaterally by the state) **are excluded from collective bargaining and have no right to strike**, and that all bargaining for

(141) <http://www.bundesnetzagentur.de/enid/2.html>

(142) References: studies on representativeness of the European social partner organisations in Germany (<http://www.eurofound.europa.eu/eiro/>)

(143) Less and less in the Public Service, probably in large part due to the changing economic and social development of these last 20 years and the increasing tensions, leading to a severe reduction in posts. Christian Moos, representing DBB, seminar on the social dialogue in Germany and France, 10-11 March 2009, Nantes, in Service public, n° 143, Juin 2009, p. 10

(144) In Germany, no institutionalised tripartite or bipartite economic and social council exists at national level.

(145) Sectoral bargaining usually takes place at regional level – that is, at the level of the federal states (Länder) – and some regions have the role of the pace setter in collective agreements. Negotiations at national level are rather rare.

In 2008, 46.8% of all valid collective agreements were company level agreements (Institute of Economic and Social Research, 2008), but they cover only a small minority of employees. In 2007, about 56% of all employees in western Germany and 41% of employees in eastern Germany were covered by sectoral collective agreements. Company-level agreements covered 7% of employees in western Germany and 13% of employees in eastern Germany (general data, including SGIs).

(146) The public service encompasses the authorities, courts and other institutions of the Central Government (Bund) and the federal states (Länder), local authorities and associations thereof, special-purpose associations, the Federal Railways Fund (Bundeseisenbahnvermögen, BEV) and, in the area of indirect public service, the Federal Employment Agency (Bundesagentur für Arbeit, BA), the Deutsche Bundesbank, social security bodies, and the legally independent public institutions.

the remaining employees takes place between the federal government and the unions¹⁴⁷. The most recent collective agreement on pay for public sector employees in all federal states (except Hesse and Berlin) was concluded in March 2009 and covers the period from 1 January 2009 to 31 December 2010. There is only one bargaining unit and two separate sets of negotiations, one for central and local government employees¹⁴⁸ and one for employees in regional government¹⁴⁹.

More than half of the employees working in **public sector hospitals** are covered by **multi-employer agreements**, while coverage rates in **private hospitals** are below 10% due to **single-employer agreements**¹⁵⁰. Privatisation has led to a steady decline in the coverage rate of collective agreements. The employer organisation representing private hospitals (BDPK) cancelled the multi-employer collective agreement in 1993 and since then, a new agreement has not been concluded. Company agreements covering all hospitals owned by a private company are exceptional; single-employer agreements typically only cover a minority of the private hospitals. According to trade union estimations, only about one third of all West German hospital sector employees and around a quarter of all East German hospital workers are covered by collective agreements. This estimation is based on the fact that about one third of all hospitals are run by charity organisations and about one third are private companies which have not concluded a collective agreement¹⁵¹.

In the sector of **postal services**, Deutsche Post AG is the main provider of postal services. Among other companies, Deutsche Post is represented by the Employer Association Postal Services (Arbeitgeberverband Postdienste e.V., AGV Postdienste) which was established in August 2007. The unions Ver.di (United Services Union - Vereinte Dienstleistungsgewerkschaft) and DPVKOM (which represents civil servants since Deutsche Post as the national public provider still employs civil servants) conclude collective agreements with Deutsche Post AG. In the mail delivery market, a very high proportion of the employees are covered by **the company agreement of Deutsche Post AG**. No bi- or tripartite bodies exist in the German post and courier services sector. Following a collective agreement negotiated between the United Services Union (ver. di) and the Postal Services Employers' Association (dominated by the market leader Deutsche Post AG), which was declared generally binding (other collective agreements also existed in the sector at that time), at the end of 2007, the German government issued a decree on mandatory working conditions for mail delivery services, which enabled the government to introduce a national minimum wage for large parts of the mail delivery services which were included in the Posted Workers Act. But this decree was invalidated by the German Federal Administrative Court: on January 28th, 2010 for formal offence (vice de forme).

(147) There are complex situations in some public SGI fields, such as education, where employees (teachers) traditionally were almost exclusively employed as career civil servants, but in recent years, some federal states in particular in eastern Germany have begun to employ teachers as public sector employees. This has led to substantial differences and many strikes (teachers are among the best organised employees in the public sector at federal state level).

(148) Between the United Services Union (Vereinte Dienstleistungsgewerkschaft, ver.di) and the bargaining association of the German Civil Service Federation/Association (Deutscher Beamtenbund und Tarifunion, dbb) with representatives of the Federal Government and the Municipal Employers' Association (Vereinigung kommunaler Arbeitgeberverbände, VKA) on general framework collective agreement (Tarifvertrag für den öffentlichen Dienst, TVöD) for employees in the federal and municipal public sector (about 2.1 million employees covered by the agreement of 9 February 2005).

(149) There used to be joint bargaining for the whole public sector but the Employers' Association of German Länder (Tarifgemeinschaft deutscher Länder, TdL) left the negotiations after 2003. Individual regions (Bundesländer) set the terms and conditions of the Beamte (the German title for those employees with specific status) they employ by regulation rather than negotiation. In general, their terms and conditions follow those of other employees, whose pay and conditions are set by collective bargaining.

(150) The coverage rate of white-collar and blue-collar hospital workers, excluding medical doctors, is as follows: working in west German public hospitals – 51.8%; working in east German public hospitals – 46.1%; working in private hospitals – west 3%, east 7.2%. In West Germany, about 55.6% and in East Germany about 59.1% of all medical doctors working in public hospitals are covered. However, in private hospitals, collective agreements only cover 5.3% (west) and 15.5% (east) of medical doctors.

(151) According to German law, church-owned hospitals or belonging to not-for-profit organisations are excluded from collective bargaining.

In **railway transport**, the majority of the employees either work for the German rail company Deutsche Bahn (DB) or its subsidiaries or for railway companies who are members of the two employer associations in the sector. According to trade union sources, most of the sector's employees are covered by **multi-employer collective agreements**. Two multi-employer collective wage agreements exist, which together cover a majority of the employees throughout Germany: a collective agreement on railways (Tarifvertrag für die Bediensteten der nichtbundeseigenen Eisenbahnen und Kraftverkehrsunternehmen – Eisenbahntarifvertrag, ETV), which covers private and public companies other than companies of the DB group¹⁵²; and the collective wage agreement for employees of various companies and subsidiaries of the DB group (Entgelttarifvertrag für die Arbeitnehmer verschiedener Unternehmen des DB Konzerns, KonzernETV)¹⁵³. It covers privatised companies and subsidiaries of the DB group, including railway companies as well as companies in the logistic, bus transportation and shipping sector. Data on companies that are not members of the employer associations were not available and trade union information on these companies is scarce.

The civil aviation sector is highly fragmented in Germany and the bargaining landscape is split and volatile. With privatisation and liberalisation of the sector **the importance of multi-employer bargaining** has diminished. In fact, only one package of multi-employer agreements remains, covering the remaining public employees at airports in local public ownership¹⁵⁴. The majority of companies in the industry conclude single-employer agreements so most of the workers in civil aviation are covered by agreements at company or establishment level.

In **the electricity sector**¹⁵⁵, there are sectoral and company agreements: **company agreements in generation**, and a **national branch-level collective agreement only for supply companies** (TV-V) (in 2007). The bargaining covers almost 100% of the sector.

The gas sector is dominated by a few large companies and their subsidiaries¹⁵⁶. A clear distinction between single-employer agreements and multi-employer agreements does not hold in the case of the gas sector. Apart from **multi-employer agreements** and **single-employer agreements** there is **also a hybrid form of collective agreement hardly known elsewhere**: In the case of RWE, E.On Ruhrgas and Vattenfall and their subsidiaries the respective collective agreements are concluded between the employers' association and a trade union. Whereas one might define these collective agreements as **company agreements**, the ver.di union considers them to be **sectoral collective agreements** arguing that they cover a broad range of local and regional subsidiaries including some companies formerly owned by local municipalities. The number of employees covered by either single-employer agreements or the main companies' (RWE, the E.On Ruhrgas or the Vattenfall) collective agreements is greater than the number of employees covered by the traditional forms of multi-employer agreements. There is no **sectoral collective agreement at national level** apart from the collective agreement concluded between ver.di and the municipal employers' associa-

(152) It was first concluded by AGVDE and various other trade unions in 1966 and has been renewed since then.

(153) The most recent was signed on 31 January 2009 between Transnet, GDBA and GDL; it is considered to be a multi-employer collective agreement by the bargaining parties. The settlement applies to all employees in the company, irrespective of the trade union to which they belong and will expire on 31 July 2010.

(154) The so-called Collective Agreement for Airports (Tarifvertrag für die Sparte Flughäfen, TV-F). The agreement comprises the provisions of the Public Sector Collective Agreement (Tarifvertrag für den öffentlichen Dienst, TVöD) and the specific section on airports (Besonderer Teil Flughäfen, BT-F).

(155) Torsten Brandt, Thorsten Schulten, Liberalisation and privatisation of public services and the impact on labour relations: a comparative view from six countries in the postal, hospital, local public transport and electricity sectors, 2007, PIQUE Project, <http://www.pique.at>

(156) A few large gas companies procure gas in Germany and abroad and deliver gas to regional companies which deliver gas to local companies. Several hundreds of public and private local and regional companies supply gas to the end consumer.

tion (Kommunaler Arbeitgeberverband, KAV) covering municipal gas delivering companies.

Sources of national law on SGIs

Sector	Legal references	Web sites
Telecommunications	Gesetz über Fernmeldeanlagen von 1989; Telekommunikationsgesetz vom 25.07.1996	http://www.gesetze-im-internet.de/kg_2004/___152.html
Postal services	Poststrukturgesetz vom 08.06.1989; Postgesetz vom 1.1.1989	http://www.gesetze-im-internet.de/postg_1998/index.html
Production of electricity	Gesetz über die Elektrizitäts- und Gasversorgung vom 7. Juli 2005 (Energiewirtschaftsgesetz – EnWG)	http://bundesrecht.juris.de/enwg_2005/___1.html
Electric networks (transport-distribution)	Gesetz über die Elektrizitäts- und Gasversorgung vom 7. Juli 2005 (Energiewirtschaftsgesetz – EnWG)	http://bundesrecht.juris.de/enwg_2005/___1.html
Marketing of electricity	§§ 20, 36 EnWG	http://bundesrecht.juris.de/enwg_2005/___1.html
Gas transport-distribution	Gesetz über die Elektrizitäts- und Gasversorgung vom 7. Juli 2005 (Energiewirtschaftsgesetz – EnWG)	http://bundesrecht.juris.de/enwg_2005/___1.html
Marketing of gas	Gesetz über die Elektrizitäts- und Gasversorgung vom 7. Juli 2005 (Energiewirtschaftsgesetz – EnWG)	http://bundesrecht.juris.de/enwg_2005/___1.html
Railway transports of passengers	Allgemeines Eisenbahngesetz von 1935 idFv. 27.12.1993 (AEG) Gesetz zur Neuordnung des Eisenbahnwesens vom 27.12.1993	http://www.gesetze-im-internet.de/aeg_1994/___1.html ; http://de.wikipedia.org/wiki/Eisenbahnneuordnungsgesetz
Freight rail transport	Allgemeines Eisenbahngesetz von 1935 idFv. 27.12.1993 (AEG) Gesetz zur Neuordnung des Eisenbahnwesens vom 27.12.1993	http://www.gesetze-im-internet.de/aeg_1994/___1.html
Regional and local transport of passengers	Gesetz zur Regionalisierung des öffentlichen Personennahverkehrs (RegG) vom 27. Dezember 1993	http://de.wikipedia.org/wiki/Eisenbahnneuordnungsgesetz
Air transport	Luftverkehrsgesetz vom 1.10.1923	http://de.wikipedia.org/wiki/Luftverkehrsgesetz
Inland water transport	Binnenschiffahrtsstraßen-Ordnung (BinSchStrO) vom 15.10.1993	http://de.wikipedia.org/wiki/Binnenschiffahrtsstra%C3%9Fen-Ordnung
Maritime transport	Seeschiffahrtsstraßen-Ordnung (SeeSchStrO) vom 3.5.1971	http://de.wikipedia.org/wiki/Seeschiffahrtsstra%C3%9Fen-Ordnung
Water	Trinkwasserverordnung vom 21.5.2001	http://www.dvgv.de/wasser/recht-trinkwasserverordnung/trinkwasserverordnung/abschnitt-1/
Waste water	Abwasserverordnung vom 21.3.1997 idFv 17.4.2004	http://de.wikipedia.org/wiki/Abwasserverordnung
Heating	Verordnung über allgemeine Bedingungen für die Versorgung mit Fernwärme (AVBFernwärmeVO) Verordnung des Bundesministers für Wirtschaft vom 20. Juli 1980 (BGBl. I, S. 742) - geändert durch die Verordnung zur Änderung der energiesparenderen Vorschriften vom 19. Januar 1989 (BGBl. I, S. 112).	http://de.wikipedia.org/wiki/Fernw%C3%A4rme#Rechtliche_Grundlagen
Broadcasting	Staatsvertrag für Rundfunk und Telemedien (kurz Rundfunkstaatsvertrag oder RStV) Zehnten Staatsvertrages zur Änderung rundfunkrechtlicher Staatsverträge vom 19. Dezember 2007 (GBl. 2008, S. 237), Telemediengesetz vom 1.3.2007	http://de.wikipedia.org/wiki/Telemediengesetz
National public administration	Art. 70 Basic Law; Bundesverwaltungsverfahrensgesetz vom 21.9.1991 (BGBl. I S. 3050)	http://dejure.org/gesetze/BVwVWG
Regional or local public administration	Landesverwaltungsverfahrensgesetze	http://www.zendas.de/recht/texte/vwvfg.html
Hospital health services	Landeskrankenhausgesetz Baden-Württemberg In der Fassung vom 29.11.2007	http://www.rechtliches.de/BaWue/info_LKHG.html
Ambulatory health services	§ 4 Sozialgesetzbuch I ; §§ 27, 72 ff Sozialgesetzbuch V, § 557 Reichsversicherungsordnung	http://www.sozialgesetzbuch-sgb.de/
Primary and secondary education	Landesschulgesetze, eg: Schulgesetz für Baden-Württemberg (SchG) in der Fassung vom 1. August 1983 (GBl. S. 397; K. u. U. S. 584),	http://www.smv.bw.schule.de/Gesetze/schulgesetz.pdf
Higher education	Gesetz über die Hochschulen und Berufsakademien in Baden-Württemberg (Landeshochschulgesetz – LHG), in Kraft getreten am 1.1.2005 Gesetz über die Universitäten im Lande Baden-Württemberg (Universitätsgesetz – UG) vom 1. Februar 2000, Gesetzblatt für Baden-Württemberg Nr. 5 vom 28. März 2000, S. 208	http://www.hof.uni-halle.de/steuerung/hg_uebersicht/uebersicht.htm http://www.mwk-bw.de/Hochschulen/Hochschulrecht.html
Vocational training	Berufsbildungsgesetz vom 1.9.1969 (BBiG)	http://de.wikipedia.org/wiki/Berufsbildungsgesetz_(Deutschland)
Compulsory social protection	Sozialgesetzbuch XII	http://www.sozialgesetzbuch-sgb.de/
Complementary social protection	§ 28 Abs. 1 S. 2 SGB XII	http://www.sozialgesetzbuch-sgb.de/
Social housing	Sozialgesetzbuch	http://www.sozialgesetzbuch-sgb.de/
Childcare services (0-6 years)	Landeskindergartengesetze Eg: Kindergartengesetz BW: Gesetz über die Betreuung und Förderung von Kindern in Kindergärten, anderen Tageseinrichtungen vom 01.01.2009	http://www.landesrecht-bw.de/portal/?quelle=pur&query=kTiaG&psml=bsba_wueprod.psml&doktyp=Gesetze&max=true
Care of the disabled	Sozialgesetzbuch IX (dort: § 2 Abs. 1),	http://www.sozialgesetzbuch-sgb.de/
Elderly care	Pflegeversicherungsgesetzes (SGB XI)	
Financial services	Landessparkassengesetze; eg: Sparkassengesetz für Baden-Württemberg In der Fassung vom 19.7.2005,	http://www.rechtliches.de/BaWue/info_SparkassenG.html
Cultural services	Not regulated by law, voluntary regional and municipal services	

PUBLIC SERVICES IN DENMARK

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

In modern times, Denmark had always three levels of government: the central government at the state level and two sub-national levels of government – since the amalgamation reform in force at 1st January 2007, 5 regional regions (regioner) and 98 municipalities (kommuner).¹⁵⁷ The autonomy of local administration was proclaimed by the first democratic Constitution in 1849 and it is regulated by law. The local government position was consolidated in the 1970s by the reform of decentralisation. Recently, the 2007 reform has changed the distribution of powers between the central government and local authorities and between local authorities.

Even though many SGEs sectors have been organised as publicly owned enterprises, the public character of ownership has never been an important political issue in Denmark. At the same time, large-scale nationalisation after the Second World War did not occur in Denmark to the same extent as in many other West European countries. Moreover, it is quite characteristic that just as a relatively large share of the Danish public sector has been and still is controlled by local authorities, so also a large number of the publicly owned corporations are controlled locally¹⁵⁸. The “public services” recognition is based on the legislator intervention.

National concepts such as public/private responsibility are more common than the Community terms: services of general interest (Tjensteydelser af almindelig interesse); Services of general economic interest (Tjensteydelser af almindelig økonomisk interesse); Non-economic services of general interest (Ikke-økonomiske tjensteydelser); Social services of general interest (Social service / af almindelig interesse).

Terms in TEU and TFEU	Danish terms in TEU and TFEU ^{table 19}
Services of general interest – SGIs	tjensteydelser af almen interesse
Services of general economic interest – SGEIs	tjensteydelser af almen økonomisk interesse
Non-economic services of general interest – NESGIs	ikke-økonomiske tjensteydelser af almen interesse
Public service	offentlig tjensteydelse

(157) The Nordic countries are characterised by widely dispersed populations and also rather few municipalities but with a great deal of self-governance; from an early stage, they have been responsible for accomplishing the national welfare programmes. Therefore, the municipalities represent a major part of the public expenditure.

(158) O.-J. Olsen, in Ulla Neegaard, “Regulation of the provision of public services in Denmark”, in Gérard Marcou, Franck Moderne, Droit de la régulation, service public et intégration régionale, l’Harmattan, 2005

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs' organisation?¹⁵⁹

Central	Regional	Local
Telecommunications	Railway transport of passengers	Primary and secondary education
Postal services	Water	Compulsory social protection
Production of electricity	Waste water	Childcare services (0-6 years)
Electricity networks (transport-distribution)	Heating	Care of the disabled
Marketing of electricity	Hospital health services	Elderly care
Gas transport-distribution	Ambulatory health services	Water
Marketing of gas	Elderly care	Waste water
Railway transport of passengers		Heating
Freight rail transport		
Regional and local transport of passengers		
Air transport		
Broadcasting		
Hospital health services		
Ambulatory health services		
Primary and secondary education		
Higher education		
Vocational training		
Compulsory social protection		
Complementary social protection		
Social housing		
Cultural services		

(159) Maritime transport and inland water transport have never been part of the public domain in Denmark.

B. Sectoral organisation and trends

Status of the operators

National public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
<p>Railway transport of passengers</p> <p>Freight rail transport</p> <p>Broadcasting</p>	<p>Wastewater</p> <p>Hospital health services</p> <p>Ambulatory health services</p> <p>Childcare services (0-6 years)</p>	<p>Regional and local transport of passengers</p> <p>Heating</p> <p>Primary and secondary education</p> <p>Social housing</p> <p>Care of the disabled</p> <p>Elderly care</p>	<p>Vocational training</p> <p>Care of the disabled</p> <p>Elderly care</p> <p>Compulsory social protection</p>		<p>Postal services</p> <p>Production of electricity</p> <p>Air transport</p>	<p>Telecommunications</p> <p>Electricity networks</p> <p>Marketing of electricity</p> <p>Gas transport-distribution</p> <p>Marketing of gas</p> <p>Railway transport of passengers</p> <p>Freight rail transport</p> <p>Regional and local transport of passengers</p> <p>Inland water transport</p> <p>Maritime transport</p> <p>Heating</p> <p>Hospital health services</p> <p>Ambulatory health services</p> <p>Primary and secondary education</p> <p>Complementary social protection</p>

SGI markets

Liberalised market and competition	Liberalised market Public operators dominant	Liberalised market Private operators dominant	Public monopoly	Private monopoly	No market
Telecommunications Regional and local transport of passengers (few cases) Air transport Maritime transport Heating Social housing	Railway transport of passengers Waste water Broadcasting Hospital health services Ambulatory health services Vocational training (PPP) Compulsory social protection Childcare services (0-6 years) Care of the disabled Elderly care Primary and secondary education Higher education Regional and local transport of passengers (local/regional monopolies)	Complementary social protection Freight rail transport	Postal services (legally, competition) Water		National public administration Regional and local public administration

Main financing methods of SGIs

Fees/payment by users/clients	Public subsidies	Tax funded	Public subsidies to individuals
Telecommunications Postal services Production-transport-distribution of electricity Gas-transport distribution Railway transport of passengers Freight rail transport Regional and local transport of passengers Air transport Inland water transport Heating Broadcasting Social housing Childcare services (30%)	Broadcasting Social housing Childcare services Cross-subsidies Regional and local transport of passengers Inland water transport	Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Compulsory social protection Complementary social protection Care of disabled Elderly care	Production-transport-distribution of electricity Gas transport-distribution Heating

Authorities responsible for setting pricing and/or tariff policies

Parliament	Central government	Local government	Regulatory agencies	Health insurance institute of Slovenia
Postal services Broadcasting	Railway transport of passengers	Childcare services (0-6 years)	Telecommunications	

II/ Approaches

A. The model of public administration and national public companies

In the past public ownership has been an integral part of Nordic industrial policy. From the post-war period, the Danish public enterprise sector was extremely small. Public ownership has been prevalent in infrastructure industries (transport, water, and telecommunications) and also in banking (GiroBank). In the post-war period, the nationalisation of industrial enterprises was not seriously considered but, until the 1980s, a broadly developed social Welfare State was supported.

In the early 1990s, the government began to change the legal status of public enterprises to limited liability companies and later sold shares in some of these companies. Privatisation really started to be taken more seriously in 1993 and evolved gradually. The sale of a 51% holding in the post office's banking business, GiroBank, in 1993 was the country's first privatisation sale. Other sales involved the telecom business Tele Danmark (largest state-owned enterprise): in 1994, a restructuring of the share capital reduced the state's holding from 89% to 51%.¹⁶⁰ In the period 1995-2008 the restructuring of the public sector continued with corporatisation in other sectors such as the postal service (1995), telecommunications, etc.

Privatisation was not attributed to a policy of convergence oriented to EMU, since the country did not suffer fiscal pressures or public debt. Privatisation and corporatisation were influenced by competition policies and the EU single market. The pressures to abandon State protection in a number of traditional monopoly areas and the demand for keener international competition have been the key factors leading to the reorganisation of firms¹⁶¹. Also, privatisation did not appear to be ideological and efficiency as such was not an issue. The most important motive for privatisation or conversion are the need to 'strengthen the commercial aspects' of a company's activities, new technologies, need to assure strategic cooperation, increasing international competition because of EU-initiatives and changes in domestic markets (The Danish Policy of Privatisation, 1996). Today, Denmark operates highly liberalised markets in telecommunications, air transport and maritime transport.

In a comparative perspective, a number of activities that have been privatised in other countries remain in

(160) Johan Willner, "Privatisation in Finland, Sweden and Denmark. Fashion or necessity?", in *Privatisation in the European Union: theory and policy perspectives*, Routledge, 1998, p. 173

(161) Judith Clifton, Francisco Comin, Daniel Diaz Fuentes, *Privatisation in the European Union : public enterprises and integration*, Springer, 2003, p. 60

public ownership: Railways (DSB), Postal services (Postvæsendet), SAS Danmark (complex process of reorganisation, partly privatised, the rest is owned by the three Scandinavian governments; the Danish government share is less than 15 %), Dansk Olie og Naturgas (DONG).

B. Local autonomy

The Constitution of 1953 guarantees the autonomy of local governments. In the 1970s a number of public sector areas were transferred from central to local government authority. The increasing role of local government has taken place in areas where traditionally local governments were the main public provider, for example in education, social and health care services¹⁶².

Since the 2007 reform, the local authorities are in charge with most of public services and handle a very large part of the public functions: primary and special education, adult education, social action (elderly care, pensions, etc.), water, waste, electricity, some health services, etc.

The regions are responsible for health care, social work, regional transport, etc.¹⁶³

The municipalities and regions can create local public companies on their own, in cooperation with other local authorities or in partnership with private shareholders. Public service enterprises such as water, electricity and waste have been managed by the local and regional authorities or user cooperatives. The subsidized private sector plays an important role in education and social and health care services. Since 2006, the level of local authority participation in the capital of a local public company is limited to 49% whatever the company form. The local authorities who hold the majority in the existing companies must sell their shares before 1 January 2012¹⁶⁴.

C. “New public management”

In Denmark, the NPM reforms at the central level were focused on the setting of performance targets, performance-based contracts and reporting through annual reports. Contracts in general, contract agencies specifically, have been the cornerstone of the public management reform movement in the 1990s. Denmark has been more reluctant to implement the marketisation aspect of NPM; it tries out new management ideas but not primarily those concerned with markets and contracting¹⁶⁵. That explains the less developed PPP policy and relatively few PPP projects. The official Danish PPP policy paper (Action Plan for Public-Private

(162) Norway and Denmark were forerunners when it comes to progressive social policies. During the first decades of the 20th century Danish cities accomplished far-reaching reforms of elementary schooling, health care, social support and housing conditions. These local measures preceded the forthcoming building of the Danish welfare state after 1945. They can be seen as a form of municipal socialism, defined as socialism in the local setting but not nationally. Lars Nilsson, Local self-government in northern Europe in the 19th and 20th centuries, Conference paper 2009, International Commission for the History of Towns

(163) For an extensive list of the division of competencies between the levels following the 2007 reform, see Vrangbæk og Bundgaard (2007) Reform by Coincidence? Explaining the Policy Process of Structural Reform in Denmark, *Scandinavian political studies*, 30(4), pp. 491-520.

(164) Dominique Hoorens, *Les collectivités territoriales dans l'Union européenne. Organisation, compétences et finances*, Dexia, 2008, p. 266

(165) The same approach as in the two other Scandinavian states.

Partnerships) was first issued in January 2004¹⁶⁶.

As concerns SGI evaluation, the general trend with respect to less social and health services is that the government provides the citizens with light consumer information. However, with respect to the social, education and health sector there is a myriad of various bench-marking exercises which are all compulsory for all service providers, and which employ centrally produced criteria and indicators. These exercises include both self-evaluations as well as studies of the end-user perceptions of the services provided. And they are a recurrent theme every year.

E. Regulatory Agencies

After the Second World War the Danish State influence upon economic life has grown significantly. Strongly centralized control and intervention have generally been viewed as absolutely necessary¹⁶⁷. In the majority of public services public ownership was chosen.

In a sectoral perspective, the changes in regulation were significantly influenced by the EU directives of relevance in several SGI fields.

III/ Social dialogue

Denmark¹⁶⁸ has one of the oldest institutionalised bargaining systems in an industrialised, capitalist society. It started at the end of the 19th century. The so-called '**Danish model**' is characterised by the institutionalisation of conflicts, relatively high membership rates¹⁶⁹, and a well-established pattern of cooperation fostering industrial peace and stability¹⁷⁰. The collective bargaining system is characterised by multi-level regulation and a centrally controlled decentralisation – also referred to as 'centralised decentralisation'. A basic agreement and a cooperation agreement are negotiated at national level which have a longer validity period than the collective agreements at sectoral level and build a framework for negotiating the sectoral agreements by defining fundamental procedural rules. The sectoral agreements, in turn, are used as a comprehensive framework that is implemented at company level and increasingly supplemented by company agreements. The principal level for **collective bargaining** in Denmark is **the sectoral level**¹⁷¹. Collective agreements are binding in accordance with the basic agreements reached between the social partners in the private as well as public sector¹⁷². Non-union members working in a company affiliated to an employer organisation are also

(166) Carsten Greve, Graeme Hodge, "Public-Private Partnership: a comparative perspective on Victoria and Denmark", in Tom Christensen, Per Laegreid, *Transcending new public management: the transformation of public sector reforms*, Ashgate, 2007, 179

(167) *Ibid.*, p. 220

(168) References: studies on representativeness of the European social partner organisations in Denmark (<http://www.eurofound.europa.eu/eiro/>)

(169) The density of employer organisations in Denmark is relatively high in a European perspective. In contrast to the trade union side, membership density on the employer side has been relatively stable in recent decades. The coverage rate of collective agreements was 83% in 2008, thus ranking comparably high among the EU Member States.

(170) In Denmark, there is a long tradition for regulating labour market issues by way of collective bargaining between the social partners rather than by way of legislation.

(171) In recent decades, the industrial relations system has undergone some fundamental changes. The most important change seems to be the tendency towards decentralisation of the collective bargaining system.

(172) The share of public-sector employees constitutes about one third of the workforce.

covered by the collective agreement signed by the organisation.

In Denmark, the majority of staff working **in the public sector** are employed as statutory civil servants or solely under a collective agreement. In addition, a number of staff are employed on civil servant-like conditions and a small number according to regulations or on individual contracts¹⁷³. Most issues are regulated by collective agreements¹⁷⁴. Approximately 95% of state personnel are covered by the negotiating competence of three central organisations¹⁷⁵ which have established a joint bargaining committee, the Danish Central Federation of State Employees' Organisations (Centralorganisationernes Fællesudvalg, CFU). The main agreement for statutory civil servants is concluded by the Ministry of Finance (represented by the State Employer's Authority¹⁷⁶) and CFU, whereas the main agreement for contractual staff is concluded by the Ministry of Finance and each of the 3 central organisations (StK, SKAF and AC) which form CFU. Main agreements with other central government employers are concluded by the central organisations or their affiliated trade unions. In the local government some employees have a specific status and they are covered by collective bargaining, which does not require legislation to take effect. There are negotiations between the union and the local government employers' association KL.

There is currently no civic dialogue around SGIs in Denmark in the sense that certain civil society actors are included in discussions on e.g. prices and tariffs. It is possible to identify single examples of interventions from associations of senior citizens or consumer associations, but this is not institutionalised.

As in other parts of the public sector, the **hospital sector** has a large number of trade unions, while it has only one employer. The unions come together in bargaining groups that sign the significant parts of the collective agreement with the employer on behalf of their member unions. The sector is entirely covered by collective bargaining.

Collective bargaining in the municipal and regional sectors generally takes place at two levels. On the one hand, bargaining takes place at the employer and organisational level. At the same time, the trade unions are united under two bargaining groups. The negotiations take place according to a specific plan which varies between the levels. The regions, which are represented in the negotiations by the Wage and Rate Committee of Danish Regions (Regionernes Lønnings- og Takstnævn, [RLTN](#)), negotiate on their own.

In **the postal sector**, Post Denmark is the leading employer and it is also one of the country's largest workplaces. **Collective agreement coverage is high on average (estimated at 90%)** excepting certain areas concerning the distribution of advertising material. The sector is dominated by **multi-employer agreements**.

(173) In addition to the statutory regulations for civil servants concerning basic employment conditions and pension schemes, there are agreements regulating working conditions for civil servants and contractual staff. Those for civil servants are based on the statutory regulations. There is no possibility of going on strike in connection with the renewal of collective agreements. Employment under collective agreements is based on collective agreements concluded by the Ministry of Finance and the employees' organisations. It is possible to go on strike in connection with the renewal of collective agreements, but not during the peace period. The contractual staff – whether based on a collective agreement or an individual contract – are encompassed by similar regulations as those of the private sector. Employment based on an individual contract may only be used in cases where there exists no agreement covering the area, or if the organisation with which the agreement has been concluded gives it approval.

(174) Pay is only regulated by collective agreements in the central government sector.

(175) The Association of Danish State Employees' Organisations (Statsansattes Kartel, StK), the State and Municipal Employees' Joint Bargaining Secretariat (Stats og Kommunalt Ansattes Forhandlingsfællesskab, SKAF), the Confederation of Professional Associations (Akademikernes Centralorganisation, AC). SKAF is a cooperation between three central organisations on their own: the Association of Public Servant Trade Unions (Statstjenestemændenes Centralorganisation II, CO II), the Association of Danish Teachers' Organisations (Lærernes Centralorganisation, LC), the Association of Danish Contractual Employees' Organisations (Overenskomstansattes Centralorganisation, OC)

(176) The employer in central government is the Minister of Finance – at the bargaining table represented by the State Employer's Authority (Personalestyrelsen) which is responsible for collective bargaining (even though the minister signs the final agreement).

In the **electricity sector** collective bargaining takes place at **sectoral** and **company level**. The **gas sector** is dominated by large companies which have signed the **sectoral collective agreements**. In the gas sector there are also three gas distribution companies owned by the municipalities and private companies. All agreements in the sector are **multi-employer agreements**. The industrial cartel (the Central Organisation of Industrial Employees - CO-industri) negotiates the central collective agreement to which the gas sector belongs.

As in other sectors of the Danish labour market, **the railways sector** has experienced an increased de-centralisation of bargaining competences to the lower level, that is, company level and local. The railways sector belongs to both of these levels of the public sector, as well as to the private sector; however it remains mainly state owned, with a small section in private ownership and a smaller local section. In the public sector the two main bargaining units are at state level and local government level. As the presence of the state in railways is large, the sector is mostly still part of the state-level collective bargaining system. This system consists of a hierarchy where bargaining units, comprising central organisations or cartels of trade unions, negotiate the main agreements. These **national-level agreements** are then followed by agreements at company level. The private operators are all members of the only employer organisation in railways.

In **air transport** trade union density and collective agreement coverage is significantly high (almost 100%). About 1% of the agreements are concluded through single-employer bargaining, whereas the rest of the agreements are concluded through **multi-employer bargaining**.

Sources of national law on SGIs

Sector	Legal references	Web sites
Telecommunications	Bill L. 248. 2000 Act on Competitive Conditions and Consumer Interests in the Telecommunications Market	http://en.itst.dk/law-material/lilarkiv/acts/Act%20on%20Competitive%20Conditions%20and%20Consumer%20Interest%20in%20the%20Telecommunications%20Market.pdf
Postal services	Bill L. 409. 2002 Post Danmark A/S Act Bill L. 472 Lov om postbefordring	https://www.retsinformation.dk/Forms/R0710.aspx?id=22298
Production of electricity	The five bills on Danish electricity reform, as adopted by Folketinget on 28. May 1999 (L. 234-238)	http://www.ens.dk/en-US/Info/Legislation/Danish_Electricity_Reform/Sider/Forside.aspx
Electric networks (transport-distribution)	The five bills on Danish electricity reform, as adopted by Folketinget on 28. May 1999 (L. 234-238)	http://www.ens.dk/en-US/Info/Legislation/Danish_Electricity_Reform/Sider/Forside.aspx
Marketing of electricity	The five bills on Danish electricity reform, as adopted by Folketinget on 28. May 1999 (L. 234-238)	http://www.ens.dk/en-US/Info/Legislation/Danish_Electricity_Reform/Sider/Forside.aspx
Gas transport-distribution	Consolidation of the Act on Natural-gas supply (L. 287) 2005.	http://www.ens.dk/da-DK/Info/Lovstof/Hoeringer/2009/Documents/Eng_udgave_Lovbekg_287_20042005_Naturgas.pdf
Railway transport of passengers	Bill 567 Lov om jernbane	https://www.retsinformation.dk/Forms/R0710.aspx?id=115614
Freight rail transport	Bill 567 Lov om jernbane	https://www.retsinformation.dk/Forms/R0710.aspx?id=115614
Regional and local transport of passengers	Bill 567 Lov om jernbane	https://www.retsinformation.dk/Forms/R0710.aspx?id=115614
Air transport	Bill 731 (2007) Lov om luftfart	https://www.retsinformation.dk/Forms/R0710.aspx?id=22682
Water	Lov om vandforsyning m.v. L. 1026, (2008)	https://www.retsinformation.dk/Forms/R0710.aspx?id=121065
Waste water	Lov om vandforsyning m.v. L. 1026, (2008)	https://www.retsinformation.dk/Forms/R0710.aspx?id=121065
Heating	Lov om varmforsyning. L. 347 (2005)	https://www.retsinformation.dk/Forms/R0710.aspx?id=22435
Broadcasting	Lov om radio- og fjernsynsvirksomhed. L. 429 (2009)	https://www.retsinformation.dk/Forms/R0710.aspx?id=124960
Hospital health services	Sundhedsloven L. 95 (2008)	https://www.retsinformation.dk/Forms/R0710.aspx?id=114054
Ambulatory health services	Sundhedsloven L. 95 (2008)	https://www.retsinformation.dk/Forms/R0710.aspx?id=114054
Primary and secondary education	Lov om folkeskolen L. 593 (2009)	https://www.retsinformation.dk/Forms/R0710.aspx?id=125580
Higher education	Lov om uddannelsen til studentereksamen (Gymnasieloven) L. 791 (2008)	https://www.retsinformation.dk/Forms/R0710.aspx?id=120624
Vocational training	Lov om erhvervsuddannelser L. 1244 (2007)	https://www.retsinformation.dk/Forms/R0710.aspx?id=105174
Compulsory social protection	lov om aktiv socialpolitik L. 1460 (2007)	https://www.retsinformation.dk/Forms/R0710.aspx?id=113596
Social housing	Lov om boligbyggeri. L. 668 (1995)	https://www.retsinformation.dk/Forms/R0710.aspx?id=55238
Care of the disabled	Sundhedsloven L. 95 (2008)	https://www.retsinformation.dk/Forms/R0710.aspx?id=114054
Elderly care	Sundhedsloven L. 95 (2008)	https://www.retsinformation.dk/Forms/R0710.aspx?id=114054
Financial services	Many pieces of legislation	
Cultural services	Many pieces of legislation	

PUBLIC SERVICES IN ESTONIA

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Estonia regained independence in August 1991. The restoration of local self-government was already redefined in the Local Government Act of November 1989 setting up primary level local authorities in every town and rural district (village soviet, selsoviet).¹⁷⁷ On the basis of a decree of 1989, towns, boroughs and rural districts (village soviet, selsoviet) could achieve self-governmental status if they submitted a social-economic development programme and statutes.

According to the Estonian Constitution of 28 June 1992, the local communities are the rural municipalities and the towns¹⁷⁸. Other local communities may be created on the basis and according to the procedures established by law (Article 155)¹⁷⁹. Today, the territorial administration contains, on the one hand, the deconcentrated level of the state administration organised in 15 counties (maakonnad¹⁸⁰), and, on the other hand, the decentralised level of rural municipalities (vallad) and towns (linnad).

The administrative-territorial organisation of Estonia needs changing. The average population of Estonian rural municipalities is less than 2,500 people and, in spite of mergers, there are still unviable units where the centrally located settlement is separated from its hinterland in administrative terms. Opinions on this differ in Estonia – some politicians support voluntary mergers of municipalities while maintaining the one-level local self-government system whereas others consider the central government initiative to merge small municipalities to be necessary. Beside them, there are politicians in Estonia who think the number of municipalities should not be decreased. The latter consider it necessary to restore the two-tier local self-government system with directly elected councils that were abolished in 1993.

According to the Constitution (Article 154) all local issues shall be resolved and regulated by local governments, which shall operate independently in accordance with the law. Obligations may be imposed upon local governments only in accordance with the law or with the agreement of the local government. Expendi-

(177) This law provided for a two-tier local authority system. Counties and so-called 'republican towns' formed the secondary level and towns, boroughs and rural districts (village soviet, selsoviet) the primary level.

The general plan of economic self-management for Estonia (drawn up in 1987, towards the end of the Soviet regime) had as one of its main tenets a bottom-to-top administrative reform.

http://www.einst.ee/factsheets/factsheets_uus_kuju/local_government_reform.htm

(178) According to the Constitution, the division of the territory into administrative units shall be provided by law. The natural wealth and resources of Estonia are national riches which shall be used economically (Article 5 of the Constitution).

(179) The mandate of the local council can be shortened by the law because of the merger or division of the local communities or of the inability to act of the local council (Article 156 of the Constitution). A local government has the right to form unions and joint agencies with other local governments (Article 159 of the Constitution).

(180) With the reform of 1993 the county governments lost their status as self-governing bodies.

tures related to the obligations imposed on local governments by law shall be funded within the state budget (Article 154 paragraphs 1 and 2 of the Constitution).

In Estonia, as in Lithuania, the term “public service” is used also to refer to activities of general interest as well as to the public service or public institutions. Estonia law contains no comprehensive legal concept of public service and its definition^{181 182}. The public services are regulated by sectoral laws.

Terms in TEU and TFEU	Estonian terms in TEU and TFEU ^{table20}
Services of general interest – SGIs	Üldhuviteenuste ^{table21}
Services of general economic interest – SGEIs	Üldist majandushuvi pakkuvate teenustega ^{table22}
Non-economic services of general interest – NESGIs	Majandushuvi mitte pakkuvaid üldhuviteenuseid
Public service	Avalike teenuste

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs’ organisation?

Central level	Regional level	Local level
Telecommunications	-	Local transport of passengers
Postal services		Water
Electricity (production, transport, distribution)		Waste water
Gas (transport, distribution)		Hospital health services
Railway transport of passengers		Ambulatory health services
Freight rail transport		Primary and secondary education
Air transport		Vocational training
Inland water transport		Compulsory social protection
Maritime transport		Complementary social protection
Heating		Social housing
Broadcasting		Childcare services (0-6 years)
Hospital health services		Elderly care
Ambulatory health services		Cultural services
Primary and secondary education ^{table23}		
Higher education		
Compulsory social protection ^{table24}		
Care of disabled		
Vocational training ^{table25}		
Financial services		
Cultural services		

(181) The Constitution of 1992 refers only to «the service of defence».

(182) The Public Service Act of 1995 refers rather to state or local self-government staff than to public services – the public service (avalik teenistus) is defined as an employment in the state or local administration. <http://www.avalikteenistus.ee/?lang=en>, voir M. Manganot, op.cit., p. 92, 93. See also the Local Government Organisation Act (1993), in particular Chapter 7 “General Principles of Local Government Service”.

B. Sectoral organisation and trends

Status of SGI operators

National public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	Mixed providers (majority of private shares)	Private providers
Postal services Production of electricity Transport of electricity Distribution of electricity Railway transport of passengers Broadcasting Hospital health services Ambulatory health services Higher education Vocational training Compulsory social protection Complementary social protection Care of disabled Cultural services		Regional and local transport of passengers Water Waste water Hospital health services Ambulatory health services Primary and secondary education Vocational training Compulsory social protection Complementary social protection Social housing Childcare services (0-6 years) Elderly care Cultural services		Gas transport Distribution of gas Air transport Water Waste water	Telecommunications Postal services Production of electricity Transport of electricity Railway transport of passengers Regional and local transport of passengers Inland water transport Maritime transport Heating Broadcasting Primary and secondary education Higher education Elderly care Financial services

SGL markets

Liberalised market and competition	Liberalised market Public operators dominant	Liberalised market Private operators dominant	Public monopoly	Private monopoly	No market
Telecommunications Air transport Regional and local transport of passengers Waste water Broadcasting Higher education Financial services	Postal services Transport-distribution of electricity Railway transport of passengers Freight rail transport Water Hospital health services Ambulatory health services Primary and secondary education Vocational training Elderly care Cultural services	Inland water transport Maritime transport Heating	Compulsory social protection Complementary social protection Social housing Childcare services (0-6 years) Care of disabled	Gas transport-distribution	

Main financing methods of SGIs

Fees/payment by users	National budget	Local budget	Public insurance funds
Telecommunications	Primary and secondary education	Primary and secondary education	Hospital health services
Postal services	Higher education		Ambulatory health services
Production of electricity	Vocational training	Vocational training	
Transport-distribution of electricity	Compulsory social protection	Compulsory social protection	
Marketing of electricity	Complementary social protection	Complementary social protection	
Transport-distribution of gas	Social housing	Social housing	
Marketing of gas	Childcare services (0-6 years)	Childcare services (0-6 years)	
Railway transport of passengers	Care of disabled	Care of disabled	
Freight rail transport	Elderly care	Elderly care	
Regional and local transport of passengers			
Air transport			
Inland water transport			
Maritime transport			
Water			
Waste water			
Heating			
Broadcasting			
Primary and secondary education			
Higher education			
Compulsory social protection			
Complementary social protection			
Social housing			
Childcare services (0-6 years)			
Financial services			
Care of disabled			
Elderly care			
Financial services			
Cultural services			

Specific (reduced) tariffs concern some categories of users, in particular the students (railway transport of passengers, in some private schools, in some universities, cultural services), the seniors (railway transport of passengers, cultural services), the inhabitants of islands (inland water transport).

II/ Approaches

A. The model of public administration and national public companies

If at the time of the old political regime, all fields were managed by the state, currently the number of national public enterprises is much reduced and their status reformed.

In the field of SGEIs, there are some state enterprises for which no privatisation process is envisaged:

01. The biggest postal company – Estonian Post Ltd (AS Eesti Post – public limited company) that belongs 100% to the Estonian state.
02. In the sector of production and transport of electricity, the prevalent operator is Eesti Energia AS, public limited company owned 100% by the Estonian state (some discussions about putting the company into the stock market; a new national company was created in December 2009 by the separation of the electricity production and distribution networks as private limited company - Elering OÜ - owned 100% by the Estonian state).
03. The Estonian rail company – AS Eesti Raudtee, organised as public limited company, was privatised in 2001 and renationalised in 2007; it is owned 100% by the Estonian state.
04. In the air transport sector, the public limited company AS Tallinn Airport Ltd belongs 100% to the Estonian state.
05. In the broadcasting sector, Eesti Rahvusringhääling (national broadcasting - TV and radio).

B. “All Public”

Since 1990 a large and rapid privatisation has begun, initially to alleviate the state spending and bring greater stability. Thus, Estonia is the only country among the new member states where the transport infrastructure is not wholly owned by the state.

State companies privatised after 1989:

01. In the gas sector, the reorganisation and privatisation process started in 1992 (RT 20.05.1992, 18, 266), being the first sector privatised; today, AS Eesti Gaas is a mixed capital company owned 37% by the Russian company Gazprom, 33,7% by the German company E.ON Ruhrgas, and the remainder by the Estonian state and other smaller owners.
02. In the telecommunications sector the process of privatisation started in 1997 (Tele 2 was established), on 24 September 2009 the Estonian Government decided to sell 27% of Estonian Telecom Ltd (AS Eesti Telekom) stocks to the main owner Telia Sonera.
03. The national airline Estonian Air was created as a state-owned public limited company on 1st

December 1991; its privatisation started in 1996 when the state decided to put on sale 66% of its shares; today, the owners of Estonian Air are the Estonian state (34%), AS Cresco (an Estonian company 17%) and SAS Group (49%).

In the health sector, on the basis of the Act on the administration of health services adopted in 2001, health facilities have been restructured to become commercial enterprises governed by private law (foundations or SARL).

C. Local autonomy

The principle of local autonomy is consecrated by Article 154 of the Estonian Constitution.

According to the law, local government is based on several principles, such as the principle of “provision of public services under the most favourable terms”. The functions of a local government include the organisation, in the rural municipality or city, of social assistance and services, welfare services for the elderly, youth work, housing and utilities, the supply of water and sewerage, the provision of public services and amenities, waste management, physical planning, public transportation within the rural municipality or city, and the maintenance of rural municipality roads and city streets unless such functions are assigned by law to other persons. Also, the functions of a local government include the organisation, in the rural municipality or city, of the maintenance of pre-school child care institutions, basic schools, secondary schools, hobby schools, libraries, community centres, museums, sports facilities, shelters, care homes, health care institutions and other local agencies if such agencies are in the ownership of the local government (Article 6 of Local Government Organisation Act of 1993, as amended between 1994-2009).

The establishment of the procedure for the grant of benefits and for the provision of services financed from the rural municipality or city budget, the establishment of rules for public order in order to ensure public order; the adoption and updating of a waste management plan; the establishment of the waste management rules; the establishment of the frequency and time of transport, the transport areas and the limits of waste transport fees for the types of waste subject to organised waste transport, etc., are the exclusive competence of the local council (article 22 (1), (363), (364), (365), (366) of Local Government Organisation Act 1993).

The municipalities are free to choose the management methods for their services. They can intervene themselves, by an internal municipal body (municipal agency – hallatav asutus; this is the case for schools, libraries, nurseries), or by a public limited company (AS), or by becoming a shareholder of a private company (OÜ) (public transports, water distribution, housing, health institutions)¹⁸³.

Local governments have the right to form associations and joint agencies with other local governments on the basis of and pursuant to the procedure provided for in legislation¹⁸⁴. This is the case in the services of waste, education, transports, social care, and organisation of cultural events.

(183) A rural municipality or city may found agencies under the administration of rural municipality or city administrative agencies which are not legal persons for the provision of services, may be a partner or shareholder in a company of significant importance in the development of the rural municipality or city, may found foundations and be a member of a non-profit association. (Article 35(1) of Local Government Organisation Act 1993, as amended in 1994-2009)

(184) Articles 12 and 62 – Forms of co-operation, Local Government Organisation Act 1993, as amended in 2005 and Local Government Associations Act

D. Delegated management and externalisation

Local authorities may arrange the provision of certain public services through the private sector. Contracting out is widely used in practice, especially in the case of technical tasks.

E. Regulatory Agencies

Market liberalisation is highly and very quickly developed in Estonia.

On 1 January 2008 a new Competition Authority (Konkurentsiamet) was established by merging the former Competition Board (Konkurentsiamet), Energy Market Inspectorate (Energiaturu Inspeksioon) and Communication Board (Sideamet). As a result of the merger the new authority is responsible for the functions of the former Competition Board, the Energy Market Inspectorate and the tasks of the former Communications Board related to market regulation. In addition to the functions named above the new responsibilities include supervision of railway infrastructure capacity allocation and issuing of operating licences to railway undertakings.

III/ Social dialogue

Estonia¹⁸⁵ is characterised by decentralised collective bargaining with company-level as the dominant level of negotiation. **Sectoral agreements** are reached only **in some SGI sectors**. At national level, only minimum wages are negotiated. Where a collective agreement is concluded in an enterprise, the collective agreement becomes legally binding. Most commonly, collective agreements only apply to the signatory parties, that is persons working in the undersigned company or companies. If it is a multi-employer agreement the terms of wages and of working and rest time in collective agreements may be extended to those not affiliated to the signatory parties.

Public sector employees have a special status: they have more restrictions and requirements, but at the same time they have larger social rights and warranties. **Collective bargaining does not regulate the employment relationships of central administration employees**. There are two trade unions that represent public servants but there are no central government employees within them. Some employees in **regional and local administration** have a specific status and they are covered by **collective bargaining**, which does not require legislation to take effect. Pay and conditions are negotiated locally with individual local and regional authorities. When negotiations for the rest of the public sector are held, the government is represented by an inter-ministerial committee, led by the Minister of Social Affairs.

In the **hospital health services** collective bargaining coverage is high, mainly due to the multi-employer **sectoral agreement**. Those who are not covered by the sectoral-level agreement may be covered by **en-**

(185) References: studies on representativeness of the European social partner organisations in Estonia (<http://www.eurofound.europa.eu/eiro/>)

enterprise-level collective agreements.

In Estonia's **postal services sector** no multi-employer agreement exists. There is only **one collective agreement** concluded at **company level** and that only covers the employees of **Estonian Post**. This public company employs most of the sectors' workers (about 98%) that are covered by this collective agreement. Such collective bargaining coverage is remarkably high for Estonia; however, the post and courier services sector is not large in Estonia. There is only one trade union and no sectoral employer organisations in the sector. Private sector employees are not covered by any collective agreement.

The railway transport sector is relatively small but it is one of the most active in terms of employee representativeness. Nearly all employees are covered by some kind of collective agreement. About 10% of the sector's employees are covered by **multi-employer agreements** and the remaining 90% by **single-employer agreements** (in 2006). Multi-employer agreements are extended to all members of the trade unions involved and, at their request, to employees who are not members of the trade union but are workers of the employer involved in the agreement.

In **air transport sector** the unions have concluded several **enterprise-level collective agreements** but a large proportion of the employees are still not covered by an agreement. It is estimated that about 33% of the employees in the sector are covered by a collective agreement. There are no multi-employer agreements in the sector and no employer organisations.

There are no trade unions or collective agreements **in the gas sector**¹⁸⁶. The existing employer associations in the sector are concentrated on the economic and technical development of the gas trade.

National references

Telecommunications: www.mkm.ee; www.telekom.ee
Postal services: www.mkm.ee; www.post.ee
Production of electricity: www.mkm.ee; www.energia.ee
Electricity networks (transport): www.mkm.ee; www.energia.ee
Distribution of electricity to consumers (households and industries): www.mkm.ee; www.energia.ee
Gas transport: www.mkm.ee; www.gaas.ee
Distribution of gas to consumers (households and industries): www.mkm.ee; www.gaas.ee
Railway transport of passengers: www.mkm.ee; www.evr.ee; www.edel.ee
Freight rail transport: www.mkm.ee; www.evr.ee
Regional and local transport of passengers: www.mkm.ee; www.eurolines.ee
Air transport: www.mkm.ee; www.estonian-air.ee; www.tallinn-airport.ee
Inland water transport: www.mkm.ee; www.saartelinid.ee
Maritime transport: www.mkm.ee; www.tallinksiija.com
Water: www.envir.ee; www.mkm.ee; www.tallinnavesi.ee
Waste water: www.envir.ee; www.mkm.ee; www.tallinnavesi.ee
Heating: www.mkm.ee; www.soojus.ee
Broadcasting: www.err.ee
National public administration: www.valitsus.ee
Regional or local public administration: www.valitsus.ee; www.ell.ee; www.emovi.ee
Hospital health services: www.sm.ee; www.regionaalhaigla.ee
Ambulatory health services: www.sm.ee; www.regionaalhaigla.ee
Primary and secondary education: www.hm.ee; www.ell.ee; www.emovi.ee
Higher education: www.hm.ee; www.ut.ee; www.ttu.ee
Vocational training: www.hm.ee
Compulsory social protection: www.sm.ee; www.ell.ee; www.emovi.ee
Complementary social protection: www.sm.ee
Social housing: www.sm.ee; www.ell.ee; www.emovi.ee
Childcare services (0-6 years): www.hm.ee; www.sm.ee; www.ell.ee; www.emovi.ee
Care of the disabled: www.sm.ee
Elderly care: www.sm.ee; www.ell.ee

(186) Based on the available information in 2006; in 2005, the largest employer occupied about 87% of the gas sector.

PUBLIC SERVICES IN SPAIN

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Spain is a unitary state whose organisation includes both a deconcentrated level of State administration and decentralised communities. Before evolving into a highly decentralised democracy, which today is one of the European models of regionalism, the country has experienced an authoritarian political regime centrally directed by Franco until 1975.

The deconcentrated administration of the State is organised at regional level (Delegado General del Gobierno) and at the level of provinces (Subdelegaciones des Gobierno).

Spain has three levels of local authorities: 17 autonomous communities (comunidades autonomas, including Madrid), 50 provinces (provincia) and 8112 municipalities (municipios)¹⁸⁷.

In the country, the idea that government can provide a range of services to citizens seems quite consensual; also, it can act with or without the participation of private entities, either directly or exclusively by individuals.

However, the concept of public service has not a fundamental role in administrative law, or even as a criterion of jurisdiction. The concept's role is rather to justify public intervention, an amplification of the prerogatives of the administration. The traditional concept of "public service", understood as an activity reserved for public intervention (organic perspective) has been progressively replaced by the concept of "activities of public interest".¹⁸⁸ One argument for this interpretation is that in areas now subject to the market rules, governments have changed their commitment to provide service in an obligation of result: the public authority is a strategist and a regulator, but a less direct operator. The objective remains the provision of energy, communications and transport, etc., but this activity is now satisfied by the market agents, supervised by the administration. The important thing is not the nature of the subject which developed an activity but rather the essential character of this activity, and its relationship with the public interest. According to this view, there

(187) Ministerio de Política Territorial http://www.mpt.es/documentacion/politica_local/sistema_de_informacion_local_-SIL-/banco_de_datos/registro_eell/estudios/estudios_generales/parrafo/00/document_es/DATOS%20GRÁFICOS%202009.pdf

(188) According to Spanish legal doctrine, it is not possible to find a single notion of public service reflecting the use of the concept under Spanish administrative law and jurisprudence. The notions are built on different criteria, each leading to a different outcome. Two main concepts are distinguished in this regard: a strict/subjective concept, build on a formal criterion (such as the legal nature of the activity; see article 128 of the Spanish Constitution of 1978), according to which public services would be those activities which are the reserve of the State and of any other territorial body, and a broad/objective concept, based on material criteria, according to which public services are those activities where, independently of their public or private nature, the State has assumed the responsibility of guaranteeing that the service is received by users in a certain form (in particular, in accordance with the requirements of continuity, adaptability, equality, affordability, etc.), either providing the service directly or entrusting it to a third party through a contract. Luis Arroyo Jimenez, in Markus Krajevski, Ulla Neergaard, Johan van de Gronden (eds.), *The challenging legal framework for services of general interest in Europe*, T.C.M. Asser Press, 2009, pp. 310, 311

may be a part of the private activities of general interest, and other activities of general interest reserved to public administration according to the definition of organic traditional public service¹⁸⁹.

Thus, sectors such as telecommunications, postal services, gas or electricity are not longer considered as genuine public services in Spain, because these activities can be developed without the active participation of the state, even if they are considered “activities of general interest” (Article 2§2 of the Law n°34/1998 on hydrocarbons sector) or as “essential services” (Article 2§2 of the Law n°54/1997 on electricity).

It has gradually abandoned the traditional concept of “public service” by replacing it with the security of service supply to all consumers. Some services are no longer services run by public authorities developed by the State through public companies. Their functions are performed by private companies. A third example is the General Law on Telecommunications (Law 32/2003), which proclaims that “telecommunications services are services of general interest provided in a system of jurisdiction”, except for national defence or civil protection.

This shift from traditional patterns of public services to the new name of activities of general interest, essential services or services of general interest operates in several sectors (energy, telecommunications, railways, waste management, water, etc.).

Within these services of general interest, it is possible to distinguish three groups of activities subject to government intervention:

01. Services of general economic interest provided by large network industries: telecommunications, postal services, gas, electricity and transport. In these areas, ownership of infrastructure is mainly by private persons (electricity, gas). But the government plays an essential role of regulator to achieve the conditions of market access, setting prices for use of facilities, control of the interconnection system, or organising the universal service. The historical operators were initially network owners and still retain an advantage and sometimes because of this situation, they can abuse their advantage to the detriment of competition. In all cases, there is a separation between network ownership and service delivery through the principle of third parties with access to the network, and the operation of these services is subject to the principles of the new competition law. The consumer must in turn receive a guarantee of delivery of services of general interest (which sometimes goes by the introduction of obligations on behalf of universal service, as in the field of postal services, with the role assigned to public company Sociedad Estatal Correos y Telégrafos).
02. The other services of general economic interest: waste management, pipelines, broadcasting.
03. Services which are not commercial in nature: education, health, social security.

In the sectors of SGIs, there is no general framework law, but two types of organisation are found, depending on whether the provider is a monopoly or a private actor.

All these developments have been largely dictated by the need to transcribe the law of the European Union,

(189) Very early on, Spanish legal doctrine imported the French notion of public service. However, this legal notion underwent a distinct evolution, alongside a specifically dogmatic construction, according to which all administrative action could be materially classified within three broad categories subject to somewhat different legal regimes (administrative action of limitation, which includes the normative regulation of private activities; activity of providing and organising public services; and administrative action of direction, which includes the promotion of certain private activities, mainly through state aids). Luis Arroyo Jimenez, in *op. cit.*, 2009, pp. 309, 310

as evidenced by the reproduction of the same pattern of dismantling government monopolies and opening various sectors to competition. In general, the process of liberalisation had a positive impact on economic development, but there remain quite a few obstacles to guaranteeing free competition (electricity and gas, telecommunications, with few operators and a strong dominance of former state monopolies). Thus, the choice of customers on price and quality of services is often relatively limited. Therefore, representatives of consumers complain about the lack of real competition and tolerance by government of corporate abuse.

Terms in TEU and TFEU	Spanish terms in TEU and TFEU ^{table26}
Services of general interest – SGIs	Servicios de interés general
Services of general economic interest – SGEIs	Servicios de interés económico general
Non-economic services of general interest – NESGIs	Servicios de interés general que no tengan carácter económico
Public service	Servicio público

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs' organisation?

Central government	Regional government	Local government
Telecommunications	Regional transport of passengers (3)	Local transports of passengers
Postal services	Broadcasting	Water
Production of electricity	Regional public administration	Wastewater
Electricity networks	Hospital health services	Heating
Marketing of electricity	Ambulatory health services	Broadcasting (4)
Gas transport-distribution	Primary and secondary education	Local public administration
Marketing of gas	Higher education	Complementary social protection (4)
Railway transport of passengers	Vocational training	Social housing (4)
Freight rail transport	Compulsory social protection	Childcare services (0-6 years) (5)
Air transport (1)	Complementary social protection	Care of disabled (4)
Maritime transport	Social housing	Elderly care (4)
Broadcasting	Childcare services (0-6 years)	Cultural services
National public administration	Care of disabled	
Hospital health services (2)	Elderly care	
Ambulatory health services (2)	Cultural services	
Primary and secondary education (2)		
Higher education (2)		
Vocational training		
Compulsory social protection (2)		
Social housing (2)		
Elderly care (2)		

- (1) The central government is currently discussing the possibility of changing the model of the state-owned company charged with managing the airports (AENA) by giving access to it to the regions, the municipalities and the private sector, although the central government would keep the control of the majority of the new company created.
- (2) Education and health care services are shared competences between the central government and the regions. The role of the central government consists in passing basic laws (“leyes de bases”) in the National Parliament in order to set up the common framework of these services. The regional governments can pass developing laws and implement the services. Another role of the central government consists in financing services agreed with the regions (examples of that are the services for disabled people, financed by the central government, the regions and the users)
- (3) With the exception of the railway transport services, managed up-to-now by the state-owned company RENFE. The commuting railway services are reclaimed by some regions.
- (4) These are not compulsory local services; although municipalities can decide to deliver them in order to complement the insufficiencies of some services
- (5) Most of the kindergarten for children from 0 to 3 years is private. Non-compulsory education from 3 to 6 years is guaranteed in public schools.

B. Sectoral organisation and trends

Status of SGI operators

National public providers	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	Mixed providers (majority of private shares)	Private providers	PPP
Postal services Electricity networks Freight rail transports Broadcasting		Regional and local transport of passengers Water Wastewater Heating Broadcasting Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Compulsory social protection (1) Complementary social protection Social housing Childcare services (0-6 years) Care of disabled Elderly care Cultural services			Telecommunications Postal services Production of electricity Marketing of electricity Transport-distribution and marketing of gas Railway transport of passengers (2) Regional and local transport of passengers Air transport Maritime transport Water Wastewater Heating Broadcasting Hospital health services Ambulatory health services Primary and secondary education Higher education Compulsory social protection Complementary social protection Social housing Childcare services (0-6 years) Care of disabled Elderly care Cultural services Financial services	Regional and local transport of passengers Water Wastewater Heating Hospital health services

(1) With the exception of the social security system, managed by the central government

(2) Railway transport of passengers and railway freight services are managed by the state-owned company RENFE. Liberalisation is foreseen, but not implemented already.

SGI markets

Liberalised market and competition	Liberalised market Public operators dominant	Liberalised market Private operators dominant	Public monopoly	Private monopoly	No market
Telecommunications Air transport Broadcasting	Postal services Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Childcare services (0-6 years) (1) Care of disabled Elderly care (2) Cultural services	Telecommunications Production of electricity Marketing of electricity Transport-distribution of gas Marketing of gas Railway transport of passengers	Electricity networks Freight rail transport Regional and local transport of passengers Water Heating	Regional and local transport of passengers (3) Maritime transport Water Heating	Compulsory social protection Complementary social protection (4) Social housing

(1) Private operators are dominant from 0 to 3 years. Public operators are dominant from 3 to 6.

(2) Insufficient public provision

(3) Liberalised market for regional bus lines. Private operators are dominant

(4) Progressive introduction in some regions (i.e. Madrid) of vouchers that allow the users of some services (i.e. disabled or elderly people) to choose between different private operators and to pay for these services partially. There is an insufficient network of public facilities and a market for private operators.

Main financing methods of SGLs

Fees/payment by users/clients	State budget	Regional and/or local budget	Equalisation funds	Insurance funds	Incomes from the activity	Social tariffs/prices
Telecommunications	Production of electricity	Regional and local transport of passengers	Electricity networks		Broadcasting	Electricity
Postal services	Railway transport of passengers	Water				Marketing of electricity
Production of electricity	Freight rail transport	Broadcasting (3)				
Transport-distribution of gas	Broadcasting	Wastewater				
Marketing of gas	Compulsory social protection	Heating				
Railway transport of passengers (1)	Complementary social protection	Hospital health services				
Freight rail transport Regional and local transport of passengers	Complementary social protection	Ambulatory health services				
Air transport		Primary and secondary education				
Maritime transport		Higher education (4)				
Water		Vocational training				
Broadcasting (2)		Social housing				
Hospital health services (if private operators)		Childcare services (0-6 years)				
Ambulatory health services (if private operators)		Care of disabled (5)				
Primary and secondary education (if private operators, not subsidised)		Elderly care				
Higher education (if private operators)		Cultural services				
Vocational training						
Compulsory social protection						
Complementary social protection						
Social housing						
Childcare services (0-6 years)						
Cultural services						

(1) Signing of programme-contracts between the central government and RENFE. Most of its budget comes from the state budget.

(2) National radio and television (RTVE) is financed from 2010 following the French model: without advertising, this state-owned company is to be financed by the state budget, 3% of the revenues of the national private channels, 0.9% of the revenues of the “payment televisions” and 0.9% from the telecommunication companies (“taxe telecoms”). This model is put into question by the EU.

(3) Main finance resources are the regional or local budget plus advertising.

(4) Regional budget plus user taxes.

(5) Co-finance between central government (45%), regions (38.2%) and users (16.8%), approximately.

National authorities responsible for setting pricing and/or tariff policies

Parliament	Central government	Regional administration	Regulatory agencies	Others
-	Telecommunications Postal services Production of electricity Marketing of electricity (1) Transport-distribution of gas Marketing of gas Railway transport of passengers Freight rail transport Vocational training	Regional and local transport of passengers (2) Higher education (2)		

(1) After receiving proposals from the regulatory agencies.

(2) These are responsibilities of the regions.

II/ Approaches

A. The model of public administration and national public companies

The references corresponding to the traditional notion of public service were those of the in-house management of the services and of the major national public enterprises – often monopolies – in the case of network services¹⁹⁰. From the Franco era, state enterprises were an integral part of industrial policy. By the early 1980s, they accounted for two-thirds of the value added of state industry. Led by the impulse of the European Community, this organisation has been questioned since the 1980s and during the 1990s large privatisation programmes were launched.

Current state-owned enterprises in SGI sectors in Spain:

01. Postal services. «Correos» has been reorganised to form a General Directorate in the central government; it is an autonomous body, now converted into a company, public company.

02. The electric networks are organised as a public monopoly in Spain, although the central government owns just 20% of the capital of the company REE (“Spanish Electric Network”) and is obliged by law to keep at least 10%.

03. In the fields of rail and air transport, the network airport managements are ensured by two public companies: ADIF for the rail sector and AENA for the air transports. Management of airports is shared with the regions, the municipalities and the private sector.

¹⁹⁰ A core of public sector companies was laid down in the 1920s, when there was created *Compania Arrendataria del Monopolio de Petroleos* and *Compania Telefonica Nacional de Espagna* and the 1940s. Vincente J. Montes Gan, Amadeo Petitbo Juan, in David Parker *Privatisation in the European Union: Theory and Policy Perspectives*, Routledge, 1998, PP. 191-218

04. In the field of broadcasting the public operator RTVE has a dominant position. There are also regional and local TV stations.

Two phases can be distinguished in the process of sale of state-owned companies:

The first one (1984-1996) started in the mid-80s under the government of the Socialist Party (PSOE), that sold most of the big state-owned monopolies like Endesa, Repsol or Telefónica and the liquidation of the public assets in medium and small companies like Seat or Marsans (tourism). In total, according to SEPI (State Company of Industrial Participations), the agency that represents the public companies, from 1984 to 1996 Spain got 13.200 millions of euros thanks to these operations.

The second period (1996-2002) coincides with the government of the People's Party (PP). The "Program of Modernisation of the Public Entrepreneurial Sector" implied the sale of all the public companies with the exception of mining, railways, communication companies and some other secondary sectors. In total, the Spanish State nearly got 30.000 millions of euros. The "jewels of the Crown" were sold.

The last big sales were the privatisation of ENA (National Company of Highways) in 2003 and "Turbo 2000" in 2004, a company in the aeronautics industry. These two operations mark the real end of the period because after that the central government has only some sold residual assets in companies like Aldeasa (shopping in airports), Altadis (tobacco), IZAR (naval construction), Endesa (electricity), and the 8.5% of REE (the company that regulates the electricity network). The revenues got from these sales were 2.000 million euros.

Today, the margin of privatisation is reduced and the private sector is only interested in the companies linked with infrastructures, AENA (the airports manager), the 20% that the State keeps in REE and the freight railway transportation. The debate about the privatisation of AENA has been opened by the interest of some regions and municipalities in participating in airport management. The current central government proposes to give access to these administrations and the private sector but not all the details of the change of model are yet clear.

A different subject is related to the companies owned or controlled by the regions and the municipalities. Most of them were created to deliver the services transferred from the central government and many of them are delivered by concessions and agreements ("conciertos") with private companies. This is even the case with the public hospitals managed by private companies (following the British PFI model) in Madrid, Valencia or Andalusia.

State-owned companies

Company	Percentage	Sector
Agencia EFE	100	Communication
Alimentos y Aceites	91.96	Stock exchange
Astilleros españoles	100	Naval construction
Cetarsa	79.18	Tobacco
Cofivacasa	100	Assets management
Defex	51	Defence and security
EADS, NV	5.48	Aeronautics
Enagas	5	Energy
Ensa	100	Industrial goods
RTVE	-	Communication
Enusa	60	Energy
Fundación Laboral	-	Foundation
Fundación SEPI	-	Foundation
Grupo Hunosa	100	Mining
Grupo Izar	100	Civil naval construction
Hipódromo de la Zarzuela	95.78	Leisure
Hispasat	7.41	Telecommunications
Iberia	5.16	Transport
Infoinvest	100	Estate management
Iniexport	100	Foreign trade
Mayasa	100	Mining
Mercasa	51	Food distribution
Navantía	100	Naval construction
Presur	100	Mining
REE	20	Energy
Saeca	80	Finance
Sedettur	100	Turism
Sepides	100	Investment promotion
Sociedad Estatal Española P4R	11.87	Foreign trade
Sodian	60.29	Industrial
Tragsa	51	Agriculture and environment

Source: SEPI, 2010.

B. Local autonomy

The Spanish local government has been legally defined from the beginning of the political transition based upon two main principles: local autonomy and financial self-sustainability¹⁹¹. The references of public services analysis have diversified, leaving a growing share of local autonomy because of the increasing transfer of responsibilities. The Law on basic regulation of local authorities of 2 April 1985¹⁹² defines the framework of the division of competences between different levels of administration and establishes the services which must be provided by the municipalities (Article 25), according to their demographic size¹⁹³ (waste water, water supply, public lighting, maintenance of public roads, municipal police are compulsory for all municipalities; the markets, the public parks and libraries are compulsory for the municipalities with more than 5000 inhabitants; etc.). Public security, traffic management, cultural activities and tourism are optional.

The Article 86 of the Law of 1985¹⁹⁴ declares the following essential activities and services the reserve of the municipalities (entidades locales): water supply, wastewater treatment, waste collection, treatment and recycling, local public slaughter houses and markets, and local public transportation.

The central state and the autonomous communities can delegate competences to municipalities; it is the case usually in the field of education (schools infrastructure, management of education programs).

The competent public body may politically decide whether to directly deliver the service, either through its own administrative units or through a separate legal person (**local public enterprise, joint stock company or limited liability company**), or to delegate the provision of service to a private party through a contract of indirect provision of public service, specifically regulated under the Public Contracts Act of 2007.

The major parts of the public service are provided directly by the administration.

C. Delegated management and externalisation

Spain has a long tradition of delegating management of local public services to the private sector. With the opening of many areas of competition, the model of delegated management is now more widely used, private structures replacing the local government (in the area of heating and water for example).

The delegation of a public service to a public entity may take four different forms - contracts of indirect provision of public services: a concession (concesion) to a private undertaking that will provide the public service and assume the economic risk resulting from its exploitation; the “interested” provision (gestion interesada), a technique rarely used, whereby the private party provides the service, but both this party and the public body share the results of the activity according to proportions previously agreed in the contract; the “agreement” (concierto) between the public administration and a private party that was already supplying the

(191) Spanish Constitution of 1978, Articles 137, 140, 141, 142

(192) In Spanish on http://www.060.es/te_ayudamos_a/legislacion/disposiciones/25119-ides-idweb.html

(193) The map of local government in Spain is highly fragmented and heterogeneous; more than half of the municipalities have less than 1000 inhabitants.

(194) In Spanish on http://www.060.es/te_ayudamos_a/legislacion/disposiciones/25119-ides-idweb.html

service and that receives fixed compensation; and an institutionalised public-private partnership in the form of a mixed capital entity, the capital of which is held jointly by the contracting entity and the private partner.

Concessions and mixed capital companies are the two most frequently used delegation forms in the area of economic public services, especially at local level. The water and waste services are most often managed by concession (e.g. for water and wastewater, public monopoly in Madrid, private monopoly in Barcelona, PPP). The legal regime and the effects of concession depend on whether the activity has been reserved, or remains open to the free market.

The *concierto* is habitually employed in the field of social public services, such as education, hospitals and social care services (e.g., elderly homes)¹⁹⁵.

Since 2003, PPP has developed in Spain, mostly in the sectors of transportation, infrastructure and hospital care¹⁹⁶.

D. “New Public Management”

The development of the New Public Management is also reflected in a strong impetus for the evaluation of public policies and the creation of the Agency for the evaluation of public policies and of the services' quality. It monitors the quality of quality programs broken down into management contracts and the accomplishment of performance targets of service charters. Similarly, in this perspective, a greater involvement of citizens in managing public services is also promoted.

Regarding the evaluation process, there is no formal system of evaluation of SGIs. The control of SGIs operation is made by Parliament and the media. Some services have special characteristics of performance: maximum tariffs (public education, telecommunications, and energy), covering the entire country (postal services, rail services), etc. All SGIs must meet the accessibility and quality criteria. This control is enhanced by independent authorities that regulate different markets: National Commission of Energy (CNE) for oil, gas and electricity, and the Telecommunications Market Commission (CMT). Finally the existence of the supervisory agency CNC (National Commission of Competence), charged with supervising the markets to avoid anti-competition behaviours, needs to be mentioned. Its general tasks generate some problems of jurisdiction with the regulatory agencies.

E. Regulatory Agencies

More recently, at the level of state utilities, the New Public Management appeared not to be effective which led the state to divest some of its functions as service operator, and to develop its role of regulator of activities managed by private operators. This change in the conception of the State role has led to a multiplication of privatisation cases, PPP development and the emergence of many regulatory agencies.

(195) Luis Arroyo Jimenez, in op. cit., 2009, pp. 320, 312

(196) Les collectivités..., op.cit., Dexia, 2008, p. 288

01. The Telecommunications Market Commission (CMT, created in 1996 – www.cmt.es), is an independent public body invested with legal status and full public and private capacity and with its own patrimony, which is separate from the patrimony of the State, that regulates national electronic communications and audiovisual services markets. It establishes and supervises the specific obligations that must be met by telecommunications market operators and promotes competition in the audiovisual services markets, pursuant to its regulatory provisions, resolves conflicts between operators and, if necessary, acts as an arbitration body in disputes between those operators.

02. The National Energy Commission is the regulatory body for energy systems (electricity market, as well as the hydrocarbons markets, including both liquid and gases), created in 1998 (CNE – www.cne.es). The Commission is a public authority with independent legal identity, its own assets and full operational capacity. The National Energy Commission is assigned to the Ministry of Industry, Tourism and Trade, which controls the effectiveness of its activity.

III/ Social dialogue

In Spain, there are some specific forms of social dialogue for SGIs: at national level, in various sectors such as health, education or social protection there is one minister with responsibilities for the social dialogue; it is the same case for the autonomous communities.¹⁹⁷ Furthermore, social dialogue is also guaranteed through collective agreements whose application affects all workers and companies included in the level of agreement. For a period, provincial sectoral agreements concerned over half of the workers covered by collective bargaining, while national agreements affected about a quarter. But since 2005 there have been an increasing number of company agreements and the coverage of national sectoral agreements has increased, whereas that of provincial sectoral agreements has decreased. However, in SGI sectors, the negotiating framework of collective agreements generally exists only at the company level.

In Spain¹⁹⁸, developments in **the post and courier services** sector in recent years have been marked by the liberalisation of the public service, which maintains a dominant position in the traditional postal market, and the appearance of new private business operations in the area of new courier and business postal services. Industrial relations in the sector reflect this polarisation of the postal market. Beyond the **agreements of the large companies in the sector** – the state-owned National Postal Services Operator (Sociedad Estatal de Correos y Telégrafos, **Correos**; the collective agreement which governs more than 99% of its workforce) and the private postal operator **Unipost** – in which most of the trade union membership is concentrated, the sector has not favoured the extension of collective bargaining. The Postal Advisory Council is the highest government advisory body on postal services. It includes representatives of some trade unions, the national government, the regional and local authorities, the state employer Correos, the employer associations of the sector and the consumer and user organisations.

Industrial relations and the representativeness of **the rail sector** are strongly conditioned by their public

(197) See also http://www.mpt.es/documentacion/funcion_publica/dialogo/org_sindicales.html

(198) References: studies on representativeness of the European social partner organisations in Spain (<http://www.eurofound.europa.eu/eiro/>)

sector origin¹⁹⁹ and the recent process of liberalisation. All workers in the sector are covered by some type of **agreement**, whether **at company level** – for example, RENFE Operadora or ADIF – or **sectoral level**. The trade unions lack a common social partner representing the employers, so no sectoral agreement exists covering all of the workers and all categories. However, the fact that the railway companies were previously public implies a far higher density of trade union membership than in the rest of the labour market.

In **the electricity sector** the collective agreement led to sectoral and **mainly company agreements**. The union density is low. **The gas sector** is included in the energy sector and is dominated by large, previously public companies that are undergoing a clear process of internationalisation. The public-sector origin largely conditions the sector and its industrial relations (strong trade union presence). Only one employers' association exists in the gas sector (Sedigas). The **single-employer agreements** are **dominant** (a large majority of the total number of employees is covered by single-employer agreements - namely the main enterprises of the Gas Natural Group, and much less by multi-employer agreements). The employees not covered by a collective agreement are those in certain services of small marketing companies.

As there is no national agreement in **the air transport sector**, collective bargaining is highly fragmented between subsectors, companies and even categories of workers; there is a large presence of corporate trade unions. The subsectors of handling and air services with helicopters are totally covered by **national sectoral agreements**. In the rest of the civil aviation industry, national company agreements are predominant. The ground staff of many airlines is regulated by **specific agreements**. Finally 'fringe agreements' affect specific categories of workers, such as air traffic controllers, maintenance staff, cabin crew and pilots.

Given that in Spain a significant part of **hospital care** is **public**, the public administration is one of the main actors in the industrial relations system. Within **the public sector**, the majority of staff enjoys an employment status similar to civil servants; they are known as **personnel with special statutes** (personal estatutario). No collective bargaining takes place for these workers or for civil servants in public administration. There are some framework agreements but they are not properly negotiated with the trade unions, although the unions may be consulted on some issues. The working conditions of the rest of the **staff in the public sector** are established by **labour law and collective agreements**. These agreements cover only the public sector and very often a single hospital. As since 1981 public health competencies have been progressively transferred to the regional governments and autonomous communities and most collective agreements are signed at **regional or company level** the industrial relations system of the sector is not uniform. Nevertheless, the general characteristics of the industrial relations of the sector are a high level of trade union involvement among employees and high collective bargaining coverage (in the public part of the sector; **in the private sector**, the representativeness rate is lower). On the employer side, there is no national organisation in this sector.

The civil service staff has two representative bodies: the staff councils and the bargaining commissions. Bargaining is carried out by the commissions, which are established at several levels: the General Service Commission deals with the employment conditions of all employees of the public administrations. The general commission in each autonomous community and each local authority, and associated sectoral commissions, deal with the specific conditions of the corresponding area or sector, and the application and development of the agreements reached by the General Commission. In **the central government**, access to employment,

(199) Practically all of the companies in the sector have some degree of public ownership (in 2006), with the exception of contractors and subcontractors – many of which belong to another sector. It was estimated that about 6% of the workers in the sector are affected by the subcontractors' agreement.

working time, and work organisation are laid down by the Public Employment **Statute** negotiated by the most representative trade unions in the General Bargaining Commission. This statute will act as the “collective agreement” of the sector, dealing with pay scale tariffs, working time, collective bargaining, training and mobility. These elements are specified in each bargaining commission of the public administration and, through the agreement of the latter, in **sectoral bargaining commissions**. Furthermore, pay increases are determined by the State Budget, and in no case may the bargaining commissions agree higher increases than those laid down by the State Budget.²⁰⁰

Sources of national law on SGIs

Secteur	Références légales	Sites
Télécommunications	Loi 32/2003 général de télécommunications	www.cmt.es
Services postaux	Loi 14/2008 complémentaire au budget de l'État (création de la société publique Correos)	www.correos.es
Production d'électricité	Loi 54/1997 du secteur électrique	www.cne.es
Commercialisation d'électricité	Loi 54/1997 du secteur électrique	www.cne.es
Réseaux électriques	Loi 54/1997 du secteur électrique	www.cne.es
Commercialisation d'électricité	Loi 54/1997 du secteur électrique	www.cne.es
Transport et distribution de gaz	Loi 34/1998 du secteur des hydrocarbures	www.cne.es
Transport ferroviaire de passagers	Loi 39/2003 du secteur ferroviaire	www.adif.es
Transport ferroviaire de frets	Loi 39/2003 du secteur ferroviaire	www.adif.es
Transports locaux ou régionaux de passagers	Loi 39/2003 du secteur ferroviaire	www.adif.es
Transport aérien	Loi 4/1990 du budget général de l'État (création de la société publique AENA)	www.aena.es
Eau	Nombreuse normative locale	
Assainissement	Nombreuse normative locale	
Chauffage urbain	Nombreuse normative locale	
Radio-télévision	Loi 17/2006 de la radio et la télévision de titularité étatique Nombreuse normative régionale pour les télévisions publiques régionales	www.rtve.es
Administrations publiques nationales		
Administrations publiques régionales ou locales		
Services de santé hospitaliers	Loi 14/1986 générale de santé	www.msc.es
Services de santé ambulatoires	Nombreuse normative régionale	
Éducation primaire et secondaire	Loi 2/2006 d'éducation	www.educacion.es
Enseignement supérieur	Loi 4/2007 d'universités	www.educacion.es
Formation professionnelle	Loi 5/2002, des qualifications et de la formation professionnelle	www.educacion.es
Protection sociale obligatoire	Loi 2009 de promotion de l'autonomie personnelle et l'attention aux personnes en situation de dépendance. Nombreuse normative régionale	www.msc.es
Protection sociale complémentaire	Normative régionale et locale	
Logement social	Décret 801/2005 du plan 2005-2008 pour faciliter l'accès des citoyens au logement Nombreuse normative régionale et locale	www.mviv.es
Aide à la petite enfance (0 à 6 ans)	Nombreuse normative régionale	
Aide aux handicapés	Loi 2009 de promotion de l'autonomie personnelle et l'attention aux personnes en situation de dépendance. Nombreuse normative régionale	www.msc.es
Aide aux personnes âgées	Loi 2009 de promotion de l'autonomie personnelle et l'attention aux personnes en situation de dépendance. Nombreuse normative régionale	www.msc.es

(200) According to the legislation, while normally agreements will be honoured, the state reserves the rights to suspend or modify them in cases where “substantial changes in the economic circumstances” result in a serious threat to the public interest.

PUBLIC SERVICES IN FINLAND

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Finland is a unitary state divided into 19 regions plus the autonomous province of the Åland Islands and into 85 sub-regions, which are composed of 416 municipalities (*kuntaa*, divided in cities and rural municipalities). The deconcentrated administration of the state is organised in 6 State Provincial Office (*läänit*) under the Ministry of Finance to coordinate government policies in fields such as education, culture, justice, health or social action. An integral part of public administration in Finland rests on the relations between the State and the municipalities, which largely function autonomously. The model for providing basic public services is mainly built on the responsibility and autonomy of local government. State functions and tasks are mainly connected to internal and external safety, legislation, and relations with other countries, the justice system and social security, railway transport, airports, etc.

As in Sweden²⁰¹ and Denmark, Finland's administrative legal system is not based on the concept of "public services" but on that of the prerogative of public authorities. The foundation of the socialised, industrialised State was created in the early years of independence (after 1918), when the social activity was centralised, but a genuine welfare State was constructed only after 1966²⁰². Thus, in Finland, like in the other Nordic countries, the most important task of public administration is to take care of the main part of welfare services for citizens (education, health care and social affairs²⁰³). Due to the increased tasks of the welfare State, public administration began to expand rapidly from the 1960s onwards. In 1987 an adjustment phase began with drastic measures to cope with the welfare-state crisis. The reforms entailed increased operational and economic independence for the municipalities.

(201) Finland was separated from Sweden in 1809 and became an autonomous Grand Duchy annexed to the Russian Empire. The country retained its own legal system, respectively the old Swedish legal system, and its administrative system was a mixture of the old Swedish model with some new features of the Russian administrative system. The basis of the Finnish administrative structure was created in the period of the constitutionally governed State (1856-1917). However, upon becoming independent in 1917, Finland already had over one hundred years of experience in having its own administration and long-standing contacts with the Nordic administrative culture. Hannu Koivurinta, *The structure of the Finnish public administration*, www.ias2009.fi

Nowadays, about 15% of the Finnish municipalities are bilingual (Finnish and Swedish) or Swedish speaking.

(202) In the 1980s the volume of public expenditure grew at a rate of almost 4 per cent per annum and the number of public sector employees at about 2.5 per cent per annum. Hannu Koivurinta, *op. cit.* This is explained by the fact that the welfare state model was largely based on the idea of the municipalities being the producer and providers of services. Finnish social policy, similarly to that of other Nordic countries, is characterised as being universal, social democratic and supportive of women. The implementation of universal social policy is largely based on high levels of tax collected by the state and the municipalities. See Nea Heinonen, *The Association of Finnish Local and Regional Authorities, Local government system in Finland*, 2006, www.kunnat.net

(203) State administration has an average total number of 125,000 employees, 5,000 of whom are employed in the ministries, 24,000 in other central administration agencies and institutions, and 55,000 in regional and local State administration. Universities and polytechnics have approximately 31,000 employees. Hannu Koivurinta, *op. cit.*

In the “public services” area, the original Finnish concept is yleishyödyllinen toiminta (service for public good - yleishyödyllinen toiminta (FIN), allmännyttig verksamhet (SV); VNa 829/2007) which has its origins in Finnish Income Taxation²⁰⁴. The concept is defined as a socially important activity for the whole Finnish community or some region - large-scale, general target group and settled activity, not for economic profit (for example Act 680/1976, Income tax law 1535/1992 22 §). It could be regarded as comparable/corresponding to the EU expressions of “services of general interest”, “social services of general interest” and of “non-economic services of general interest” (activities for which economic profit is not a goal (third sector, not public or private profit maximizing sector, for example sport organizations (like SLU – Finnish Sports Federation), war veteran organizations, patient organizations, private education institutes, private hospitals and private research institutes with no direct economic meaning/goal). Still, there is no clear conceptualisation.

Before its accession to the EU in 1995, Finnish law did not develop distinct concepts representing the economic and commercial services of general interest. The literal translation of the EU expression “services of general economic interest” is yleisiin taloudellisiin palveluihin liittyvä palvelu/SGEI-palvelu (FIN). It is considered as representing any economic service so important to the community that public power can give and has given specific service obligations to private corporations/companies. But its area is not defined: for example, one can mention social housing, some electricity network and power services, broadband (1 Mb), mobile communication networks, public transportation in some areas, some health care services, and postal services. The concept is taken from EU-law. A more recent term is “public service obligation” used especially in the connection with some privatised “network industries” like postal and communication services.

The expression “social service” (sosiaalipalvelu) is used in the legislation in relation to all social actions other than allocation of subsidies²⁰⁵.

Terms in TEU and TFEU	Finnish terms in TEU and TFEU ^{table27}
Services of general interest – SGIs	yleistä etua koskevat palvelut
Services of general economic interest – SGEIs	yleisiin taloudellisiin tarkoituksiin liittyvä palvelu
Non-economic services of general interest – NESGIs	muihin kuin taloudellisiin tarkoituksiin liittyvä yleinen palvelu
Public service	julkinen palvelu

(204) Some private organizations (those not having the economic profit as a goal) are exempted from income tax liability.

(205) Law n°1982/710, Article 17

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs' organisation?

Central government	Regional government	Local government
Telecommunications	Inland water transport	Maritime transport (ports)
Electricity networks	Water	Local transport of passengers (road, rail)
Production of electricity	Waste water	Water
Gas transport-distribution	Compulsory social protection	Waste water
Marketing of gas	Complementary social protection	District heating (combined power and heating)
Railway transport	Hospital health services	Elderly care
Air transport		Compulsory social protection
Inland water transport		Complementary social protection
Maritime transport		Hospital health services
Broadcasting		Cultural services
Higher education		
Primary and secondary education		
Childcare services (0-6 years)		
Vocational training		
Cultural services		
Compulsory social protection		
Complementary social protection		
Care of disabled		
Social housing		
Financial services		

B. Sectoral organisation and trends

Status of operators

National public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
Telecommunications Postal services Railway transport of passengers Freight rail transport Higher education Cultural services	Production of electricity Electricity networks Marketing of electricity Marketing of electricity (electricity whole sale exchange, Nord Pool) Social housing	Production of electricity Electricity networks Marketing of electricity Water Waste water Heating (combined power and heating) Hospital health services Ambulatory health services Primary and secondary education Vocational training Compulsory social protection Complementary social protection Social housing Childcare services (0-6 years) Care of disabled Elderly care Cultural services	Production of electricity Electricity networks Marketing of electricity Social housing		Production of electricity Electricity networks Marketing of electricity Social housing Gas transport distribution Marketing of gas	Telecommunications Production of electricity Regional and local transport of passengers Air transport Inland water transport Maritime transport Heating Hospital health services Primary and secondary education (not for profit) Vocational training (not for profit) Complementary social protection (charity organisations, not for profit organisations) Childcare services (0-6 years) Care of disabled Elderly care Financial services Cultural services

SGL markets

Liberalised market and competition	Liberalised market Public operators dominant	Public monopoly	Liberalised market Private operators dominant	Private monopoly	No market
Telecommunications Production of electricity Marketing of electricity Regional and local transport of passengers Air transport Inland water services Maritime transport Heating Financial services	Hospital health services Ambulatory health services Childcare services (0-6 years) Elderly care Cultural services District Heating (combined power and heating) Broadcasting Social housing	Postal services Electric networks Railway transport of passengers Freight rail transport Water Waste water		Gas transport distribution Marketing of gas	Primary and secondary education Higher education Vocational training Compulsory social protection Complementary social protection Care of disabled

Main financing methods of SGLs

Fees/payment by users/clients	Public grants/aids	Insurance funds	Social tariffs/prices
Telecommunications Postal services Production of electricity Electricity networks Marketing of electricity Gas transport distribution Marketing of gas Railway transport of passengers Freight rail transport Regional and local transport of passengers Air transport Inland water transport Maritime transport Water Waste water Heating Broadcasting Hospital health services Ambulatory health services Social housing Childcare services (0-6 years) Elderly care Financial services Cultural services	Hospital health services Ambulatory health services Vocational training Compulsory social protection Complementary social protection Social housing Childcare services (0-6 years) Care of disabled Elderly care Cultural services	Hospital health services Vocational training	Railway transport of passengers (students, elderly) Regional and local transport of passengers (students, elderly) Social housing

National authorities responsible for setting pricing and/or tariff policies (1)

Parliament	Central government	Local governments	Regulatory agencies
	Childcare services user fee (0-6 years)	Water Waste water Hospital health services Ambulatory health services Compulsory health services Elderly care	Telecommunications(2) Postal services(2) Electricity networks (2) Gas transport distribution (2)

No tariff for services covered by the public budget (of state or local communities): hospital and ambulatory health services, primary and secondary education, higher education, vocational training, compulsory social protection, complementary social protection, childcare services (0-6 years), care of disabled, elderly care. Some social services in Finland are financed by a user fee and public budget. In those cases public service provider is setting the tariffs under the limits given by legislator.

Tariff policy is indirect (productivity of capital).

II/ Approaches

A. The model of public administration and national public companies

The public sector played traditionally an important role in the fields of Finnish “public services”. Public ownership has been widespread in transport, water, telecommunications, air transport (Finnair) and banking (Postipankki) and state enterprises were intended to play a strategic role in the country’s development.

Until the 1980s, the Finnish State administration followed a model in which public tasks were the joint responsibility of the ministries and central agencies. In the early 1990s, the structures of State administration underwent a reform, partly due to the difficult economic recession. The system of central agencies was abolished, and several agencies were replaced by State companies and State business enterprises²⁰⁶. The new companies are subject to State control but the statute of private law gives them certain autonomy.

The markets of postal services and railway transport are dominated by the monopolies of the state-owned companies. The PLT - Post and Telecommunications of Finland became state-owned companies as of 1990 after being earlier a state office. Postal activities separated in 1994; nowadays Itella Oyj is a state-owned company under private law (the privatisation of the state-owned telecommunication company started in 1994). The railway services are operated by the state-owned company VR-yhtymä Oy.

Important public monopolies characterize the energy sector: for the activities of electricity networks, by the national monopoly of Fingrid Oyj, the operator owned by large electricity producers and the state, and a similar situation exists in the gas sector, dominated by the monopoly of Gasum Oy, a company under private law owned by private companies and the state.

(206) Hannu Koivurinta, op. cit.

B. Local autonomy

Article 121 of the Constitution states the principle of autonomy or self administration (*itsehallinto*). On this basis the legislator conferred important autonomous powers to municipalities and a significant financial independence²⁰⁷. Finnish local authorities provide basic public services for their residents, most importantly services related to education and culture (comprehensive and upper secondary schools, vocational institutions, adult education, libraries), social welfare (child day-care, elderly care and care of disabled, etc.) and health (preventive and primary health care, specialist medical care and dental care), environment and maintenance of the technical infrastructure (street and road maintenance, environmental protection). Their tasks also include water and energy supply, heating, waste management. Apart from in relation to fields of activity governed by special laws, the municipality is autonomous in its general competence which is not precisely defined by the law. Thus, a municipality may create and manage any activities which are serving the general interest (public good)²⁰⁸.

According to Chapter 1 section 2 of the Finnish Local Government Act, local authorities shall perform the compulsory functions either alone or in cooperation with other local authorities²⁰⁹. Local authorities may also secure the services they need to perform their functions from other service providers. Municipalities can form their own private corporations²¹⁰ and become part of private organisations; these are frequently owned together by several municipalities. Even though the law permits these different ways of “public service” provision, Finland’s geography, with its long distances and fragmented population, makes this variety less active in practice²¹¹. It seems that municipalities are becoming more and more purchasers rather than producers of their own services.

The Regional Councils (*maakunnan liitot*) act as the region’s planning and economic development organisation. They are statutory joint municipal authorities (members are politically appointed by the member municipalities) and they rely on the power and resources of their local government members.

(207) See for details Tore Modeen, “L’autonomie locale en Finlande”, in *Annuaire des collectivités locales*, 1998/vol. 18/n°1, pp. 167-176

(208) Speculative trading activities are not compatible with the functioning of a legal person under public law. Tore Modeen, *op. cit.*, 1998, p. 170

(209) They can enter into cooperation agreements or found a separate organisation - a joint municipal authority - to handle their combined affairs. Total number of joint municipal authorities is 226. Many of the services are produced jointly with other local authorities. For example, hospitals and many educational institutions are maintained by joint municipal authorities. Finnish local and joint authorities employ nearly 430,000 people, approximately one-fifth of Finland’s workforce. Hannu Koivurinta, *op. cit.*

(210) e.g. for energy production and distribution, for water and waste

(211) Arto Havery, Jenni Airaksinen, «Inter-municipal cooperation in Finland : old traditions and new promises”, in Rudie Hulst, André van Montfort (eds.), *Inter-municipal cooperation in Europe*, Springer, 2007, p. 45 About 30% of municipal employees work in health care, 27% in education and culture, 26% in social welfare services, 5% in municipal enterprises and services, 4% in community planning and public works, 4% in general administration, 2% in real estate, the rest in public order. Nea Heinonen, *op. cit.*, 2006

C. Delegated management and externalisation

To secure the “public services” municipalities may purchase them from other service providers (other municipalities, federation of municipalities, public sector organisations, and private providers). The recent developments show a tendency to make stronger the private provision of “public services” which play an important role in the sectors of energy (highly competitive), day-care, elderly care and even hospital and health services.

D. “New Public Management”

The doctrine of NPM was introduced in the Finnish administrative reforms by the mid-1990s. The 1980s became a turning point, because during that decade the problems of the welfare state on the levels of bureaucracy, support and financing became more and more acute and the old models of development no longer produced the hoped-for modernisation. Following the NPM reforms, the structures of government have gone through radical change. A new model for public utilities and companies was implemented, the independence of local government increased due to reform of state interest and de-regulation, growth of the public sector went into reverse, there was more emphasis on the development of public services towards customer participation quality and the control of costs, etc. The authority of local government as well as that of agencies and public enterprises has fundamentally increased under this new system²¹².

Development of PPP in public services provision is mainly focused on different investment projects (public buildings like schools and motorways and railways).

The evaluation of services is not arranged in a coherent way. Supervising authorities and agencies use their own methods of evaluation keeping an eye on price, quality, and other variables. For example social housing services as a SGEI are (compulsorily) evaluated and controlled by a supervising agency (ARA). It controls building plans, financing, and ensures that other legal obligations are fulfilled. Standard reporting obligations and financial inspection rights are included in supervisory rules.

Inland marine piloting services are classified as SGEI and exclusive right to provide that service has been given for Luotsausliikelaitos. Customers pay a subsidised fee and economic losses incurred by this are covered by a grant from the state budget.

E. Regulatory Agencies

New agencies have been established in Finland within the last twenty years, as State service institutions have been transformed into State companies and State business enterprises, the business activities of which require steering and supervision. Agencies established in this context include:

(212) Markku Temmes, Finland and New Public Management, in RISA, 1998, vol. 64, n°3, pp. 441-456

the Finnish Communications Regulatory Authority – FICORA (established in 1998, Viestintävirasto, agency under the Ministry of Transport and Communications to regulate the market of telecommunications, postal services and broadcasting - <http://www.ficora.fi/en/index.html>),

the Energy Market Authority (since 1995, Energiamarkkinavirasto, subordinate to the Ministry of Employment and the Economy - <http://www.energiamarkkinavirasto.fi/index.asp>),

Transport Safety Agency (Liikennevirasto - <http://portal.liikennevirasto.fi/sivu/www/en/>), government agency under the jurisdiction of the Ministry of Transport and Communications, which is in charge of regulatory issues in the field of road traffic, railways and maritime safety. It was formed on 1 January 2010 as the waterways functions of the Finnish Maritime Administration, the Finnish Rail Administration²¹³ and the central administration of the Finnish Road Administration merged.

the Finnish Transport Safety Agency - TraFi (since 1 January 2010 - http://www.civilaviationauthority.fi/about_caa_finland; it replace the Finnish Civil Aviation Authority established in 2006), and the Financial Supervisory Authority (Finanssivalvonta²¹⁴ - <http://www.finanssivalvonta.fi/en/Pages/Default.aspx>).

The foundation of the Consumer Agency and the Finnish Competition Authority (<http://www.kilpailuvirasto.fi/cgi-bin/english.cgi?>) is also linked with the strengthening market economy in society.

In the health services sector, the National Supervisory Authority for Welfare and Health – VALVIRA (<http://www.valvira.fi/en/>) is a central administrative office of the Ministry of Social Affairs and Health with missions of guidance and supervision to improve the management of health risks and of quality of services in social welfare and health care and for legal protection.

III/ Social dialogue

In Finland²¹⁵ labour market relations are characterised by close cooperation between the state and the social partners. Almost all legislation concerning working life is based on a **tripartite consensus**²¹⁶. In the public sector, social partners have the same rights and obligations as in the private sector to negotiate collective agreements. There is also some dialogue in a national and official (law based) discussion forum (kansalaisyhteiskuntapolitiikan neuvottelukunta) where for example non-profit social service producers can express their views²¹⁷. Central bargaining was dominant for nearly 40 years but the tendency to decentralise to sectoral, company and, even, individual level bargaining is becoming the model for the future²¹⁸. Collective

(213) Finnish Rail Authority (since 2006, Liikenteen turvallisuusvirasto TraFi, subordinated to the Ministry of Transport and Communications - http://www.rautatievirasto.fi/en/finnish_rail_agency)

(214) Earlier the Rahoitustarkastus predecessor of Finanssivalvonta was an independent branch of The Bank of Finland since 1993. In 2007 Rahoitustarkastus was united (Act 878/2008) with Vakuutusvalvontavirasto (Insurance supervisory authority) and it is still a branch of The Bank of Finland.

(215) References: studies on representativeness of the European social partner organisations in Finland (<http://www.eurofound.europa.eu/eiro/>)

(216) When the tripartite system was in its strongest form one key role of central government was to adjust the financial and tax policy according to national collective agreement. Government was able to offer incentives to negotiators for example by making promises on future tax policy. The tripartite system is still in use especially in legislative matters (when drafting laws on labour and pension).

(217) Valtioneuvoston asetus kansalaisyhteiskuntapolitiikan neuvottelukunnasta 269/2007

(218) The 2007–2008 collective bargaining negotiations were concluded at sectoral level.

agreements have a generally or universally binding nature²¹⁹.

In Finland the trade union density has been stable at over 70%. The three main trade union confederations are SAK (founded in 1907), the Finnish Confederation of Salaried Employees (Toimihenkilökeskusjärjestö, STTK, set up in 1946) and the Confederation of Unions for Academic Professionals in Finland (Akateemisten Toimihenkilöiden Keskusjärjestö, AKAVA, established in 1950).

In **the central administration** of Finland there are two statuses for employees: the civil servants²²⁰ and the employees with a labour contract (with employment contracts similar to the private sector). However, the distinction has become less and less significant because the terms of employment have become very close to each other and negotiations are running congruently for the two statuses. Labour market negotiations are largely based on a **tripartite system**. This means cooperation and negotiations among employer organisations, the trade union movement and the Government. The entry into force of the Collective agreement for state civil servants requires Government approval. If a collective agreement increases central government expenditure, the Finance Committee of the Parliament has to approve additional costs. Collective agreements that are **agency-specific (local)** or specific for a certain **administrative branch** are negotiated in their respective parts by agreement agencies and they are approved by the Ministry of Finance. There are five major **national agreements** for **different groups in the local and regional government sector** (in 2007).

The Finnish **hospital services sector** is divided into the municipal and private sectors. The Commission for Local Authority Employers (Kunnallinen Työmarkkinalaitos, KT) is the only employer organisation in the municipal sector. The Employers' Association for Service Enterprises (Palvelulaitosten työnantajyhdistys, PTY) is an employer organisation in the field of municipally owned private companies, while the Private Health Services Association (Terveyspalvelualan Liitto ry) – affiliated to the Confederation of Finnish Industries (Elinkeinoelämän keskusliitto, EK) – is an employer organisation for private hospitals.

In **the postal services sector** social dialogue usually takes place between companies and trade unions. The rate of collective bargaining coverage is 100%. Collective agreements on national incomes policy cover all employees.

The field of industrial relations in **the railways sector** is robust; trade unions have a long history and they represent certain professions and different tasks in railways. Only one employer organisation is present in the sector for public enterprises (Employers' Association for Transport and Special Services (Liikenne- ja erityisalojen työnantajyhdistys, LTY), which represents various transport branches and specific fields.

In **the air transport**, in 2006, there were three affiliated employer organisations and 10 trade unions in the sector that represent different occupational groups. Most of the trade unions and all three employer organisations conclude collective agreements.

(219) According to the principle of general applicability of collective agreements employers that are unorganised in terms of collective bargaining also have to comply with the national agreements that concern their field of economic activity. Since 2001, a public authority (commission) formally decides whether collective agreements are generally binding.

(220) Lately (from the beginning of 2010), the status of university teaching personnel has shifted from civil service to private sector contracts. Collective agreements are now negotiated between private sector employer and labour organisations.

Sources of national law on SGIs

Sector	Legal references	Web sites
Telecommunications	Viestintämarkkinalaki (393/2003)	http://www.finlex.fi/fi/laki/ajantasa/2003/20030393
Postal services	Postipalvelulaki (313/2001)	http://www.finlex.fi/fi/laki/ajantasa/2001/20010313
Production of electricity	Sähkötarkkinalaki (386/1995) Electricity Market Act (unofficial translation) http://www.energiamarkkinavirasto.fi/files/electricity_market_act_20050128.pdf	http://www.finlex.fi/fi/laki/ajantasa/1995/19950386
Electric networks (transport-distribution)	Sähkötarkkinalaki (386/1995 16 §)	http://www.finlex.fi/fi/laki/ajantasa/1995/19950386 http://www.fingrid.fi/portal/in_english/
Marketing of electricity	Sähkötarkkinalaki (386/1995)	http://www.finlex.fi/fi/laki/ajantasa/1995/19950386
Gas transport-distribution	Maakaasumarkkinalaki (508/2000) Natural Gas Market Act (unofficial translation) http://www.energiamarkkinavirasto.fi/select.asp?gid=132&pgid=132	http://www.finlex.fi/fi/laki/ajantasa/2000/20000508
Marketing of gas	Maakaasumarkkinalaki (508/2000) Natural Gas Market Act (unofficial translation) http://www.energiamarkkinavirasto.fi/select.asp?gid=132&pgid=132	http://www.finlex.fi/fi/laki/ajantasa/2000/20000508
Railway transport of passengers	Rautatielaki (555/2006) Joukkoliikennelaki (869/2009)	http://www.finlex.fi/fi/laki/ajantasa/2006/20060555 http://www.finlex.fi/fi/laki/ajantasa/2009/20090869
Freight rail transport	Rautatielaki (555/2006)	http://www.finlex.fi/fi/laki/ajantasa/2006/20060555
Regional and local transport of passengers	Joukkoliikennelaki (869/2009)	http://www.finlex.fi/fi/laki/ajantasa/2009/20090869
Air transport	Ilmailulaki (1242/2005) Aviation Act	http://www.finlex.fi/fi/laki/ajantasa/2005/20051242
Inland water transport	Merilaki (674/1994) Valtioneuvoston asetus eräiden Euroopan yhteisön sisävesiliikennettä koskevien direktiivien täytäntöönpanosta (121/2002)	http://www.finlex.fi/fi/laki/ajantasa/1994/19940674 http://www.finlex.fi/fi/laki/alkup/2002/20020121
Maritime transport	Merilaki (674/1994)	http://www.finlex.fi/fi/laki/ajantasa/1994/19940674
Water	Vesihuoltolaki (119/2001) Act on Water Services	http://www.finlex.fi/fi/laki/ajantasa/2001/20010119
Waste water	Vesihuoltolaki (119/2001) Act on Water Services Valtioneuvoston asetus yhdyskuntajätevesistä (888/2006) Government Decree on Urban Waste Water Treatment – (unofficial translation)	http://www.finlex.fi/fi/laki/ajantasa/2001/20010119 http://www.finlex.fi/fi/laki/kaannokset/2006/en20060888.pdf
Heating	Maankäyttö- ja rakennuslaki (132/1999) Asunto-osakeyhtiölaki (1599/2009)	http://www.finlex.fi/fi/laki/ajantasa/1999/19990132 http://www.finlex.fi/fi/laki/alkup/2009/20091599
Broadcasting	Laki radiotaajuuksista ja telelaitteista (1015/2001) Laki Yleisradio OY :stä (1380/1993) Laki televisio- ja radiotoiminnasta (744/1998)	http://www.finlex.fi/fi/laki/ajantasa/2001/20011015 http://www.finlex.fi/fi/laki/ajantasa/1993/19931380 http://www.finlex.fi/fi/laki/ajantasa/1998/19980744
National public administration	Suomen perustuslaki (731/1999 119 §, 124 §) Hallintolaki (434/2003)	http://www.finlex.fi/fi/laki/ajantasa/1999/19990731 http://www.finlex.fi/fi/laki/ajantasa/2003/20030434
Regional or local public administration	Suomen perustuslaki (731/1999) 121 § Kuntalaki (365/1995)	http://www.finlex.fi/fi/laki/ajantasa/1999/19990731 http://www.finlex.fi/fi/laki/ajantasa/1995/19950365
Hospital health services	Erikossairaanhoitolaki (1062/1989) Kansanterveyslaki (66/1972)	http://www.finlex.fi/fi/laki/ajantasa/1989/19891062 http://www.finlex.fi/fi/laki/ajantasa/1972/19720066
Ambulatory health services	Kansanterveyslaki (66/1972)	http://www.finlex.fi/fi/laki/ajantasa/1972/19720066
Primary and secondary education	Perusopetuslaki (628/1998) Laki ammatillisesta koulutuksesta (630/1998)	http://www.finlex.fi/fi/laki/ajantasa/1998/19980628 http://www.finlex.fi/fi/laki/ajantasa/1998/19980630
Higher education	Yliopistolaki (558/2009) Ammattikorkeakoululaki (351/2003)	http://www.finlex.fi/fi/laki/ajantasa/2009/20090558 http://www.finlex.fi/fi/laki/ajantasa/2003/20030351
Vocational training	Laki ammatillisesta aikuiskoulutuksesta (631/1998)	http://www.finlex.fi/fi/laki/ajantasa/1998/19980631
Compulsory social protection	Sosiaalihuoltolaki (710/1982)	http://www.finlex.fi/fi/laki/ajantasa/1982/19820710
Complementary social protection	Sosiaalihuoltolaki (710/1982) Kuntalaki (365/1995)	http://www.finlex.fi/fi/laki/ajantasa/1982/19820710 http://www.finlex.fi/fi/laki/ajantasa/1995/19950365
Social housing	Laki asunto-olojen kehittämistä (919/1985) Laki Asumisen rahoitus- ja kehittämiskeskuksesta (71/2007)	http://www.finlex.fi/fi/laki/ajantasa/1985/19850919 http://www.finlex.fi/fi/laki/ajantasa/2007/20070071
Childcare services (0-6 years)	Laki lasten päivähoitosta (36/1973) Sosiaalihuoltolaki (710/1982)	http://www.finlex.fi/fi/laki/ajantasa/1973/19730036 http://www.finlex.fi/fi/laki/ajantasa/1982/19820710
Care of the disabled	Laki vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista (380/1987) Laki Kehitysvammaisten erityishuollosta (519/1977)	http://www.finlex.fi/fi/laki/ajantasa/1987/19870380 http://www.finlex.fi/fi/laki/ajantasa/1977/19770519
Elderly care	Sosiaalihuoltolaki (710/1982) Kansanterveyslaki (66/1972)	http://www.finlex.fi/fi/laki/ajantasa/1982/19820710 http://www.finlex.fi/fi/laki/ajantasa/1972/19720066
Financial services	Laki luottolaittoiminnasta (121/2007) Laki sijoituspalveluyrityksistä (922/2007)	http://www.finlex.fi/fi/laki/ajantasa/2007/20070121 http://www.finlex.fi/fi/laki/ajantasa/2007/20070922
Cultural services	Kirjastolaki (904/1998) Laki kuntien kulttuuritoiminnasta (728/1992) Laki opetus- ja kulttuuritoimen rahoituksesta (1705/2009) Museolaki (729/1992)	http://www.finlex.fi/fi/laki/ajantasa/1998/19980904 http://www.finlex.fi/fi/laki/ajantasa/1992/19920728 http://www.finlex.fi/fi/laki/alkup/2009/20091705 http://www.finlex.fi/fi/laki/ajantasa/1992/19920729

PUBLIC SERVICES IN FRANCE

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

France is the largest country of the European Union (552427 km²) and the second most populous country (62,82 million inhabitants in 2005) behind Germany. It includes a metropolitan area and overseas territories.

The country is organised into three tiers of local government: 36 683 municipalities, 100 counties²²¹ (Paris is both city and county) and 26 regions²²² (Corsica has a special status). In overseas territories, the sub-national levels have different statutes of autonomy for different territories.²²³

The deconcentrated services of the State are organised into three levels: 339 districts (arrondissements), 100 county areas (circonscriptions départementales) and 26 regional districts (circonscriptions régionales).

In France, the notion of “public service” historically played a major role due to the “Colbert” tradition of public intervention in the economy. It was also the subject of important theoretical developments, including going so far as to consider the State as “a union of public services organised and controlled by the governments”²²⁴ (L. Duguit), in order to establish the legitimacy while framing the action. In this voluntary approach, the concept of public service is at the heart of public law and has even appeared to be a criterion for the application of administrative law in the late XIXth century. It then refers to an activity of general interest managed by a public person or under his control with “exorbitant” legal procedures. Partially denied by the jurisprudence, this systematic doctrine nevertheless remained rooted in positive law, where it has even spread under the impetus of an extensive political interpretation of the notion of general interest. Thus, new fields of intervention – social action, culture, leisure... - have been progressively established in the “public service”.

At the structures level, public service is traditionally assumed directly by the State or local communities and exceptionally and only in some sectors – railway transports, water, gas, electricity – by persons of private law through concessions. The extension of activities assumed under this designation led, in the 20th century, to broader recognition of private involvement and diversification of procedures of delegation, while preserving the essential role of public actors, in particular in the context of nationalised network public services (creation

(221) The municipality and the county were created during the French Revolution. Their demographic size is very variable and, as regard the municipalities, they are particularly small on average (France alone accounts for 40% of the total number of EU municipalities). The creation of Mayotte county was decided and it will be effective in 2011 when there will be 101 counties (departments).

(222) The regions were created by the law of 5 July 1972 as public institutions. They became decentralised authorities with the election of regional councils by universal suffrage in 1986 and the Law of 17 March 2003 included them in the Constitution.

(223) DOM-TOM (4 counties - départements and 4 Overseas regions), TOM (6 Overseas territories), a local community sui generis and an Overseas territory with particular status. See Dominique Hoorens (dir.), *Les collectivités territoriales dans l'Union européenne. Organisation, compétences et finances*, Dexia, 2008, p.335

(224) «Une coopération de services publics organisés et contrôlés par les gouvernants».

of SNCF in 1936, EDF and GDF in 1946).

Thus, in the French tradition, the concept of public service contains a wide variety of meanings, which can create real confusions. Indeed, under the same name of “public services” (services publics) are both nominated:

01. administrative public services, services of sovereignty (régaliens) and industrial and commercial public services (energy, transport, communications);
02. national public services, dependent on the State, and local public services, dependent on territorial and local communities (in particular on municipalities and associations of municipalities);
03. services directly managed by the public authority and delegated services.

Behind the same expression “public service”, there is often confusion between organisations, missions, goals and objectives. In particular, two conceptions co-exist²²⁵:

01. The organic concept, which associates public service with the entity providing the service. This concept is often considered the essence of the French concept and which ones are designated under the expression of service public à la française;
02. A functional concept, which focuses on public service objectives and purposes.

Several other sources of confusion exist: thus, public services and monopolies are often assimilated while the reality, far more complex, shows that public service missions can be provided in the context of partial competition. The same, if special status of employees of certain public services exist (civil service, railway, electricity, gas, etc.), it is not an absolute requirement. Also, public enterprises are frequently treated as public services, while there are in France two main reference models of public service management:

01. That of national public services managed by national public enterprises, with monopoly, centralisation and status of employees (EDF, SNCF, La Poste, etc.);
02. That of delegated management of public services to private companies, which is more ancient since it existed under the monarchy; today it is dominant in the field of water, waste water, urban transport and many local public services, so that French private companies of service are world leaders in sectors such as water and waste water (Suez-Lyonnaise des eaux, Véolia-Générale des eaux). The World Bank calls this second reference model service public à la française.

It therefore appears that the general term “public service” covers in reality a series of diversities. The very limited presence of the expression in the Constitution – only twice, in paragraph 9 of the Preamble of the Constitution of 1946 and in Article 11 of the Constitution – shows the significant lack of a univocal definition, even though the concept is very active in political and legal debates.

This fact helps to understand that the Community edifice, marked by the economic liberalism, has had a strong impact on the first model. It moreover has been for a while accused of questioning the “public service to the French” (service public à la française) by imposing the end of public monopolies and introducing competition in many sectors since the 1980s. It resulted in profound changes, with the end of the State

(225) See Pierre Bauby, *La libéralisation des services publics*, Cahiers français, n°347, novembre-décembre 2008, La Documentation française

monopoly in telecommunications, where the Ministry of Telecommunications has given way to the public operator France Télécom in 1990, which was then transformed into a limited company gradually privatised and now fully subject to competition. Meanwhile, an independent regulator (ART) was established and universal service obligations have been charged to the historical operator, but these were funded by all operators in proportion to their activity. Similar structural changes have been made in the sector of air transport, also opened to competition, and in the sectors of electricity and gas. They are also under way in the postal sector and the railways, where first the management of infrastructure (RFF) and the operator (SNCF) were separated, and now they are subject to competition for freight transportation and international transport of passengers. Thus, although the degree of changes is variable depending on the field, all public service activities, in particular within the national economic field are affected by significant changes as a result of Europeanisation.

It must also be noted that developments affecting the French public service are not limited to management methods, now more open to private operators, but also concern the modes of operation of these services. Subject to competitive pressure, they are actually asked to give renewed attention to the quality of service provided to users-“clients- and to the requirements of economic efficiency. At the same time, EU rules require clearly defined objectives for each public service and the obligations there under. Thus, the Europeanisation of public services represents a significant transformation in France, which affects both the management bodies and operating procedure. Evolution has certainly not reached its conclusion in all sectors, but the logics applied are transversal: on the one hand, liberalisation and development of competition, on the other hand, the definition of public service obligations and of universal service, represent the architecture of the new organisation of public services.

The use of EU concepts in the French law:

01. **Services of general interest – term little used in the French law²²⁶**
02. **Services of general economic interest – term little used in French law²²⁷**
03. **Non economic services of general interest – expression not used in the French law**
04. **Social services of general interest – expression not used in the French law**
05. **Public service obligations – expression sometimes used in French law**

Terms in TEU and TFEU	French terms in TEU and TFEU ^{table28}
Services of general interest – SGIs	Services d'intérêt général
Services of general economic interest – SGEIs	Services d'intérêt économique général
Non-economic services of general interest – NESGIs	Services non économiques d'intérêt général
Public service	Service public

(226) For example, Article 34 of the Law n° 83-8 of 7 January 1983 on the division of competences between municipalities, counties, regions and the State, as amended

(227) Law n°2003-8 of 3 January 2003 concerning the gas and electricity markets and the public service of energy, which uses the expression missions d'intérêt général (Article 1 and 30-1); Decree of 23 December 1994 which uses the expression "intérêt économique général"; The General Code of Taxes, which uses the expression of services collectifs d'intérêt économique general (of tourism and leisure). The Monetary and Financial Code, Article R221-8-1 «missions de service d'intérêt économique général».

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs' organisation?

Central government	Regional government	County government	Municipal government
Telecommunications Postal services Production of electricity Transport of electricity Marketing of electricity Transport and marketing of gas Railway transport of passengers (international, national and inter-regional transports) Freight rail transport Air transport Maritime transport Broadcasting Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Compulsory social protection Care of disabled Financial services Cultural services	Railway regional transport of passengers Regional transport of passengers Inland water transport Hospital health services Secondary education (lyceum infrastructure) Vocational training	Local transport of passengers (county level) School transport by bus Maritime transport (ports) Social housing Social services Elderly care Childcare services (0-6 years) Care of disabled Elderly care Secondary education (college - infrastructure) Cultural services	Distribution of electricity Distribution of gas Local transport of passengers Water Waste water Heating Hospital health services Ambulatory health services Primary education (infrastructure) Social housing Social aid Childcare services (0-6 years) Cultural services

B. Sectoral organisation and trends

Status of the operators

National public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
Postal services Railway transport of passengers Freight rail transport Inland water transport (management of public infrastructure) Broadcasting Hospital health service Higher education Compulsory social protection Cultural services	Electricity	Regional and local transport of passengers Inland water transport Water Waste water Hospital health service Ambulatory health services Childcare services (3-6 years) Primary education Secondary education Vocational training Compulsory social protection Social housing Care of disabled Elderly care Cultural services		Water Waste water Local transports	Telecommunications Gas Air transport	Telecommunications Postal services Transport of electricity Freight rail transport Regional and local transport of passengers Air transport Inland water transport Water Waste water Heating Broadcasting Hospital health service Ambulatory health services Primary education Secondary education Higher education Vocational training Compulsory social protection Social housing Childcare services Care of disabled Elderly care Financial services Cultural services

SIG markets

Liberalised market and competition	Liberalised market Public operators dominant	Public monopoly	Liberalised market Private operators dominant	Private monopoly
Broadcasting (12)	Telecommunications (téléphonie fixe) Production of electricity (3) Marketing of electricity (5) Freight rail transport (7) Regional and local transport of passengers (8) Hospital health services (13) Primary and secondary education Higher education	Postal services (secteur réservé) Electricity networks (4) Railway transport of passengers	Telecommunications (1) Postal services (2) Production of gas (6) Air transport Water (9) Waste water (10) Heating (11) Ambulatory health services Social housing Childcare services (0-6 years) Care of disabled Elderly care Financial services (14)	

(1) On the mobile phone market the main operators are Orange (44% of the total number of clients at the end of 2007), SFR (34% of total number of customers at the end of 2007), and Bouygues Télécom (17% of total number of clients at the end of 2007).

(2) A total of 21 licensed postal operators (March 2009)

(3) In the sector of production of electricity there are in France three main operators: EDF, CHR and Endesa France (formerly SNET). They provide more than 95% of production of electricity in France, of which 90% are ensured by EDF (85% of EDF production is nuclear). This part of the electricity sector is fully open to competition.

(4) Monopoly of transport for RTE (manager of the public network infrastructures of transport in France) and of distribution networks for ERDF and GRDF (subsidiaries of EDF). EDF and the local distribution companies are in charge of distribution, under the control of local authorities which organise the public electricity supply. EDF holds 93% market share (in 2007). 5% is provided by municipal operators (régie).

(5) Activity opened to competition. GDF-Suez is the second operator. The new entrant – private company Poweo – has 2% of the market.

(6) In France, the production of gas represents only 2% of the national consumption. The main operator of gas production is the Group Total. The ownership of the company is predominantly European; France owns 34%. The French network of gas transport is operated today by two operators: GRT Gaz (subsidiary 100% of Gaz de France) and TIGF (Total Infrastructures Gaz France, 100% subsidiary of Total). Underground gas storage is operated by Gaz de France which manages 79% of the French capacities and TIGF 21%. In the distribution, GDF (now GDF Suez) holds 92% market share (in 2007). The equilibrium of market shares was

reversed in 2008 with the merger of Gaz de France and private operator Suez. 5% of the market is represented by municipal enterprises (régies). EDF is the second marketer of gas in France and the new private company Poweo holds 3% of the gas market.

(7) From 2006 (end of SNCF monopoly for all type of freight transport), SNCF apart, 9 railway companies have licence with access to the French network. But their joint market shares represented, at the end 2008, only about 9% of freight transport in France.

(8) In Île-de-France, a single transport network depending on the organising authority – STIF (public administration) – which includes several forms of public transport (metro, RER, bus, tram, rail) provided by public and private operators. The public enterprises RATP (metro, RER, bus, tram) and SNCF (RER and rail) hold 92% of the market shares and largely dominate the market of public transport in the Paris region. 8% of the market is operated by private companies (bus), which are grouped in OPTILE (l'Organisation Professionnelle des Transports de l'Île-de-France). In the provinces, public operators hold 71% of public transport market shares. Large operators affiliated to public groups such as SNCF, Caisse des Dépôts (CDC) and some RATP subsidiaries remain dominant on the market (50%). The subsidiary Kéolis (group SNCF) keeps the most important part (32%) while Transdev owned by CDC owns 17%. The municipal régies and the local mixed companies hold 21% of the market shares in 2006. Private operators have a one-third share of the provincial market. Véolia Transport (Véolia Environnement) whose market shares represent 24% of total is the second major carrier after Kéolis.

(9) The increasing use of public service delegation led to the creation in France of major international groups. The French industry is shared between three companies: Véolia Eau (37%), Lyonnaise des Eaux (21%; Suez Environnement), Saur France (11%, group Saur), and some independents (2%).

(10) In 2004, more than 55% of the population is covered by private companies.

(11) About 300 French cities are equipped with heating networks, the largest cities with two or three. Two reference players in the urban area: Elyo (47%, Suez) and Dalkia France (38%) subsidiary of Véolia Environnement group and EDF, which hold 93% market shares of the private distribution. The remaining 8% is provided by independent companies. The merger of GDF and Suez should modify the equilibrium between the private operator Elyo (ex-Suez) and the public operator Cofatech (ex-GDF).

(12) The evolution of audience share (PDA) of television channels since 1995 shows a downwards trend for all historical channels and a remarkable rise of "alternative offer". In 2007, TF1 has registered 30,7% PDA, followed by F2 with 18,1% PDA, and 17,5% PDA channels of digital terrestrial television (DTT). The top eight audiences on radio at the end of 2007: the Independents 14,6%, RTL 12,9%, NRJ 11,5%, France Inter 9,9%, France Info 9,6%, Europe 9%, Nostalgie 7,7%, Skyrock 7,3%

(13) Public hospitals represent 64,8% of all hospital beds. Private institutions participating in the public hospital services account for 10,4% of all hospital beds. The private profit sector represents 20,0% of total hospital capacity.

(14) Credit institutions have seen for ten years a substantial decrease in the number of their establishments and they are highly concentrated. In 2008, the major banking groups are Crédit agricole, BNP Paribas, Société Générale, Caisse d'épargne, Banque populaires, Crédit mutuel, HSBC, Dexia, Deutsche Bank, GE

Capital. At the end of 2008, on the metropolitan territory, the top seven banking groups were collecting about 90% of deposits and almost 84% of credits. At departmental level, often 25% of market share is exceeded by one or two institutions. The ratio of five top institutions in late 2008 shows a market share of 51% of total assets (58,5% in deposits and 49,7% for loans).

Main financing methods of SGIs

Fees/payment by users/clients	Public grants/aids	Compensations – universal service obligations	Insurance funds	Social tariffs/prices
Telecommunications	Railway transport of passengers	Telecommunications	Hospital health services	Telecommunications
Postal services	Regional and local transport of passengers	Postal services	Ambulatory health services	Distribution of electricity (1)
Electricity	Inland water transport		Elderly care	Railway transport of passengers (2)
Gas	Broadcasting			Gas distribution
Railway transport of passengers	Hospital health services			Broadcasting (3)
Freight rail transport	Ambulatory health services			
Regional and local transport of passengers	Primary and secondary education			
Air transport	Higher education			
Inland water transport	Vocational training			
Water	Compulsory social protection			
Waste water	Social housing			
Heating	Childcare services			
Broadcasting	Care of disabled			
Hospital health services	Elderly care			
Ambulatory health services	Cultural services			
Primary and secondary education (hors conventionnement)				
Higher education				
Vocational training (4)				
Compulsory social protection (5)				
Complementary social protection				
Social housing				
Elderly care				
Financial services				
Cultural services				

(1) Decree of 8 April 2004 established a special tariffication of electricity «product of first necessity». The decree provides that the benefit of the special pricing is open to individuals benefiting from universal health coverage with annual resources below a ceiling based on the composition of the family home.

(2) Tariffs for larger families, tickets for annual vacation, compensated by the State

(3) There are exemptions to pay fees people relief for social reasons.

(4) The funding is public (the State 27% of total, the regions 14%) and private (companies, about 41% of total). The persons unemployed receive funding for their education.

(5) Social security contributions made by non-employees, employers and employees; tax financing, State

public contributions (nearly 10% in 2006).

National authorities responsible for setting pricing and/or tariff policies

Central government	Sub-national governments	Regulatory agencies	Providers
Distribution of electricity Gas distribution (1) Broadcasting Higher education Compulsory social protection	Water Waste water Heating Social housing	Postal services (universal service)	Telecommunications Waste water Primary and secondary education (private)

(1) Unlike electricity prices, there is no single price for gas for the whole of France. Prices vary according to the distributor. For Gaz de France, there are six different tariff arrangements depending on the distance of distributors from the public supply network. Natural gas is sold in France under two pricing systems: the negotiated prices for customers who have chosen a market offer with the historical operator or an alternative supplier and administered prices for customers who have not exercised their eligibility. There are two types of administered prices: prices in “public distribution” (individual customers and small business; these tariffs are offered by GDF SUEZ (main supplier) and 22 local historical operators, the local distribution companies) and tariffs on “subscription” (industrial customers). The administered prices are set by the Ministers of Economy and Energy after consultation with the Regulatory Commission of Energy, depending on cost trends, in particular supply costs (Order of 16 June 2005, amended). Since 15 August 2008, private customers who have low incomes are entitled to supply natural gas at special rate of solidarity (social tariff of natural gas as a standard deduction allowed for one year) (Order No. 2008 -778 of 13 August 2008; see also the Decree n° 2008-779 of 13 August 2008).

II/ Approaches

A. The model of public administration and national public companies

In its classic conception, the notion of public service corresponds to the approach of direct public management (Police, Justice, Education etc.) and that of large national enterprises since there are many services nationally defined, managed by public enterprises with monopoly, centralisation and special status of personnel (EDF, SNCF, France Telecom, La Poste, etc.). Criticised for its weighty management, costs and insufficient consideration of users, this organisation, although technically and economically successful in some sectors has been challenged from the 1980s under the double movement of Community construction and development of neo-managerial model.

01. Telecommunications. France Telecom was created in the form of “public operator” (exploitant public) separate from the ministry of origin by the Act of 2 July 1990. The Act of 26 July 1996 made

France Telecom a “company of private law in which the State holds directly more than half the capital”. The capital of France Telecom was opened in 1997: the first 22% of the capital was privatised in October 1997 (privatization advanced on the agenda since 1993; in 1995 a new project involving the change of status was approved). The Act of 31 December 2003 waived the requirement for the state to hold half of the capital of the company, removing its characteristic of “national public service”. In 2004 another 10.85% of the capital was sold. On 31 January 2005 the French government held 41.08% shares of the company. In 2008 it held 27.4%. France Telecom held the landline monopoly until the end of 1997 and maintained a monopoly on local calls until the end of 2001. In 2005 it held 80.9% of the fixed telephony market.

02. Postal services. La Poste is the main national postal operator. It was reorganised from a ministerial administration into an independent operator of public law in 1991. In 2010 its status was changed into a company 100% owned by the State.

03. Electricity. The activities of production, transport and distribution of electricity have long been controlled by the government because of the strategic nature of the electricity supply. In March 1946, the company Charbonnages de France was set up by the nationalisation of Coal and the Act of 8 April 1946 nationalised electricity and gas by organising the sector around the exclusive rights of production, transport, import, export and distribution attributed to two public industrial and commercial public enterprises - Electricité de France (EDF) and Gaz de France (GDF). The nationalisation did not include producers and distributors that were already public, such as the powerplants of SNCF and Charbonnages of France and local public régies of distribution. The Act of 9 August 2004 transformed EDF and GDF into limited companies. On 19 November 2004, EDF changed its status and became a limited company and its capital was opened on 24 October 2005. The State has, by law, more than 70% shares in Electricite de France. The limited company RTE EDF Transport - a subsidiary of EDF, is in charge of managing the public transport network.

04. Gas. Gaz de France was created by the nationalization law of 1946. According to Article 24 of Law n° 2004-803 of 9 August 2004, Electricité de France and Gaz de France were transformed into companies in which the State owns more than 70% of capital. Except where other provisions of law apply, they are governed by the laws applicable to limited companies. According to Article 12 of Law n° 2004-803, the company managing the transmission of natural gas, created after the legal separation imposed on Gaz de France, shall be governed, except where other provisions of law apply, by the laws applicable to companies. Its assets can be held by Gaz de France, the State, companies or organisations of the public sector. The Law n° 2006-1537 of 7 December 2006 provides the privatisation of Gaz de France. According to Article 39 of the Law, the State participation should go down from 70% to about 34%. In 2008, the private group GDF Suez was created by the merger of Gaz de France (GDF) and the private operator Suez (see Order of 16 July 2008 fixing the modalities of the transfer from public to private sector of the majority of the capital of Gaz de France SA). In the new group the French State holds 35% of the capital. Thus, since 2008, Gaz de France Suez has been a private group.

05. Railway transport. The railway companies which developed the railway network in France were most often traditionally created with the support of the State. In 1938, following the Agreement of 31

August 1937 providing for the merger of all networks under the responsibility of public power, the National Society of French Railways (SNCF) was founded, as a joint stock company (société anonyme d'économie mixte). The LOTI Law (law on inland transport development) of 30 December 1982 transformed the National Society of French Railways, from 1 January 1983, into an industrial and commercial public body (établissement public industriel et commercial, EPIC). Réseau Ferré de France (RFF) was created by Act n° 97-135 of 13 February 1997, as an EPIC, to exercise on behalf of the State, the responsibilities of rail infrastructure.

06. Air transport. Air France was founded on 30 August 1933 by the regrouping of French airlines Air Orient, Air Union, SGTA and CIDNA. The airlines Air France, Air Blue and Air France Transatlantique were nationalised by an order of 26 June 1945. The Act of 16 June 1948 on the status of the freight aviation provided the statutes of the new national carrier Air France. The intent to privatise of Air France was expressed in the Act of 19 July 1993. The Act of 9 April 2003 provides for the privatisation of the majority of Air France capital. After the takeover offer, on 21 May 2004, the state owned 44.07% in Air France-KLM capital, the employees 10%, 46% floating capital. The share of the French state should further fall to reach a level of less than 20%.

07. Inland water transport. The manager of public rivers is Waterways of France (Voies navigables de France), a public institution created by Law of 27-28 February 1912.

08. Broadcasting. France Televisions is a national establishment in which the State directly owns all the shares. Radio France and the company responsible for broadcasting outside France are companies whose capital is owned by the French state. In 1974, reorganisation of the ORTF gave rise to the creation of seven different companies: TF1, Antenne 2, FR3, Télédiffusion de France (TDF), Société Française de Production (SFP), INA and Radio France. In 1986, TF1 was privatised. The law n° 89-532 of 2 August 1989 provides Antenne 2 and FR3 with a joint presidency. On 7 September 1992, these two channels were renamed France 2, France 3 and are grouped under the common brand France Television (only as trade name). The structure is devoid of legal personality. The Act N° 2000-719 of 1 August 2000 created the holding company France Télévisions SA comprising France 2, France 3 and La Cinquième - renamed France 5 in January 2002 - and set its legal framework. France Televisions is a company subject to the legislation on limited companies, whose capital is wholly owned by the state. The Act of 6 July 2001 conferred legal personality to France Televisions and extensive powers of control over the group companies. SFP was sold to a private group on 18 July 2002. The law n° 2004-669 of 9 July 2004 on electronic communications and audiovisual communication services incorporated RFO in the group France Televisions. The Law n° 2009-258 of 5 March 2009 on audiovisual communication and the new public service of television transformed the France Televisions group into a single enterprise. Television and radio services edited by France 2, France 3, France 4, France 5 and RFO are now directly published by the company France Televisions, which became a national program (for the specification of France Televisions see Decree n° 2009-796 of 23 June 2009).

B. Local autonomy

Since the 1980s, because of multiple transfers of competences made since the decentralisation (education buildings, social sector, etc.) or the development of mixed-economy local companies, local autonomy has been of growing importance.

Despite the great diversity of municipalities and important disparities, particularly in terms of population, all communes have the same administrative structure and the same legal powers (see table above). There is also a significant number of intercommunal groups that manage the competences transferred by their members (municipalities)²²⁸.

Local public services can be managed directly (régie)²²⁹ or by delegated management. Direct management has been for a long time the traditional method of management of most administrative public services.

In accordance with the provisions of Ordinance n° 2009-864 of 15 July 2009, the contracts “in house” (régie) are defined as contracts concluded between a contracting authority and a contractor over which it exercises control comparable to that exercised over its own departments and which performs most activities for this authority, provided that the contractor holds either the status of a contracting authority, or it applies, to meet its own needs, the rules for awarding contracts under this ordinance, by the Procurement Code or the ordinance of 2005 relating to contracts awarded by certain public or private persons which are not subject to public procurement code.

C. Delegated management and externalisation

The model of delegated management²³⁰ is widely present in the areas of industrial and commercial services, private structures substituting for the public authorities. The delegate operator may be a private or a public local company (mixed company - société d'économie mixte/SEM).

Thus, for other modes of transport than rail, the local authorities generally use delegated management²³¹. In urban public transport in provincial France, the share of direct management tends to stabilise around 10% (from 1997 to 2005). It is governed by régies with financial autonomy, in the small networks (for a total of about twenty networks in direct management) and EPIC for large networks. Compared to all public transport networks, direct management concerns rather the small networks (15 of 19 régies in 2005 covering fewer than 100 000 inhabitants). For bigger networks, organizing authorities tend to use a specialised private provider. The Communities (urban agglomerations, municipalities) delegate extensively; the municipalities and mixed unions (syndicats mixtes) delegate less.

(228) Among them, it is a very integrated form of intermunicipality – public institutions of intermunicipal cooperation (EPCI) competent to levy taxes. These structures have been developed in particular after the Law of 6 February 1992 (Loi d'orientation relative à l'administration territoriale de la République). In 2007 they regrouped 91% of the French municipalities.

(229) See <http://www.eurosig.eu/article77.html>

(230) See <http://www.eurosig.eu/article78.html>

(231) Excepting Paris –Régie autonome des transports parisiens RATP, and several others (régies with only financial autonomy for small networks, and EPIC for larger networks)

The water sector is dominated by delegated management: in 2004, over 80% of the population is served by private companies (some remunicipalisations in Grenoble, 1994; Castres, 2003; Cherbourg, 2005; Paris, 2010). In waste water delegated management covers about 55% of the population.

D. “New Public Management”

More recently, at the level of State public services, New Public Management led the state to divest some of its functions of service operator, in favour of the role of regulator of activities entrusted to private operators. This change of the conception of the role of the State, has particularly led to a multiplication of privatisations, the development of public-private partnerships²³² and the emergence of numerous regulatory agencies, under the label of independent administrative authorities.

E. Regulatory Agencies

In France the regulatory agencies (autonomous entities directly involved in the exercise of an executive function) have the status of independent administrative authority (AAI) specifically recognised by law or under the case law criteria. The French AAI were frequently created since the late 1970s to protect individual rights and public freedoms or to involve professionals in the definition of rules of behaviour in technical areas that imposes, to be credible, to receive the consent of economic actors. Another generation of agencies/regulatory institutions has been developed in the context of liberalisation policies in the network services. A major factor in the creation of “independent regulators” for regulating service markets was the obligation to transpose EU directives²³³.

Telecommunications. Postal services. The function of regulating the electronic communications sector is exercised on behalf of the State by the Minister in charge of electronic communications and the Regulatory Authority for Electronic Communications and Postal Services - ARCEP (Article L32-1/I/3, Code of postal services and electronic communications).

In 1982, the High Authority for Audiovisual Communication (HACA) was created to control public broadcasting and confer local and regional radio and TV licences. In 1986, HACA was replaced by an independent national authority, the National Commission of Communication and Freedoms (CNCL). Initially, CNCL had regulatory powers only in the media sector but then it was charged with the provision of telecommunications networks of the first generation. In 1988 it was replaced by the High Council for Audiovisual in charge of licensing private telecommunications systems (private networks, cellular telephony, satellite communications, etc.). After the legislative reform of 1990-1 in the telecommunications sector, the administrative responsibilities of CSA for telecom were transferred to the Ministry of Posts and Telecom (the Directorate of General Regulations/DRG before 1994/DGPT between 1994-1996). In 1993, the Dandelot report presented the need to reform the regulatory system. The argument for an independent regulator was included in a report of

(232) Since the ordinance of June 2004 and establishment of May 2005 of Mission d'appui aux partenariats public-privé (MAPPP)

(233) See <http://www.eurosig.eu/article85.html>

1995. In 1996, following the adoption of new legislation which provided for the introduction of competition (Law 96-659) the regulatory functions were transferred to the Regulatory Authority for Telecommunications (ART) which began operating in 1997. Following the Act of May 2005, ART became the Regulatory Authority for Electronic Communications and Postal Services (ARCEP).

Railway transport. The Law n° 2009-1503 of 8 December 2009 on the organization and regulation of railway transports and containing various provisions relating to transport created the Regulatory Authority of Rail Operations, an independent public authority, which contributes to good operation of public service activities and of competitive rail transport, for the benefit of users and customers of rail services. It ensures in particular that the conditions for access to the railway network by the railway companies do not impede the development of competition²³⁴. This regulation is required by the introduction of competition in freight railway transport since 31 March 2006 and the international passenger service planned for no later than January 2010.

Energy. The Regulatory Commission of Energy (CRE) (formerly Committee of Electricity Regulation) was created in 2003 with broad powers also in the gas sector (see also Nuclear Safety Authority - ASN).

Financial services. The Authority of Financial Markets (Autorité des marchés financiers - AMF) was created by the merger of Commission des opérations de bourse [COB], Conseil des marchés financiers [CMF] and Conseil de discipline de la gestion financière [CDGF].

III/ Social dialogue

In France²³⁵ industrial relations have always been dominated by the strong involvement of the state and the law. In recent decades the system of industrial relations has changed remarkably. A decentralised bargaining system has developed in which companies enjoy greater autonomy from both labour legislation and collective agreements. In contrast to the employees' side, employers' organisational density is quite high. Negotiations can be carried out at all levels of economic activity (pyramidal). Multi-sector bargaining was developed to a limited degree and concentrated on specific topics (social protection, vocational training, and employment measures). The traditional level has long been the branch, certainly for negotiating collective agreements of general significance. After the 1980s, a significant movement towards negotiating company-level agreements started in some areas (wages, reduced working time). The lower bargaining levels are now more frequently used. Many larger companies have a company agreement. Regional-level bargaining is rare, but some sectors (metalworking and construction) engage in local and regional bargaining. The major part of the employees is covered by a collective agreement. This is because agreements are easily extended by the state to entire sectors (branch collective agreements). The government can extend agreements at the request of one of the bargaining partners.

Even if there are bodies and procedures of social dialogue at company level or branch or, with some specificity, in various areas of the civil service (State, territorial, hospital), social dialogue is not traditionally con-

(234) <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000021468431>

(235) References: studies on representativeness of the European social partner organisations in France (<http://www.eurofound.europa.eu/eiro/>)

sidered the main asset of the French system. Its absence, or at least its weakness, is instead presented as one of its main deficiencies and it is true that social dialogue takes place normally after an opposition is crystallised, usually a strike, and that it is difficult to be effectively institutionalised.

In the French **public sector**, all **civil servants** benefit from a **special status**. This status is governed by legal or regulatory provisions²³⁶ while the status of **employees in the private sector** is governed by a contract and collective bargaining. There are three categories of civil service (Fonction publique) and therefore of **public servants**: the State civil service, the territorial civil service and the hospital civil service. The public employees of the national education are included in the State civil service. The law on the rights and obligations of civil servants of 1983 states that trade unions are entitled to conduct “negotiations with the government” before decisions on pay rises are taken and to “debate questions relative to the conditions and organisation of work”. In **the public administration**, even if the right to collective bargaining is very limited, reality has overtaken the law as bargaining spread in the 1990s to many new areas; collective bargaining now takes place at national level for all ministries and the territorial civil service.

On 7 April 2010 the National Assembly initiated the legislative procedures on a project of law concerning the reform of the social dialogue in the civil service. According to this project, unions’ representativeness will be based on electoral consultation, social dialogue will be enlarged and social rights strengthened. It also provide for the creation of a “common council of the civil service” (complementary to councils affected to each category of civil service – State, territorial, hospital). Moreover, a collective agreement will be valid (after 2014) only if it will be signed by representative unions (corresponding to at least 50% of votes in elections). Besides, contractual public employees will have the right to participate in unions’ elections.

As the French **hospital sector** is part of both the private and public sectors, industrial relations are covered by two different sets of rules: in the **public sector**²³⁷ – staff labour relations come under the rules applying to hospital civil servants and collective bargaining does not exist as such. Instead, there are consultations between the Minister of Health and the trade unions; in the **private sector** – the labour code applies and collective bargaining takes place at sectoral and company levels. Given that hospital funding depends on the public health insurance system and therefore public expenditure – collective agreements are approved by the Ministry of Health and Sport.

In **the telecommunication sector** centralised bargaining covering the **public sector** as a whole includes the telecommunication sector’s employees still employed under public law terms²³⁸ (the sector’s employees are in part public servants, in part contractual employees). As for the private telecommunications sector data are not available. In the **postal sector** there are no multi-employer agreements. The sector is still mainly dominated by the historical operator, La Poste, the largest employer (with more than 90% of the sector’s total workforce). Also, La Poste still has the highest trade union membership density in France. Within the La Poste group, employees either have civil service status or are contractual staff or are employees with private sector status. In the private sector, industrial relations are not regulated at the sectoral level.

(236) Since the loi du 13 juillet 1983 (law on the rights and obligations of civil servants), the general regulations of the different civil services have been unified, even if there are still specific provisions for each sector. Judges and members of the armed forces are the only civil servants to be governed by specific regulations. Employees of public companies are also governed by regulations which are specific to their company.

(237) The public hospital service, which includes the public establishments and more than two thirds of private establishments, represents three quarters of all beds and places offered by the hospital system in France.

(238) Despite the restructuring of the sector, in France (as in Austria and Belgium), where the employees of the former state monopoly were employed as civil servants, they could maintain this status even after restructuring measures.

In the **electricity and gas industries**, before opening to competition in 2000, employees were covered by the staff service regulations (Statut du personnel des industries électriques et gazières of 1946), that is a particular status, which applies to those working in the production, transport and distribution of electricity and gas in France²³⁹. Following negotiations between the government and the main trade union (CGT), the laws implementing the opening to competition in the electricity and gas markets have extended the status to all companies in the sector, which has become a sort of “branch collective agreement”, and which created the conditions for collective bargaining.

The French **railway transport sector** is marked by the central historical place of SNCF. Neither extensions nor multi-employer agreements exist in SNCF and RFF (created in 1997 for the management of the railway infrastructure). In the SNCF employees are almost all covered by a **particular status under public law** covering SNCF railway staff or by the **internal rule**²⁴⁰ or the collective agreement for railways of local interest; or the transport collective agreement. Other collective agreements can apply for SNCF subsidiaries, depending on the nature of their work²⁴¹. All the employees in the public sector²⁴² are covered by a collective agreement: the large majority by a **sector-level agreement**²⁴³, a minority by a **company-level agreement**.

The **civil aviation sector** comprises many different categories of staff and many trade unions covering specific categories of staff, alongside the federations affiliated to the five French representative trade union confederations. Airport handling is covered by the **National Collective Agreement** on Railway Handling and associated work. Cabin crew – pilots and flight attendants – of airlines are not covered by a national collective agreement, but by **company-level agreements**.

There is quite a lot of collective bargaining in the **sea and coastal water transport** sector, both at **company and sector levels**. The general collective agreement covers everyone, but it is added to by company bargaining, particularly in big companies (there are many company agreements). In diversified companies, there is a general agreement and specific appendices for each area of activity.

Sources of national law on SGIs

Secteur	Références légales	Sites
Télécommunications	Code des postes et des communications électroniques	http://www.legifrance.gouv.fr/affichCode.do?sessionId=8E4FA14835613CF61E34C4B167A58670.ipdjo03v_2?cidTexte=LEGITEXT000006070987&dateTexte=20090830
	Loi n°2004-669 du 9 juillet 2004 relative aux communications électroniques et aux services de communication audiovisuelle	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000439399
	Loi n° 2003-1365 du 31 décembre 2003 relative aux obligations de service public des télécommunications et à France Télécom	http://www.legifrance.gouv.fr/affichTexte.do?sessionId=2EFE83F72275CAD5389C05F433016620.ipdjo12v_1?cidTexte=LEGITEXT00000571808&dateTexte=20090820
	Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Léotard), modifiée	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068930&dateTexte=20090830
Services postaux	Code des postes et des communications électroniques	http://www.legifrance.gouv.fr/affichCode.do?sessionId=8E4FA14835613CF61E34C4B167A58670.ipdjo03v_2?cidTexte=LEGITEXT000006070987&dateTexte=20090830
	Loi n° 2005-516 du 20 mai 2005 relative à la régulation des activités postales	http://www.legifrance.gouv.fr/affichTexte.do?sessionId=2EFE83F72275CAD5389C05F433016620.ipdjo12v_1?cidTexte=LEGITEXT000006051702&dateTexte=20090820

(239) Article 47 of the 8 April 1946 law on the nationalisation of electricity and gas

(240) RH254, which applies to contractual staff

(241) For example, for catering subsidiaries, the collective agreement for railway catering or the Wagon-lits collective agreement applies.

(242) The employees of new companies in the market are not covered.

(243) Since the modification in 2004 of article 9 of the staff service regulations in the gas and electricity industries, representative unions can negotiate sector-level agreements setting national basic pay (salaire national de base, SNB).

Electricité	Loi n°2006-1537 du 7 décembre 2006 relative au secteur de l'énergie	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000462914&dateTexte=
	Loi n°2005-781 du 13 juillet 2005 de programme fixant les orientations de la politique énergétique	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000813253&dateTexte=29990101
	Loi n°2004-803 du 9 août 2004 relative au service public de l'électricité et du gaz et aux entreprises électriques et gazières	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000787077&dateTexte=
	Loi n°2003-8 du 3 janvier 2003 relative aux marchés du gaz et de l'électricité et au service public de l'énergie	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000776748&dateTexte=&fastPos=2&fastReqId=592766342&oldAction=rechTexte
	Loi n° 2000-108 du 10 février 2000 relative à la modernisation et au développement du service public de l'électricité	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000750321&dateTexte=29990101
Gaz	Loi n°2006-1537 du 7 décembre 2006 relative au secteur de l'énergie	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000462914&dateTexte=
	La loi de programme du 13 juillet 2005 fixant les orientations de la politique énergétique	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000813253&dateTexte=29990101
	La loi du 9 août 2004 relative au service public de l'électricité et du gaz et aux entreprises électriques et gazières	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000787077&dateTexte=
	Loi n°2003-8 du 3 janvier 2003 relative aux marchés du gaz et de l'électricité et au service public de l'énergie	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000750321&dateTexte=29990101
	Loi n°2000-1208 du 13 décembre 2000 relative à la solidarité et au renouvellement urbains	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000207538&dateTexte=29990101
Transports ferroviaires de passagers	Loi n°82-1153 du 30 décembre 1982 d'orientation des transports intérieurs	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000319738&dateTexte=29990101
	Décret n°83-817 du 13 septembre 1983 portant approbation du cahier des charges de la nationale des chemins de fer français SNCF	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000325199&dateTexte=29990101
	Loi n° 97-135 du 13 février 1997 portant création de l'établissement public «Réseau ferré de France» en vue du renouvellement du transport ferroviaire	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000747658&dateTexte=29990101
	Loi n°82-1153 du 30 décembre 1982 d'orientation des transports intérieurs	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000319738&dateTexte=29990101
Transports ferroviaires de fret	Loi n°82-1153 du 30 décembre 1982 d'orientation des transports intérieurs	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000319738&dateTexte=29990101
Transports locaux ou régionaux de passagers	Code général des collectivités territoriales	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070633&dateTexte=20090830
	Décret n°87-242 du 7 avril 1987 relatif à la définition et aux conditions d'exécution des services privés de transport routier non urbain de personnes	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006065904&dateTexte=20081202
	Décret n°85-891 du 16 août 1985 relatif aux transports urbains de personnes et aux transports routiers non urbains de personnes	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006065126&dateTexte=20090830
	Loi n°82-1153 du 30 décembre 1982 d'orientation des transports intérieurs	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068730&dateTexte=20090830
	Ordonnance n°59-151 du 7 janvier 1959 relative à l'organisation des transports de voyageurs en Ile-de-France	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069250&dateTexte=20081128
Transport aérien	Code de l'aviation civile	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074234&dateTexte=20090830
Transport fluvial	Code du domaine public fluvial et de la navigation intérieure	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074237&dateTexte=20090822
	Loi n° 91-1385 du 31 décembre 1991 portant dispositions diverses en matière de transports	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006078479&dateTexte=20090901
	Loi n° 83-675 du 26 juillet 1983 modifiée relative à la démocratisation du secteur public	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068818&dateTexte=20090825
	Loi n°82-1153 du 30 décembre 1982 d'orientation des transports intérieurs	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068730&dateTexte=20090830
	Loi du 27 février 1912	
	Décret n° 2008-1321 du 16 décembre 2008 relatif à Voies navigables de France, au transport fluvial et au domaine public fluvial	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000019937826&dateTexte=29990101
Transport maritime	Code des ports maritimes	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074233&dateTexte=29990101
	Loi n° 2008-660 du 4 juillet 2008 portant réforme portuaire	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000019124169&dateTexte=20090901
	Loi n°82-1153 du 30 décembre 1982 d'orientation des transports intérieurs	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068730&dateTexte=20090830
Eau	Code général des collectivités territoriales	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070633&dateTexte=20090830
	Loi n° 2006-1772 du 30 décembre 2006 sur l'eau et les milieux aquatiques	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000649171&dateTexte=29990101
	Loi n° 2004-338 du 21 avril 2004 portant transposition de la directive 2000/60/CE du Parlement européen et du Conseil du 23 octobre 2000 établissant un cadre pour une politique communautaire dans le domaine de l'eau	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000418424&dateTexte=29990101
	Loi n°2002-276 du 27 février 2002 relative à la démocratie de proximité	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000593100&dateTexte=29990101
	Loi n°92-125 du 6 février 1992 relative à l'administration territoriale de la République	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000722113&dateTexte=29990101
Assainissement	Code général des collectivités territoriales	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070633&dateTexte=20090830
	Code de l'environnement	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074220&dateTexte=20090901
	Code de la santé publique	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006072665&dateTexte=20090901
	Loi n° 2006-1772 du 30 décembre 2006 sur l'eau et les milieux aquatiques	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000649171&dateTexte=29990101
	Décret no 94-469 du 3 juin 1994 relatif à la collecte et au traitement des eaux usées mentionnées aux articles L. 372-1-1 et L. 372-3 du code des communes	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000713789&dateTexte=29990101
Chauffage urbain	Décret n°81-436 du 4 mai 1981 relatif aux contrats d'exploitation des installations de chauffage ou de climatisation ou se référant à cette exploitation	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000312042&dateTexte=29990101
	Loi n°80-531 du 15 juillet 1980 relative aux économies d'énergie et à l'utilisation de la chaleur	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000886864&dateTexte=29990101

Radio-télévision	Loi n° 2009-258 du 5 mars 2009 relative à la communication audiovisuelle et au nouveau service public de la télévision	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020352071&dateTexte=29990101
	Loi n°2004-669 du 9 juillet 2004 relative aux communications électroniques et aux services de communication audiovisuelle	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000439399
	Loi n°2003-1365 du 31 décembre 2003 relative aux obligations de service public des télécommunications et à France Télécom	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000244542&dateTexte=
	Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Léotard), modifiée	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068930&dateTexte=20090830
Administrations publiques nationales	La Constitution du 4 octobre 1958	http://www.legifrance.gouv.fr/html/constitution/constitution.htm
Administrations publiques régionales ou locales	La Constitution du 4 octobre 1958	http://www.legifrance.gouv.fr/html/constitution/constitution.htm
	Code général des collectivités territoriales	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070633&dateTexte=20090830
	Loi n°2004-809 du 13 août 2004 relative aux libertés et responsabilités locales	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000804607&dateTexte=29990101
Services de santé hospitaliers	Code de la santé publique	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006072665&dateTexte=20090830
	Loi n° 2009-879 du 21 juillet 2009 portant réforme de l'hôpital et relative aux patients, à la santé et aux territoires	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020879475&dateTexte=29990101
Services de santé ambulatoires	Code de la santé publique	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006072665&dateTexte=20090830
Education primaire et secondaire	Code de l'éducation	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071191&dateTexte=20090830
Enseignement supérieur	Code de l'éducation	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071191&dateTexte=20090830
	Code de la recherche	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071190&dateTexte=20090830
Formation professionnelle	Code de l'éducation	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071191&dateTexte=20090830
	Code du travail	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006072050&dateTexte=20090901
	Code général des collectivités territoriales	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070633&dateTexte=20090830
	Loi n° 2008-776 du 4 août 2008 relative à la modernisation de l'économie	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000019283050&dateTexte=29990101
	Loi n°2004-391 du 4 mai 2004 relative à la formation professionnelle tout au long de la vie et au dialogue social	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000005766090&dateTexte=20090901
Protection sociale obligatoire	Préambule de la Constitution de 1946	http://www.legifrance.gouv.fr/html/constitution/constitution.htm
	Code de la sécurité sociale	http://www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIART000006740077&idSectionIA=LEGISCTA000006155998&cidTexte=LEGITEXT000006073189&dateTexte=20080201
	Code de l'action sociale et des familles	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074069&dateTexte=20090830
	Loi n° 2008-1330 du 17 décembre 2008 de financement de la sécurité sociale pour 2009	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000019942966&dateTexte=29990101
Protection sociale complémentaire	Code de la sécurité sociale	http://www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIART000006740077&idSectionIA=LEGISCTA000006155998&cidTexte=LEGITEXT000006073189&dateTexte=20080201
	Loi n°2003-775 du 21 août 2003 portant réforme des retraites	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000781627&dateTexte=29990101
	Loi no 94-678 du 8 août 1994 relative à la protection sociale complémentaire des salariés et portant transposition des directives no 92-49 et no 92-96 des 18 juin et 10 novembre 1992 du Conseil des communautés européennes	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000530328&dateTexte=29990101
Logement social	Code de la construction et de l'habilitation	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074096&dateTexte=20090830
	Code général des collectivités territoriales	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070633&dateTexte=20090830
	Loi n° 2009-323 du 25 mars 2009 de mobilisation pour le logement et la lutte contre l'exclusion	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020438861&fastPos=1&fastReqId=1888583016&categorieLien=cid&oldAction=rechTexte
	Loi n° 2007-290 du 5 mars 2007 instituant le droit au logement opposable et portant diverses mesures en faveur de la cohésion sociale	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000271094&fastPos=2&fastReqId=1888583016&categorieLien=cid&oldAction=rechTexte
	Loi n° 2006-872 du 13 juillet 2006 portant engagement national pour le logement	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000238980&fastPos=3&fastReqId=1888583016&categorieLien=cid&oldAction=rechTexte
	Loi no 90-449 du 31 mai 1990 visant à la mise en oeuvre du droit au logement	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000159413&fastPos=7&fastReqId=1888583016&categorieLien=cid&oldAction=rechTexte
Aide à la petite enfance (0 à 6 ans)	Code de l'éducation	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071191&dateTexte=20090830
	Loi n° 2008-790 du 20 août 2008 instituant un droit d'accueil pour les élèves des écoles maternelles et élémentaires pendant le temps scolaire	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000019344416&dateTexte=29990101
	Loi n° 2007-293 du 5 mars 2007 réformant la protection de l'enfance	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006055596&dateTexte=20090901
	Décret n° 90-788 du 6 septembre 1990 relatif à l'organisation et au fonctionnement des écoles maternelles et élémentaires	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000352635&dateTexte=29990101
Aide aux handicapés	Code de l'action sociale et des familles	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074069&dateTexte=20090830
Aide aux personnes âgées	Code de l'action sociale et des familles	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074069&dateTexte=20090830
Services financiers	Code monétaire et financier	http://www.legifrance.gouv.fr/affichCode.do;jsessionid=F09477A4992B34B85B80CE18A135D9DC.tpdj012v_1?cidTexte=LEGITEXT000006072026&dateTexte=20090820
	Loi n°2003-706 du 1 août 2003 de sécurité financière	http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=F09477A4992B34B85B80CE18A135D9DC.tpdj012v_1?cidTexte=LEGITEXT000005634902&dateTexte=20090820

Services culturels	Code du patrimoine	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074236&dateTexte=20090830
	Code du cinéma et de l'image animée	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000020908868&dateTexte=20090830
	Code de la propriété intellectuelle	http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006069414&dateTexte=20090830
	Loi n° 77-2 du 3 Janvier 1977 modifiée sur l'architecture	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000522423&dateTexte=29990101
	Loi du 29 Juillet 1881 modifiée sur la liberté de la presse	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070722&dateTexte=20090830
	Loi 86-1067 du 30 septembre 1986 modifiée, relative à la liberté de communication	http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000512205&dateTexte=29990101

PUBLIC SERVICES IN GREECE

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Greece is a unitary state constituted of one peninsula and almost 2000 islands (227 inhabited). Greece is divided into 13 regions (peripheries) divided into 54 (51+3) counties (nomarchiakes autodiikisis and 1034 local authorities (914 municipalities – dimos and 120 communities - koinotita).²⁴⁴ The Community of Mount Athos Monasteries is an autonomous territorial entity²⁴⁵. Public administration is linked to the concept of public service, which has a double meaning, functional and organic²⁴⁶.

Greek law and jurisprudence directly or indirectly uses or appeals to the concept of public service both in its organic sense (Article 73§4, 82§1, 101§3, 105§1) and its functional one (Article 23§2, 106§3 and 82§2 of the Constitution of 1975).²⁴⁷

However, the **organic conception** of services of general economic interest is more prevalent in Greece as the network services were mostly associated – until recently – with the Public Enterprises and Organisations (DEKO – ΔΕΚΟ). In view of Greek jurisprudence (Council of State) public enterprises offering a commodity of vital importance, such as water supply, energy and telecommunications, are engaged in providing a public service, given the public purpose of ensuring that society has the goods necessary for a decent standard of living, as measured by contemporary criteria, and the opportunity to develop individual personality.²⁴⁸ Nevertheless, because of privatisations, some enterprises, such as OTE, are no longer subject to the legal framework that regulates the DEKO.

In general, the Community concepts are used very little in the debates on “public services”. Even the term

(244) Although a draft law (project Kallikrates) has been filed recently. This project aims to change again the country's administrative structure. The number of municipalities will be reduced from 1034 to 370 while the competences of 51 counties will be assigned to 13 new regions (peripheries). See this article in English on <http://www.athensnews.gr/articles/13373/15/01/2010/24785>

(245) After the recognition of independence in 1830, between 1833 and 1840 the Greek administrative and judicial system was founded following the French model of strong centralisation and of local decentralisation. Thus, as regards the concept of public service, all Greek authors (also those heavily inspired by the German theories) acknowledge its role in the development and application of administrative law. They admit however the idea that this role is not as important (fundamental) as it was for a long period in French law. Most Greek authors deal with the concept of public service in its organic sense. Epaminondas P. Spiliotopoulos, “La notion de service public en droit hellénique”, in Franck Moderne, Gérard Marcou, L'idée de service public dans le droit des Etats de l'Union européenne, L'Harmattan, 2001, pp. 217, 219

(246) In the organic sense, public administration is all the public services, excluding the Parliament, the services of the Chamber and the courts. Panayotis Poulis, Droit constitutionnel et institutions helléniques, L'Harmattan, 2008, p. 289

(247) Epaminondas P. Spiliotopoulos, op. cit., 2001, p. 219

(248) The public enterprises offering goods or services of vital importance may be organised in any legal form, even those of private law, but remain always subordinate to and overseen by the State. These enterprises are therefore subject to the same principle of continuous operation as that applicable to public services – continuous operation may not be disrupted and is guaranteed by the State. P.C. Spyropoulos, Theodore P. Fortsakis, Constitutional Law in Greece, Kluwer Law International, p. 174

“ipiressies kinis ofelias” (services of general interest; literally “services of common utility”) is not always well understood in the discussions on SGIs. It seems rather that DEKO and organisations of services of general interest – in the framework of analyses and public debates of the management of electricity, water, telecommunications and other SGEIs – are perceived in functional sense (ipiressies koinis ofeleias).

The concept that best represents the Community concept of services of general interest is Υπηρεσίες Κοινής Ωφέλειας respectively Ipiresies Koinis Ofeleias, pronounced **Ipiressies Kinis Ofelias (Services of Common Utility)**. The literal translation is Υπηρεσίες Γενικού Συμφέροντος/ Ενδιαφέροντος respectively Ipiresies Yenikou Simferondos/Endiaferondos pronounced **Ipiressies Yenikou Simferondos/Endiaferondos**. It is the term used in translation of EU texts.

As with for “services of general interest”, the Greek concept that best corresponds to the Community term “services of general economic interest” is Υπηρεσίες Κοινής Ωφέλειας respectively, Ipiresies Koinis Ofeleias, pronounced **Ipiressies Kinis Ofelias (Services of Common Utility)**. Literally, the translation is Υπηρεσίες Γενικού Οικονομικού Συμφέροντος/Ενδιαφέροντος respectively Ipiresies Yenikou Oikonomikou Simferondos/Endiaferondos pronounced **Ipiressies Yenikou Ikonomikou Simferondos/Endiaferondos**.

For the concept of non-economic services of general interest, the Greek notion that seems to match best with is Δημόσιες Υπηρεσίες, respectively Dimosies Ipiresies, pronounced Dimossies Ipiressies. This term means “public services”. In general, these services are provided by the public sector (Dimossios Tomeas – Δημόσιος Τομέας). Literally, the translation of the concept NESGI is Υπηρεσίες Γενικού Συμφέροντος Μη Οικονομικού Χαρακτήρα, respectively Ipiresies Yenikou Simferondos Mi Oikonomikou Charaktira, pronounced Ipiressies Yenikou Simferondos Mi ikonomikou Charaktira which literally means “services of general interest with non economic nature”. The functional approach of public services (in literal translation dimossies ipiressies) is much more present in the case of NESGIs. That can explain why SGEIs are represented in EPSU only for the sector of water while the main representation of Greek trade unions is that of ADEDY (administrative services).

The literal translation of the concept **social services of general interest** is Κοινωνικές Υπηρεσίες Γενικού Ενδιαφέροντος/Συμφέροντος, respectively Koinonikes Ipiresies Yenikou Endiaferondos/Simferondos, pronounced Kinonikes Ipiressies Yenikou Endiaferondos/Simferondos. However, there is no pertinent Greek term corresponding to the Community term. Thus, it is preferable to mention the terms that correspond to each service: **social security** = Κοινωνική ασφάλιση, pronounced Kinoniki Asfalisi; **child care and welfare services** that are provided by municipal and regional governments and that are often referred to as Κοινωνικές Υπηρεσίες, respectively Koinonikes Ipiresies, pronounced Kinonikes Ipiressies, which means “social services”. Two similar terms, which are often used, are Κοινωνική Μέριμνα, respectively Koinoniki Merimna, pronounced Kinoniki Merimna (social care) or Κοινωνική Πρόνοια, respectively Koinoniki Pronoia, pronounced Kinoniki Pronoia (social welfare or, in French, providence sociale).

The literal translation of the expression **public service obligations** is Υποχρεώσεις Δημόσιας Υπηρεσίας, respectively Iphoreoseis Dimosias Ipiresias, pronounced **Iphoreosis Dimossias Ipiressias**. This term is widely used in discussions concerning transport of passengers by sea and also by air and railways (some voices reclaim the implementation of public service obligations). Though, the regulator of the electricity sector RAE (Regulatory Authority for Energy) seems to have chosen – to designate the public service obligations

– the term *Ipiressies Koinis Ofeleias* (pronounced *Ipiressies Kinis Ofelias*). This term literally means “services of common utility” and could lead to a confusion since it corresponds to the concept of public service – service of general interest.

The difficulties concerning the terminology seem to originate from a disparity between the Community functional approach and the Hellenic reality (organic approach).

The term “universal service” is translated *Καθολική Υπηρεσία*, respectively *Katholiki Ipiressia*, pronounced *Katholiki Ipiressia*.

Terms in TEU and TFEU	Greek terms in TEU and TFEU ^{table29}
Services of general interest – SGIs	με τις υπηρεσίες γενικού συμφέροντος
Services of general economic interest – SGEIs	υπηρεσίες γενικού οικονομικού συμφέροντος
Non-economic services of general interest – NESGIs	υπηρεσίες γενικού συμφέροντος μη οικονομικού χαρακτήρα
Public service	δημόσια υπηρεσία

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs’ organisation?

Central government	Regional government	Local government
Telecommunications (1)	Regional transport of passengers (5)	Local transport of passengers
Postal services (1)	Water	Water
Electricity (production, transport, distribution, marketing) (2)		Waste water
Gas (transport, distribution, marketing) (3)		Childcare services
Railway transport (4)		Elderly care
Regional and local transport of passengers (5)		Cultural services
Air transport (6)		
Maritime transport (7)		
Water (8)		
Health services		
Primary and secondary education		
Higher education		
Social housing (9)		
Cultural services		

(1) Shared competences between EETT (Hellenic Telecommunications and Post Commission) and Ministry of Infrastructure, Transport and Networks (General Secretariat of Infrastructure, Transport and Networks - <http://www.yme.gr>)²⁴⁹.

(2) Shared competences between RAE (Regulatory Authority for Energy) and the Ministry of Environment, Energy and Climate Change.

(249) See also the Observatory for the Information Society - <http://www.observatory.gr>

(3) Shared competences between DESFA (Hellenic Gas Transmission System Operator), RAE (Regulatory Authority for Energy) and the Ministry of Infrastructure, Transport and Networks (competences exercised by the former Ministry of Development).

(4) Ministry of Infrastructure, Transport and Networks

(5) Ministry of Infrastructure, Transport and Networks. However, regulation is achieved at regional level by OASA (Athens) and THUTH (Thessalonica). Both organisations are under the control of the ministry.

(6) Department of Civil Aviation of the Ministry of Infrastructure, Transport and Networks.

(7) Ministry of Economy, Competitiveness and Navigation - <http://www.yen.gr>

(8) Ministry of Environment, Energy and Climate Change (management of water basins, etc.). In large cities, EYDAP (water supply) is placed under the supervision of the General Secretariat of Public Transport of the Ministry of Infrastructure, Transport and Networks - <http://www.ggde.gr>. Locally, in smallest towns, local communities manage their own services of water and waste water (municipal enterprises).

(9) OEK (Social Housing Agency) is under the supervision of the Ministry of Infrastructure, Transport and Networks.

B. Sectoral organisation and trends

Statute of the operators

National public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
Railway transports of passengers Freight rail transport Broadcasting	Postal services Production of electricity Electricity networks (transport-distribution) Marketing of electricity Transport-distribution of gas Marketing of electricity	Local transport of passengers Water (2) Waste water (2)	Marketing of gas		Telecommunications	Telecommunications Postal services Production of electricity Local transport of passengers (Thessalonica) (1) Air transport Maritime transport Broadcasting Regional and interregional transport of passengers

(1) OASTH (Organisation of Urban Transport of Thessalonica) is an organisation under private law. The capital of OASTH is shared in 415 shares. Of these, 346 are shared between 1900 drivers.

(2) EYDAP S.A – ΕΥΔΑΠ (Athens Water Supply and Sewerage Company) is the water company in the region of Attika. EYDAP ensure water supply for more than 4 million persons. The Hellenic State keeps a 61% stake

in this enterprise. The facilities of the water sector (e.g. network) belong entirely by the State (Fixed Assets Company EYDAP). Nevertheless, a contract signed between EYDAP and the Greek State in 1999 entrusts their management to EYDAP. EYDAP was launched on the stock exchange in 2000 following its privatisation. EYAO – EYATH (Thessalonica Water Supply and Sewerage Company) is the water company of Thessalonica. The Greek State holds up to 74% of its capital. EYATH enjoys exclusive rights in water supply (Thessalonica region). Facilities (network) belongs to the Fixed Assets Company EYATH (launched on the stock exchange in 2001). EYDAP and EYATH are in charge of waste water services. In cities of over 10,000 inhabitants, water is distributed by municipal enterprises (dimotikes epiheiriseis). Services provided by municipalities are rarely delegated to private companies.

SGL markets

Liberalised market and competition	Liberalised market Public operators dominant	Public monopoly	Liberalised market Private operators dominant	Private monopoly	No market
Telecommunications (fixed and mobile phone, Internet) (2) Marketing of electricity (industrial consumers)	Postal services (liberalisation of the reserved sector is planned for 1.01.2013) Production of electricity Marketing of electricity (small consumers)	Electricity networks (transport-distribution) Marketing of electricity Transport-distribution of gas Marketing of gas Railway transport of passengers Freight rail transport Water	Telecommunications (fixed lines) Air transport (3) Maritime transport (1)		

(1) Maritime transport of passengers is provided by many private companies. In 2006, 64% of the transport of passengers was ensured by 5 companies: Hellenic Seaways (32%), Blue Star Ferries (16%), ANEK (8%), Minoan (5%) and NEL (3%).

(2) 4 companies are present in this segment (Cosmote – a subsidiary of OTE, Vodafone, Wind, Q-Telecom). Several companies provide broadband Internet services: Otenet (subsidiary of OTE), Wind, HOL, Forthnet, Vivodi, Tellas, etc. Two companies (Altec and Lannet) have filed for bankruptcy in 2009.

(3) Domestic market is shared between Aegean Airlines, Olympic Air (Olympic Air is the successor to the national airline Olympic Airways, privatised in 2009) and Athens Airways. Discussions are currently underway for a merger between two dominant private companies (Olympic Air and Aegean), which would create a quasi-monopoly (de facto).

Main financing methods of SGIs

Fees/payment by users/clients	Public grants/aids	Insurance funds	Incomes from the activity	Social tariffs/prices
Marketing of electricity (1) Air transport Maritime transport Marketing of electricity (1) Social housing (2)	Air transport (4) Maritime transport (3) Social housing (2)		Maritime transport (3)	Telecommunications (disabled, elderly persons) Marketing of electricity (large families) Railway transport of passengers (children, disabled, large families, students) Local transport of passengers (disabled, large families, students) Water (large families)

(1) Charge that appears in the invoices as «services of common utility» and aims to ensure a geographical equalisation between consumers connected to the continental system and islanders that are not connected and to finance special tariffs for large families. Cross-subsidies also exist between households and enterprises/business. RAE announced their suppression as part of “rationalisation” of energy prices and to facilitate competition between PPC and alternative providers.

(2) In the case of loans for construction or purchase of housing, the grant (payment of interest rates) is shared between OEK and the Greek State (9 years for OEK and 7.5 years for the Greek State for a loan of 15 years). OEK activities are financed by a levy of 1% on income of employees and employers (contribution amounting to 0.75% of each employee salary).

(3) Public subsidies for serving the outlying islands (άγονες γραμμές – agones grammes): In 2007, 84 destinations were funded for a total of 100 million euros. The Ministry of Commercial Shipping imposes public service obligations to companies operating on the Aegean Sea (obligation to maintain services to specified destinations for a period of 10 months etc.). These obligations are funded by companies with revenues earned in the summer season.

(4) State subsidies for services to 24 destinations included in public service obligations.

National authorities responsible for setting pricing and/or tariff policies

Central government	Regional governments	Local government	Regulatory agencies	Providers
Telecommunications (1) Marketing of electricity Transport-distribution of gas			Marketing of electricity	Telecommunications Railway transport of passengers Maritime transport (since 2006)

(1) Decision 31923/1135 of 5/6/2007 of the Ministry of Economy and Finance and of Ministry of Transport and Communication specifies the procedures of compensation for the cost of providing universal service. A fund of compensation is managed by EETT (Hellenic Telecommunication and Post Commission), to which the enterprises of telecommunications whose turnover exceeds 15,000,000 euros contribute.

II/ Approaches

A. The model of public administration and national public companies

Even since the Second World War Greece has had an important public sector which, in particular after 1975, became involved in many areas.²⁵⁰ The Constitution of 1975, whilst solemnly reaffirming the principle of an economic system based on freedom and private ownership of the means of production, recognises the precedence of the general interest over private enterprise. Also, Article 106§3 of the Constitution provides for the possibility of total or partial nationalisation of private enterprises if their main goal is to provide services to the society. If these are delivered by a private enterprise on the basis of a concession contract, they have already the nature of public service in a functional sense, and nationalisation concerns principally the ownership of enterprises.²⁵¹

With Greece's accession to the European Union in 1981, international competition and technological developments led, in the early 1990s, to the beginnings of reversing this trend with, on the one hand, privatisation of the ownership of state enterprises, or, on the other hand, the conversion of the legal status of various state agencies and enterprises into companies (*sociétés anonymes*) (Act 2414/1996, Act 3429/2005). Provision was subsequently made for the possibility of de-nationalizing these agencies and enterprises (Act 1914/1990). There followed a whole wave of privatisations, continuing up to the present day. However, it is being implemented with parsimony and mainly in the field where the Greek state remains a strong partner²⁵²

Telecommunications. **OTE** was progressively privatised after 1997. The Greek State keeps almost 20% of shares and Deutsche Telekom 30%. According to figures from the authority of regulation EETT, the former public enterprise OTE maintained over 70% of market share of fixed telephony in 2007 against less than 20% for 3 other major companies. The historical operator OTE was designated as the "universal provider".

Postal services. **ELTA** (Hellenic Post) is a limited company on the stock exchange. The Hellenic State keeps 90% of the shares. The corresponding income market amounted to 40% in 2006 of total revenues against 60% for the universal service.

Production of electricity. The historical operator, the public enterprise PPC was privatised in three phases, from 2001 to 2003. **PPC- ΔΕΗ** (Public Power Corporation) is a mixed capital company. The Hellenic State keeps a 51% stake in the enterprise (<http://www.dei.com.gr>). **PPC – ΔΕΗ** provides almost all production of electricity. Alternative producers: Energeiaki A.E is a subsidiary of the mixed oil company ELPE, active in the sector of electricity²⁵³. However, several construction projects of powerplants being implemented or have

(250) Jean Anastopoulos, «Adapting the Administration – in Its Tasks, Its Structures and Its Personnel – To the New Economic Situation : The Case of Greece», in *International Review of Administrative Sciences*, 1987/53 pp. 35-48

(251) Epaminondas P. Spiliotopoulos, *op. cit.*, 2001, p. 223

(252) P.C. Spyropoulos, Theodore P. Fortsakis, *Constitutional Law in Greece*, Kluwer Law International, p. 173; Effie Karpodini-Dimitriadi, "Traditional Policy Tools and New Incentives. Built Heritage in Greece", in Peter B. Boorsma (ed.), *Privatisation and culture: experiences in the arts, heritage and cultural industries in Europe*, Kluwer Academic Publisher, 1998, p. 111

(253) <http://www.hellenic-petroleum.gr/online/generic.aspx?mid=163&pid=109>

been announced. These projects involve major international enterprises (e.g. Endesa, Edison, and Enel), often in cooperation with Greek private capital (e.g. ELPE, Mytilinaios, Kopelouzos). In addition, renewable energy projects are developing. A proposed law aiming to accelerate the introduction of renewable energy is about to be voted on. In this sector many small enterprises are active in the market (judging by the number of licences issued by RAE).

Electricity networks remains in the property of PPC. However, their management is granted to HTSO - ΔΕΣΜΗΕ (Hellenic Transmission System Operator S.A), a company owned 51% by the Hellenic State and 49% by PPC (<http://www.desmie.gr>).

PPC is currently the only enterprise active on the market of electricity marketing.

DEPA S.A – ΔΕΠΑ.Α.Ε (Public Gas Corporation S.A - <http://www.depa.gr>) is a company responsible for supplying the country with gas. The Hellenic State and ELPE participate up to 65%, and respectively 35% in the capital of this company (<http://www.depa.gr>).

Gas transport-distribution is ensured by **DESFA S.A – ΔΕΣΦΑ Α.Ε** (Hellenic Gas Transmission System Operator), a company in which the State holds 65% of shares (<http://www.desfa.gr>).

EDA.S.A – ΕΔΑ.Α.Ε (Gas Distribution Company - <http://www.eda.gr>) is in charge of the distribution of gas in Attica, Thessaly and Thessalonica. This company belongs to DEPA.

The marketing of gas is provided by different **EPA – ΕΠΑ** (regional level). EPAs are mixed companies who have exclusive rights for distribution of gas for a period of 30 years and for marketing (to consumers of less than 100 GWh).²⁵⁴

In the sector of railway transports of passengers, there is no competition. **OSE - ΟΣΕ** (Hellenic Railways) is a limited company owned 100% by the Greek State. The restructuring of the company is underway in the framework of implementation of Community Directives of 2001 (separation between network and supply of transport services - <http://www.ose.gr>). The company **EDISY S.A.** was created to manage and operate the rail infrastructures of the country. **TRAINOSE S.A.** provides transportation services for passengers and freight. Rail transport in Athens and Thessalonica (Proastiakos A.E) was absorbed by TRAINOSE (www.trainose.com). **ERGA OSE S.A.** is a subsidiary of OSE group that is responsible for the management of group investment programmes (www.ergose.gr).

Freight rail transport is operated by **GAIA OSE S.A**

Urban transport: **OASA - ΟΑΣΑ** (Athens Urban Transport Organisation - <http://www.oasa.gr>) coordinates all means of public transport in the Athens region (bus, trolleys, metro, tram, train). The law specifies that the transport of passengers is assigned to various transportation agencies placed under the supervision of OASA (Athens Urban Transport Organisation). OASA signs contracts (business contracts agreements) with these

(254) EPA of Attica is a mixed company. The Greek State owns 51% of its shares and the private investors 49% (Consortium Attiki Denmark Aps with the participation of Shell Gas and Power B.V - <http://www.aerioattikis.gr>). In the mixed society EPA of Thessaloniki, EDA (subsidiary of DEPA) owns 51% of shares vs. 49% for ENI S.A that exercise its management. <http://www.epathessaloniki.gr>

agencies.²⁵⁵ In Thessalonica the passenger service is assigned to O.A.S.TH by a concession signed between this body and the Greek State. THUTU – ΣΑΣΘ (Thessaloniki's Urban Transport Authority) is an independent public authority in charge of the development and the supervision of public transport in Thessalonica (<http://www.sasth.gr>).

Regional and inter regional transport by bus are organised by KTEL – ΚΤΕΛ. KTELS are limited companies under the supervision of the Ministry of Transport and the Prefect. Although they are entirely private enterprises - not receiving public subventions – ticket prices are set by the State. There are now about 60 KTEL in Greece. Each prefecture has its own KTEL.

Broadcasting. ERT S.A – EPT (Hellenic Broadcasting Corporation) is the national broadcasting company (3 channels). There are a total of 8 private television stations nationwide (902 Aristera sta FM, ALPHA, ALTER CHANNEL, ANTENNA TV, MEGA CHANNEL, SKAI TV, ΣΤΑΡ ΨΗΦΗΛΙΑ, MACEDONIA TV).

Social housing. ΟΕΚ – ΟΕΚ (Organisation of Social Housing) is the main institution in Greece responsible for social housing. Among ΟΕΚ activities it is possible to distinguish: the granting of loans for the purchase or construction of housing or small loans to repair homes (subsidised interest, loans under favourable conditions, etc.), the grant of rent, the provision of services to families and persons with disabilities.

Financial services. The Hellenic State holds the capital of 5 banks, of which: 77% of ATE Bank (Agricultural Bank of Greece - www.atebank.gr); 34% of Post Bank (Ταχυδρομικό Ταμιευτήριο - <http://www.ttbank.gr>); 39% of Bank of Attica (Τράπεζα Αττικής - <http://www.atticabank.gr>). Insignificant shares are maintained in two other banks.

B. Local autonomy

The Municipal Code of 2006 stipulates that the municipalities and communities have general responsibility for managing local affairs and the promotion of the social, financial, cultural and spiritual needs of their citizens. The main competences exercised by municipalities and communities include waste collection and treatment, gas distribution, local public transport, childcare services, kindergartens, retirement homes, social housing, construction and maintenance of local roads and school buildings, etc.

The management of water is ensured by specific “water regions” under the control of the State.

The principal competences of counties include consumer protection, protection of environment, supra-municipal infrastructure and transport infrastructure, etc. Some responsibilities are exercised jointly with the municipalities. However, the division of tasks is not clear.

To provide public services, municipalities and communes may establish public corporate bodies (hospitals, elderly homes, child care centres). If these take the form of a foundation, they are established by presidential

(255) The transport companies are:

A) Subsidiaries of OASA: ETHEL – ΕΘΕΛ (Compagnie de Bus Thermiques) 100% owned by the Greek State. <http://www.ethel.gr>; ILPAP – ΗΛΠΑΠ (Athens – Piraeus Trolley Buses), 100% owned by the Greek State. <http://www.athens-trolley.gr>; ISAP S.A – ΗΣΑΠ (Athens – Piraeus Electric Railways) 100% owned by the Greek State. <http://www.isap.gr>

B) Companies under the supervision of OASA: AMEL – ΑΜΕΛ (Attiko Metro Operation Company S.A) <http://www.amel.gr>; Tram S.A <http://www.tramsa.gr>; Proastiakos S.A (www.trainose.com);

decree following the prior decision of the municipal or communal council and the recommendation of the competent ministers.

They also may set up enterprises on their own (in the form of a municipal or communal ‘public utility’) and may also set up companies, alone or in partnership with other municipalities or communes, either with ‘Second Level Local Government Agencies, SLLGAs’ or other local agencies or third parties (the companies are regarded as local government enterprises insofar as these legal persons hold the majority of the corporate capital). Both these forms of organisation are private law legal persons. Their purpose is to organise functions or activities and to provide services related to or associated with their areas of competence, covering such areas as social protection and solidarity, education, culture, sport and environment. Under no circumstances may these enterprises have a commercial or industrial purpose. (Article 254 MCC)²⁵⁶

According to Article 102§3 of the Greek Constitution, Law may provide for compulsory or voluntary associations of local government agencies to execute works or render services or exercise competences belonging to local government agencies. Article 245 and seq. MCC provide the procedure of establishment of these associations as public law legal persons.

C. “New Public Management”

PPP. Over recent years Greece has seen significant participation by the private sector in the construction and management of projects involving in particular major infrastructures or specific construction projects (airport, bridge, and motorway). PPPs are regulated by the Act 3389/2005 ‘Partnerships between the Public and Private Sector’ which covers only partnerships with a budget of up to 200 million euros.²⁵⁷

Evaluation. The evaluation of public services is practiced in a sectoral framework but the practice is not widespread in all areas of SGIs (there is more evaluation in the sectors where an independent regulatory authority is set up).

Thus, EETT (Hellenic Telecommunications and Post Commission) publishes an annual report on developments in the telecommunications market and the postal market. EETT implemented a system of indicators of quality in electronic communications. The indicators must be published on the website of each company operating on the market as well as on EETT web site.²⁵⁸

RAE (Regulation Authority for Energy) published in September 2009 the “2009 National Report to the European Commission”²⁵⁹. This is the most recent document published by RAE on the development of the Greek energy market.

As for local transport of passengers, OASA publishes an Annual Report, which includes some elements evaluating the activity of public transport in the Athens region.²⁶⁰ Also, since 2007 OASA (Athens Urban

(256) P.C. Spyropoulos, Theodore P. Fortsakis, *Constitutional Law in Greece*, Kluwer Law International, p. 166

(257) P.C. Spyropoulos, Theodore P. Fortsakis, *Constitutional Law in Greece*, Kluwer Law International, p. 176

(258) The list of indicators can be found at http://www.eett.gr/opencms/opencms/EETT/Electronic_Communications/Telecoms/QualityIndicators/

(259) Available in English at <http://www.rae.gr/en/news/main.htm>

(260) The report is available in English at: http://www.oasa.gr/pdf/PEPRAGMENA_2008_english.pdf

Transport Organisation) has published reports on social responsibility, which contains a section on customer service and disabled persons²⁶¹ and implemented a Charter that gives details about the obligations of public transport companies to their passengers.²⁶²

AMEL, Athens metro company, elaborated a series of performance indicators. Four areas of evaluation are concerned: security, reliability, speed, customer satisfaction.²⁶³

Work on the evaluation of services of general interest seems to be more developed in Greece as regards maritime transport of passengers (in public debates and theoretical/academic contributions). It is possible to mention, for example, the studies of the Institute of Municipalities (ITA) on the definition of efficiency indicators for the system of maritime transport aiming to implement an evaluation system for improving the accessibility and attractiveness of the islands. This evaluation system is composed of a total of 38 indicators.²⁶⁴

D. Regulatory Agencies

EETT (Hellenic Telecommunication and Post Commission - <http://www.eett.gr>) is the regulatory authority for the markets of telecommunications and postal services. The strategic vision of this commission for 2008-2011 is “the creation of a fully liberalised and competitive market”. Thus, an asymmetric regulation was implemented in order to limit the market shares of the historical operator (OTE). For the postal sector, EETT has set itself the objective, among others, of organising a universal service of affordable quality throughout the territory of Greece.

ADAE – ΑΔΑΕ (Hellenic Authority for Communication Security and Privacy - <http://www.adae.gr>) is an independent public authority responsible for protecting the security of networks and information, free communication, etc.

RAE - PAE (Regulatory Authority for Energy) is an independent administrative authority to promote and regulate competition in energy markets²⁶⁵.

DESFA – ΔΕΣΦΑ (Hellenic Gas Transmission System Operator - <http://www.desfa.gr>) is in charge of the management and regulation of the system of transport of gas

The regulation of aviation is provided by the Service of Civil Airways of the Ministry of Transport and Networks (<http://www.ypa.gr>). This service is responsible for organising public service obligations regarding services to 24 air routes (islands of Greece). Because of the geographical characteristics of Greece (island), the State maintains important powers. The Ministry of Economy, Competitiveness and Navigation, in cooperation with the Council of Maritime Transport, defines the public service obligations and subsidises the air routes to the

(261) The report of 2008 contains the following sub-sections: - Public Information; - Information by the telephone line 185; - Management of demands and complaints; - Measures to improve passenger safety; - Service for disabled persons; - Night buses. The report (in Greek) at http://www.oasa.gr/pdf/ekthesi_eterikis_2008.pdf

(262) This charter is available in English at www.oasa.gr/pdf/xyk_en_rev_6.pdf

(263) For more information (in English) see <http://www.amel.gr/index.php?id=70&L=1>

(264) This document is available (in Greek) at: http://kedke.kedke.org/content-api/f/binaryChannel/kedke/datastore/da/7f/7d/da7f7d3d9a9f656dbcafa3e9fabbd690e8322eb1/application/pdf/contentDispositionType/attachment/ethsio2008_nhsivtikhpolitikh.pdf

(265) For more information concerning the obligations and competences of RAE <http://www.rae.gr/en/about/1a3.htm>

isolated islands (“agones grammes” - <http://www.yen.gr>).

The National Broadcasting Council (ESR – ΕΣΡ - <http://www.esr.gr>) is an independent authority responsible for the regulation of the broadcasting sector.

The Supervision of Credit and Related Financial Institutions Department (SCRFID) of the Bank of Greece (Τράπεζα της Ελλάδος - <http://www.bankofgreece.gr>) is in charge of the supervision of banking institutions operating in the Greek market.

For local transport of passengers see OASA (Athens Urban Transport Organisation), in Athens, and THUTU (Thessalonica’s Urban Transport Authority), in Thessalonica.

III/ Social dialogue

The Greek²⁶⁶ social dialogue features powerful trade unions in state agencies and in companies which are under State control. Meanwhile, in the private sector, trade union representativeness is low. Sectoral bargaining is the main bargaining level in Greece.

In the public sector, in particular the **central and local administration**, there are important differences between the employment **status of public** servants and private sector employees. These differences regard both their employment status and employment rights (access to employment, wages, setting of working hours, etc.) and their trade union rights (collective bargaining, right to strike, etc.). There are also internal differences: the distinction between purely public servants and **public-sector employees under private-law contracts** and between the categories of public servants depending on occupation and job content (e.g. doctors, teachers at different levels, members of the judiciary). **Collective bargaining in the public sector** is regulated by Law 2738/1999²⁶⁷. Its provisions apply to all salaried civil servants under public-law employment relationships, including state judicial employees, employees of public entities and first- and second-level public authorities. According to this law, there are the following **levels of collective bargaining**: a) **general collective labour agreements**, which regulate the overall terms and conditions of employment of **public servants**; b) **individual collective labour agreements**, which may regulate all issues that by their nature require more specific treatment or involve particularities and special working conditions, provided that they are not acceptable for inclusion in a general collective labour agreement; c) regulation of **specific employment issues** arising in a specific workplace and not involving any particular financial costs. Wages in the public sector are set not by collective bargaining but by legislative regulation. As far as representation of the public sector is concerned, according to the same Law there are differences depending on the

(266) References: studies on representativeness of the European social partner organisations in Greece (<http://www.eurofound.europa.eu/eiro/>)

(267) Collective bargaining in the public administration, permanent status for workers employed under open-ended contracts and other provisions. The right to collective bargaining for employees in a position of subordination under private law in an enterprise, undertaking or service of the private or public sector of the economy is regulated by Law 1876/1990 (Free collective bargaining and other provisions).

level of bargaining²⁶⁸. The general collective labour agreements are signed between the most representative third-level trade union organisation and the state at central level. The individual collective labour agreements are drawn up for each ministry and supervised state-law entity and independent public service, or for each group of state-law entities of the same kind or group of administratively decentralised services or group of self-governing local state-law entities, following bargaining carried out among the competent state bodies and the most representative second-level trade union organisation. Finally, regulation of specific employment issues may be the subject of dialogue between the competent primary trade union organisation of the employees in a place of work and the body representing the state competent in the place of work.

To a large extent, **the hospital sector** reflects the picture encountered in other business sectors that include a public and a private part: very strong trade unions in the **public sector** and weaker unions in the **private sector**. The hospital sector in Greece is characterised by three basic features: social dialogue in the form of collective agreements is absent from the public sector, while in the private sector the agreements that are achieved often ultimately lead to arbitration, following relevant complaints by workers; the sector's workers are organised in trade unions that are divided into public sector and private sector unions with only formal relationships between them, as well as being divided into trade unions based on occupation. The administrative staff unions are separate from those of doctors or medical staff²⁶⁹; the employer organisations are divided according to the type of hospital care provided by their members – for example, clinics providing general hospital services or clinics for psychiatric patients.

The post and courier services sector in Greece is characterised by a **low level of organisations representing employer and employees' interests**. The sector is characterised by the presence of a strong state-controlled group - the ELTA group²⁷⁰, which is the only provider of universal postal services in Greece and which also comprises Tachymetaphores SA (services in the courier industry). Organised representation of interests does exist to a certain extent in the two state-controlled companies in the sector as well as in two private companies operating in the courier sector (ACS and Speedex); thus, **four company-level agreements** are signed in the sector, two of which apply to the state-controlled enterprises and the other two to employees in the sector's private companies. With the exception of employees in the sector's two state-controlled enterprises, no trade unions exist for the vast majority of employees in the sector's private companies and no employer organisation (there is a large number of small companies), apart from the two already mentioned private enterprises. As a result, these employees are only covered by the minimum levels of successive intersectoral agreements²⁷¹ and by various employment regulations and not by company-level

(268) As in the case of the private sector, the public sector is divided into three levels of trade union representation. In Greece there is only one third-level trade union organisation, ADEDY. Second-level trade union organisations of public servants are: a) the federations of sectoral or occupation-based unions, whose members work for one or more ministries or state-law entities, b) federations of unions whose members work for the same ministry or state-law entity or group of state-law entities under the supervision of the same ministry. Where employees or a ministry belong to a single trade union organisation of that ministry with more than one branch, their organisation is also considered to be second level. The number of second-level trade union organisations (federations) that are members of ADEDY is 46 (in 2006) (of which 14 include employees in ministries).

(269) The hospital sector is unusual for its total separation and fragmentation of the trade unions. To some extent, this is due to the existence of many occupations and an attempt by the unions to meet the specific needs of their members.

(270) The ELTA group employs more than half of all employees in the sector (in 2006).

(271) All of the employees working for private post and courier service companies – and not only members of the two OIYE-affiliated trade unions – are covered by an (inter)sectoral agreement.

agreements.²⁷² As regards social dialogue, a clear distinction emerges between the situation in the state-controlled enterprises and those under private ownership: no forms of social dialogue or worker participation on consultative bodies have been developed in the sector's private companies. Since there are, in effect, no trade unions or employer organisations in the private part of the postal services sector, the state has not developed any form of social dialogue. For the same reason, no tripartite bodies with a consultative or opinion-forming role have been established.

In **the sector of electricity**, in 2005, there were both **sectoral** and **company agreements** and a rate of bargaining coverage of nearly 100% and a very high union density. The collective bargaining process in **the natural gas sector** in Greece is of a limited nature, taking place solely at enterprise level and essentially within a single enterprise. In 2006 it was only one company and its subsidiaries in this sector. That is why only an **enterprise collective labour agreement** is signed in the Public Gas Corporation (DEPA) with one union active in the company (SEDEPA - all employees are members of this union).

The process of collective bargaining in **the railways sector** does not show any particular problems and may be described as rather advanced compared with the course and results of collective bargaining in other sectors of the Greek economy. Another feature is that the collective agreements of the last few years have had a term of two years rather than one year; the latter is customary in most cases. In Greece, no sectoral-level collective agreement is signed in the railways sector. The collective agreement signed on behalf of railway employees is a **company-level agreement**, since only one state-controlled company operates in the whole sector (in 2006) - the Hellenic Railways Organisation (Οργανισμός Σιδηροδρόμων Ελλάδος, OSE). OSE together with its subsidiaries constitute a state-controlled corporation or société anonyme (SA). The agreement is signed between the company management and the Pan-Hellenic Federation of Railway Workers (Πανελλήνια Ομοσπονδία Σιδηροδρομικών, POS²⁷³).

Representativeness in **the civil aviation** industry features powerful trade unions in state agencies and in **companies under state control**. Meanwhile, in the **private sector**, trade union representativeness is low and no company trade union exists.²⁷⁴ All employees of the sector are covered by a **collective agreement, but not necessarily by agreements pertaining exclusively to the civil aviation industry**. In fact, there is no sectoral collective agreement for the entire civil aviation industry. In small Greek air companies where no trade unions exist, individual labour contracts are signed, where the provisions of wider collective agreements apply. The recent entry of private companies into various aspects of air operations constitutes the main reason for the presence of just one sectoral employer organisation (the Association of Foreign Air Companies) that signs a **sectoral agreement** for all employees working in foreign air companies. In the other civil aviation subsectors, mainly **company agreements** are signed, while **no agreements** are signed with civil aviation officials. Regarding the employees of small private air companies as no respective trade union and employer organisations have been established, neither sectoral nor company agreements are signed.

(272) The postal services sector is broadly similar to other sectors that were initially the responsibility of the state but which have since become privatised. On the one hand, there are the employees in state-controlled enterprises who have developed forms of collective representation that allow them to negotiate labour relations issues on more favourable terms. On the other hand, with a few exceptions such as postal services in two private enterprises, a significantly increasing number of employees in the sector are being subjected to minimum rights only.

(273) POS covers all employees in OSE and its 11 subsidiaries. The 20 trade unions operating and active in POS cover individual categories of employees at regional or local level, as well as occupational groups.

(274) A total of three trade union federations are active in the civil aviation industry. These federations are differentiated on the basis of whether the employees represented are in the public or private sector.

Sources of national law on SGIs

Secteur	Références légales	Sites
Télécommunications	L. 2578/1998 «Structure et fonctionnement du marché des télécommunications» L. 2867/2000 «Organisation et fonctionnement des télécommunications» L. 3431/2006 «Communications Electroniques»	http://www.eett.gr
Services postaux	L. 2867/2000 «Organisation et fonctionnement des télécommunications»	http://www.eett.gr
Production d'électricité	Loi 2773/99 «Libéralisation du secteur de l'énergie électrique – Régulation de thèmes de politique énergétique».	http://www.rae.gr
Réseaux électriques (transport-distribution)		http://www.desmie.gr
Commercialisation d'électricité		http://www.rae.gr
Transport distribution de gaz	L.3428/2005 «Libéralisation du Secteur du Gaz Naturel»	www.rae.gr http://www.desta.gr/
Commercialisation de gaz	L.3428/2005 «Libéralisation du Secteur du Gaz Naturel»	www.rae.gr
Transports ferroviaires de passagers	Décret Présidentiel 41/2005 conforme à la transposition des Directives Communautaires 12,13 et 14 /2001. Suite à son application, OSE (Hellenic Railways) sera scindée en deux entités : - EDISY S.A (Compagny for the Management of the Railway Infrastructure) - TRAINOSE S.A (services de transport). Le décret présidentiel est accessible à l'adresse suivante : http://nomothesia.ependyseis.gr/eu-law/downloads/Details.do?action=ItemDetails&itemId=859	
Transports ferroviaires de fret		
Transports locaux ou régionaux de passagers	Transport Urbain d'Athènes : Loi 3297/2004 qui spécifie les organismes chargés de fournir le transport de passagers. Transport Urbain de Thessalonique : Loi 2898/2001 qui spécifie le contrat entre OASTH et le Ministère de l'Economie – Ministère des Transports (de 2001 à 2008). Le nouveau contrat est validé par la Loi 3652/2008.	www.oasa.gr http://www.sasth.gr
Transport aérien	Le Service d'Aviation Civile mentionne les Articles 16 à 18 du Règlement 1008/2008/EC en ce qui concerne les obligations de service publics (desserte de 24 destinations)	Il est possible de consulter la liste des destinations à l'adresse suivante http://www.ypa.gr/up/files/public_serv_oblig.pdf
Transport maritime	Libéralisation du secteur du transport maritime (Loi 2932/2001). La loi spécifie les conditions de mise en œuvre des obligations de service public.	http://nomothesia.ependyseis.gr/eu-law/getFile/%CE%9D+2932+2001.pdf?bodyId=305961
Eau	Région d'Athènes : La Loi 2744/1999 spécifie les compétences et objectifs de EYDAP. Cette loi prévoit la séparation entre le réseau et la distribution d'eau ainsi que les procédures de fixation des tarifs. Région de Thessalonique : La Loi 2651/1998 spécifie les compétences et objectifs de EYDATH.	Loi EYDAP : http://nomothesia.ependyseis.gr/eu-law/getFile/%CE%9D+2744+1999.pdf?bodyId=568745 Loi EYATH : http://nomothesia.ependyseis.gr/eu-law/getFile/N+2651+1998.pdf?bodyId=568777
Assainissement	EYDAP et EYATH sont chargées de l'assainissement des régions d'Athènes et de Thessalonique respectivement.	
Radio-télévision	La Loi 2863/2000 spécifie le fonctionnement du Conseil National de Radiotélévision.	http://www.esr.gr/arxeion-xmi/uploads/2863-2000.pdf
Services financiers	L'article 55A du Statut de la Banque de Grèce validé par la Loi 3424/1927 spécifie les compétences en matière de supervision du système bancaire et financier. Les amendements les plus substantiels du Statut de la Banque de Grèce ont été réalisés en 1999 et en 2000 avec les Lois 2609/1998 et 2832/2000 respectivement.	Ces textes peuvent être consultés à l'adresse suivante (en anglais) : http://eng.bankofgreece.gr/en/bank/legal_framework.asp

PUBLIC SERVICES IN HUNGARY

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Hungary is a unitary state whose territorial organisation contains two levels of local government: 19 counties (megyék) and 3175 municipalities (települési önkormányzatok - 2863 rural municipalities, 265 municipalities, 23 municipalities with county status, and the capital of the country, Budapest, which has a special status). The deconcentrated administration of the State is organised at regional level (7 regionális közigazgatási hivatal).

The national law on services of general interest is organised sectorally. There is no specific Act addressing specifically services of general interest taken together. However, there are several Acts that apply throughout all sectors^{275, 276}.

The applicable Hungarian term for SGLs is “közszolgáltatások” (plural, singular: “közszolgáltatás”). The literal translation of the term would be “public services”. Its meaning coincides with the definition of SGI given in the official documents of the European Commission. There are some Acts that explicitly define the meaning of the term for their own purposes. These definitions are official but non-exhaustive²⁷⁷. The term “közszolgáltatás” appears in about 70 different laws and Parliamentary resolutions addressing fields and sectors such as railways, road transportation, education, performing arts, consumer protection, health care, environmental protection, water supply, waste management, burial services and public cemeteries, libraries, museums, local governments, regional development etc., often with direct reference to Community law.

The term SGEIs is translated into Hungarian as “általános gazdasági érdekű szolgáltatások” (literal translation). The Hungarian term is extensively used in specialised literature, always with reference to Community

(275) Act 76 of 2009 on the General Rules of the Provision of Services (<http://www.complex.hu/kzldat/t0900076.htm/t0900076.htm>), Act 155 of 1997 on Consumer Protection (http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700155.TV), Act 26 of 1998 on the Rights of the Disabled and the Equality of Their Opportunities (http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99800026.TV), Act 125 of 2003 on Equal Treatment and the Promotion of Equal Opportunities (<http://www.complex.hu/kzldat/t0300125.htm/t0300125.htm>), Act 90 of 2005 on the Freedom of Electronic Information (http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=a0500090.tv), Act 53 of 1995 on the General Rules of the Protection of the Environment (http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500053.TV).

(276) As in Czechoslovakia and Slovenia, the absence of the concept of public service in Hungary before the installation of the totalitarian regime is explained by the influence of the Austrian legal school. J. Prazak, in M. Manganot, op. cit., p. 79

(277) For example, Act 26 of 1998 on the Rights of the Disabled, Article 4, points fa and fb say: “Services of general interest are: all kinds of activity related to the exercise of public power including the activities of public authorities, public administration and jurisdiction, the activities of the Parliament, the institutions reporting to the Parliament, the Constitutional Court, the parliamentary commissioners, the Prosecution Service, and the institutions of defence and policing, when they act in exercise of their legal competence [point fa], the broadcasting activities of the public service media, educational, archival, cultural, scientific, social, child protection, health, sport, youth, employment services, provisions and activities [point fb].” Act 60 of 2009 on the Electronic Services of General Interest, Article 3 rules that any service provided by any of the IT or communication systems of which the state’s central system for electronic services consists should be regarded as a service of general interest. Resolution of the Parliament 61/2006 rules that any internet portal or forum operated by the state or local government is a service of general interest.

law and the relevant decisions of the European Court of Justice. The term is not used in the predominantly sectoral national law, except in Act 168 of 2007, in which the Lisbon Treaty was proclaimed. In textbooks used in the training of civil servants there is a traditional term with a meaning largely overlapping with that of SGEI, “anyagi közszolgáltatások”, whose literal translation is “material public services”, and covers energy, water supply, communication, public transportation, railways, postal service, waste management, chimney cleaning, public cemeteries, and the upkeep of public areas. The term is contrasted with “humán közszolgáltatások” (human public services), to cover education, health care, social services, etc.

The term NESGIs is translated into Hungarian as “általános érdek nem gazdasági szolgáltatások”, which is a literal translation. It is in use in the literature, always in reference to Community law. There is a more traditional Hungarian term with a related meaning: “humán közszolgáltatások” (human public services). It covers the scope of NESGI, but its meaning is broader (see the previous paragraph).

The closest Hungarian terms for SSGIs are “szociális közszolgáltatások” and “humán közszolgáltatások”. The former literally translates into English as “social public services”, and it is often understood to have the same meaning as SSGI. However, it is sometimes understood more narrowly, to refer only to what the European Commission’s documents calls “other essential services provided directly to the person”. The latter term is less often used but unambiguous. It translates into English as “human public services”, and its meaning is identical to the meaning given to SSGI in the Glossary.

Recent amendments adapted the terminology largely to that of Community law.

Terms in TEU and TFEU	Hungarian in TEU and TFEU ^{table30}
Services of general interest – SGIs	általános érdekű szolgáltatások
Services of general economic interest – SGEIs	általános gazdasági érdekű szolgáltatások
Non-economic services of general interest – NESGIs	nem gazdasági jellegű szolgáltatások
Public service (public service obligations)	közszolgáltató köteles

Competences of definition and organisation of SGLs

What is the level of government that actually defines the public service obligations and decides the modes of SGLs' organisation?

Central government	County councils	Municipalities
Telecommunications	Secondary education (1)	Local transport of passengers
Postal services	Cultural services	Water
Production of electricity		Waste water
Electricity networks		Heating
Marketing of electricity		Compulsory social protection
Gas transport-distribution		Complementary social protection
Marketing of gas		Childcare services (0-6 years)
Railway transport of passengers		Care of disabled
Regional transport of passengers		Elderly care
Air transport		Cultural services
Inland water transport		Primary education
Broadcasting		Vocational training
Hospital health services		
Ambulatory health services		
Primary and secondary education		
Higher education		
Vocational training		
Financial services		
Cultural services		

Hungary has no sea, and there are no legal regulations specifically for maritime transport.

(1) It is hard to eliminate the question marks. Public service obligations in primary and secondary education are defined in national law. The modes of organisation, however, are decided by the authorities who are responsible for the provision of education.

B. Sectoral organisation and trends

Status of the operators

National public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
Postal services Production of electricity Electricity networks Railway transport of passengers Regional transport of passengers Broadcasting Hospital health services Higher education Financial services Cultural services		Local transport of passengers Water Waste water Heating Hospital health services Ambulatory health services Primary and secondary education Compulsory social protection Complementary social protection Childcare services (0-6 years) Care of disabled Cultural services	Water Waste water			Telecommunications Production of electricity Marketing of electricity Gas transport-distribution Freight rail transport Air transport Inland water transport Water Waste water Broadcasting Hospital health services Ambulatory health services Primary and secondary education Higher education Compulsory social protection Complementary social protection Childcare services (0-6 years) Care of disabled Financial services Cultural services

SGI markets

Liberalised market and competition	Liberalised market / Public operators dominant	Liberalised market Private operators dominant	Public monopoly	Private monopoly	No market
Telecommunications Broadcasting Financial services	Postal services Production of electricity Water Heating Hospital health services Ambulatory health services Primary and secondary education Higher education Compulsory social protection Complementary social protection Childcare services (0-6 years) Care of disabled	Gas transport-distribution	Electricity networks		

Financing methods of SGIs

Fees/payment by users	State subsidies	Grants from local governments	Insurance funds	Other	Social tariffs
Telecommunications Postal services Electricity networks (transport-distribution) Marketing of electricity Gas transport-distribution Marketing of gas Railway transport of passengers Freight rail transport (market prices) Regional and local transport of passengers Air transport (market prices) Inland water transport Water Waste water Heating Broadcasting ^{table31} National and local public administration Hospital health services Ambulatory health services Primary and secondary education (in some cases) Higher education Complementary social protection Social housing Childcare services (0-6 years) (less often) Financial services Cultural services	Marketing of electricity Marketing of gas Railway transport of passengers Regional and local transport of passengers Water Broadcasting National and local public administration Hospital health services Ambulatory health services Primary and secondary education ^{table32} Higher education ^{table33} Vocational training ^{table34} Compulsory social protection Complementary social protection Childcare services (0-6 years) Care of disabled Elderly care Cultural services	Inland water transport Water Waste water Heating Primary and secondary education Vocational training Compulsory social protection Complementary social protection Social housing Childcare services (0-6 years) Cultural services	Hospital health services Ambulatory health services	Broadcasting Vocational training Care of disabled Elderly care Cultural funds	Marketing of electricity ^{table35} Marketing of gas ^{table36} Railway transport of passengers ^{table37} Regional and local transport of passengers Heating ^{table38} Hospital health services ^{table39} Ambulatory health services Cultural services ^{table40}

Authorities responsible for setting pricing and/or tariff policies

Parliament	Central government	Local government	Regulatory agencies
National and local public administration ^{table41}	Telecommunications ^{table42} Postal services ^{table43} Production of electricity ^{table44} Marketing of electricity ^{table45} Gas transport-distribution ^{table46} Marketing of gas ^{table47} Railway transport of passengers ^{table48} Regional transport of passengers ^{table49} Broadcasting ^{table50} Hospital health services Ambulatory health services	Local transport of passengers Heating (for district heating supply) Social housing	

II/ Approaches

A. The model of public administration and national public companies

After 1990, the Hungarian state maintained its presence as service provider even if its direct action is significantly lower than it had been at the time of the fall of the old regime.

In the sector of telecommunication, before the change of regime, the only service provider was a branch of the Hungarian Post. It became a distinct company at the end of 1991, owned in 100% by the state. Later it was privatised (to a German-American consortium) in December 1993. The company was introduced to the stock exchange in 1997. Until the end of 2001 it maintained a monopoly for international land line phone calls, for land line phone calls in general for the more than half of the country. The same company had a majority share in the only mobile phone provider of that time. It was also the dominant internet access provider. The market opened up from 2001 and now the market has several strong players.

In the postal services the Hungarian Post Office is today a company owned by the state. The new Post Act of 2003 opened the way for the liberalisation of the market, with the exception of some specific services. Yet, the state-owned Hungarian Post Office dominates the market largely.

In 1990, the year of regime change, all electricity producing power stations were operated by a single state owned company which had a monopoly in the production, distribution, and sale of electricity. In 1993 a two-level structure was introduced. The state directly owned a holding (MVM Rt.), which performed administrative roles and owned several companies (power stations, the TSO), and the companies that provided electricity to end-users. In 1995 a grand scale privatisation took place at this second level. All service providers have been privatised, and also many of the power stations. The 2001 Electricity Act made Hungary's TSO independent of MVM, the former monopoly of production. 6 major power stations belong to the MVM Group, which is owned by the state.

As concerns the electricity networks, MAVIR, the Hungarian TSO was organisationally independent of MVM, the main producer, from 2003 to 2005, although both were owned by the state. From 2006 it belonged to MVM Group, again. MAVIR, the Hungarian TSO is now owned by MVM Group, which is owned by the state. The privatisation of the provision of electricity to end-users was made possible by the 1994 Electricity Act (Act 48 of 1994). Consequently, all providers were privatised in 1995.

Gas provider companies were partially privatised in the 1990s. They have recently formed independent companies responsible for transport and distribution, to comply with Community regulations. Although these companies are formally distinct from the end-user service providers, they are owned by them. MOL, the former national hydrocarbon monopoly was privatised in a long process that lasted from 1991 to 2004. The longer range gas transport network is owned by MOL (now a private company introduced to the stock exchange).

In the area of gas marketing, the first major step after the regime change was the creation of MOL Rt. (Hungarian Oil and Gas Company Plc.) in 1991, out of the all-integrated communist hydrocarbon monopoly. MOL became a monopoly in the production, import and distribution of gas, but the provision for end-users did not go into its portfolio. Gas is provided to end-users dominantly by companies that are owned in part by major international private energy companies and in part by the local governments of the area in which they provide their services. Gas providers have been partially privatised in the middle of the 1990's. A significant part of the shares has been given to the local authorities. The 1994 Gas Supply Act suited a vertically integrated provider in the position of a natural monopoly that needs to be regulated by the state. Act n°41 of 1994 on Gas Supply defined gas supply as a service of general interest, and introduced a "single buyer" model, in which only MOL had the right to buy gas from producers, and end-user providers had to buy gas from MOL. In 1995 the regional end-user providers were privatised. The 2003 Gas Supply Act already contained specific provisions for the transport and storage of gas, and for transmission system operation, with the purpose of approximation to Community law. The new Gas Supply Act of 2003 (42/2003) adopted the notions and rules of Directive 98/30/EC of the European Parliament and of the Council concerning common rules for the internal market of natural gas, introducing a dual model of a free market of gas besides the service of general interest²⁷⁸. The new Gas Supply Act of 2008 contains distinct provisions for the activities related to gas, and also for the separation of the different activities of vertically integrated companies. The 2008 new Gas Supply Act coming into force in July 2009 incorporated all developments of Community law between 2003 and 2005, and ended the dual model introduced in 2003. The notion of "universal service" has been introduced for those end-users who decline to choose a provider from the free market.

In railway transport, traditionally Hungarian State Railways (MÁV) was a stateowned monolith whose activities included passenger transport, cargo, and the management of the network. In 2007 it was divided into different companies, and in January 2008 MÁV Cargo (the freight rail transport branch) has been privatised. Indirectly, the state kept a minor share in the company, through its share in one of the companies of the

(278) All users except for households were licensed to quit the service of general interest if they wished, and buy gas in the free market. MOL, the owner of all the gas transport lines in Hungary was required to give access to third parties to its network. The Act required also that end-user providers of gas supply would keep the accounting for the distribution and the actual sales of gas separate. The 2005 amendment required also that these activities would be carried out in organisationally distinct distribution system operators and SGI providers, although they could be owned by the same owners.

consortium that bought it²⁷⁹.

In broadcasting, apart from the public radio and the public television, which are owned by public foundations, broadcasters are private companies²⁸⁰.

In the financial services the changes were more important. Until the 1987 introduction of the two-level bank system, there was only OTP, the state-socialist quasi-monopoly, and MNB, Hungary's Central Bank, which provided services to the general public. In 1987 the commercial portfolio of MNB was divided into 3 artificially created new merchant banks, and MNB retained only the functions of the central bank. The corporate clients of the newborn commercial banks were offered shares, and by the early 1990's the direct ownership of the state dropped to around 55% in all major banks with the sole exception of OTP. The early attempts at the privatisation of merchant banks (in part) to Hungarian individuals did not prove successful. So the government of the first period after the turnover soon attempted to regain ownership over them. After the consolidation of their portfolios, in 1994 and 1995 privatisation to foreign investors started, who acquired in the beginning typically smaller shares (25-35%), which later grew. The privatisation of merchant banks was completed by the end of the decade.

B. "All Public"

In the time of the old political regime, as in all totalitarian countries of Central and Eastern Europe, large state-ownership with monopoly status was dominant in Hungary. After the establishment of the democratic regime, in many cases, as mentioned above, the Hungarian state continues to play an important role as provider of "public services". In several sectors the services are now completely provided by private operators, for example air²⁸¹ and inland water transport²⁸². A part of the "public services" which were provided by the state structures in the communist era were decentralised to local government and are directly provided by them (see below). It is the case, for example, with primary and secondary education which in the communist era was provided by the state. The rare exceptions were the few church schools. In 1990 the local authorities became the chief providers, and the churches regained control over many of the schools they lost in 1948. Private schools emerged first in the late 1980s, and had a boom in the early 1990s. Today only about 5% of every cohort is enrolled in private schools. The expansion of private pre-school education is a recent tendency.

(279) The first Railway Act after the regime change was adopted in 1993 and was suited to the concept of an integrated operator owned by the state. Yet, it ruled that the operation of the infrastructure and the operation of passenger and/or rail freight services could in principle be separated, according to detailed rules to be set later by the Minister of Transport. It ruled that the operation of the infrastructure is the exclusive responsibility of the state, and access to it can be given to foreign service providers only on a reciprocal basis. The 2005 Railway Act adapted to Community law, introducing the notion of "internal operator", so that local public transport services operated by the local authority could be exempted from competition rules. Act 183 of 2005 on Railway Transportation was drafted to encourage the institutional separation of the different branches of the industry as a rule, rather than as a remote possibility. So, in theory, it opened the way for the competition of different providers offering services to the passengers using the same network, operated by an independent infrastructure operating company. In 2009 the Act was amended in order to comply with the Community's Third Railway Package, introducing open access rights for international rail passenger services, including cabotage, provided that the main purpose of the operation of the service is international transport (cf. Regulation 1370/2007 of the European Parliament and of the Council). The 2009 amendment strengthens the rights of passengers too, in line with the Third Package.

(280) The appearance of privately owned commercial broadcasters was made possible by the 1996 radio and television Act.

(281) Malév used to be a state owned national airline. In 1992 38% of it has been sold to an Italian consortium. In 1997 these stocks were bought up by Hungarian banks. In 1999 the Hungarian state regained 99.5% ownership. The company has been privatised again in 2007, when 99.9% was sold to a Russian-Hungarian private company.

(282) The privatisation of the former state-owned water transport company, MAHART, was a long process that took place between 2001 and 2008. The inland water transport branch (MAHART Passnave) is now owned in 84% by MASPED Co., which is owned 91% by its own employees and management.

C. Local autonomy

In Hungary, the principle of local autonomy is recognized by the Constitution (chapter 9) and the Local Government Act n°65 of 1990. This law established a system whose main principles were a) that every community is entitled to have an independent local authority (as a result of which the number of local authorities doubled, and the resulting system is one of Europe's most widely dispersed), b) that the local authorities are very autonomous: they are entitled to handle any public matter which is not explicitly ruled to be in the competence of some other authority by some other Act, and c) that from the three levels of public administration, national, regional and local, the first and the last should be really significant (the hourglass model). The resulting system can be characterised by a high level of legal autonomy, combined with a great deal of problems concerning efficiency and the shortage of resources to cope with the tasks with which the local authorities are burdened. Among the amendments of the Local Government Act the 1994 one is perhaps the most significant, whose aim was to improve on this situation, and also to define provisions for access to essential services of general interest in case of the bankruptcy of the local government responsible for their provision. A further response to the defects was the emergence of so-called multi-purpose micro-regional co-operatives of local authorities (cf. Act n° 104 of 2004). Presently many see them as a likely candidate for the role of a meaningful middle level of public administration that should gain more significance.

The municipalities have competences to ensure basic local public services, some of them compulsory (pre-primary education²⁸³, essential health services, social action²⁸⁴ (e.g. elderly care, care of disabled²⁸⁵), water²⁸⁶ and waste water services²⁸⁷, public lighting, etc.) or complementary (social housing²⁸⁸, public security,

(283) Some childcare services are among the ones whose provision is mandatory for the local authorities, and which are provided free of charge. The state supports the local authorities in providing these services. Some childcare services are provided by the central government through its regional institutions. These are also financed from the central budget. Early protective nurse services and family assistance are provided by the local authorities or their co-operatives. 91% of the nurseries are operated by the local authorities, too. NGOs also offer services to families with small children. The share of private providers in pre-school education has recently grown. Guardianship duties are performed by regional agencies of the state. Homes for the children they take out of their families are provided by counties and the local government of Budapest.

(284) The Act on Local Government rules that the provision of compulsory social services is the responsibility of the local authorities. The Act also rules that services such as the village caretaker service, folk kitchen service, family support, street social work, daytime care for the homeless and night shelter should be provided free of charge. The state provides financial means for the local authorities to fulfil these obligations. The main providers of compulsory social services are the agencies of the local authorities and their co-operations. The local authorities can also fulfil their duties on this field by contracting with NGOs or churches, or by setting up public benefit companies. Recently the share of agencies of micro-regional co-operatives of local governments has been growing. At present about 40% of the services are provided by local government agencies directly, 10% by their micro-regional co-operatives, 15% by public benefit companies, 5% by churches and 15% by NGOs. The situation is similar in the field of complementary social protection. The main difference is that the role of county local government and that of Budapest, and also of the churches, is larger in the provision of complementary services than it is in the case of compulsory services.

(285) Specific financial support for the severely disabled is provided by the local directorates of the Treasury. Otherwise the local authorities are the main providers of support. Other services are provided by a wide range of providers. About 2500 institutions provide integrated education for disabled children, most of them operated by the local authorities. There are also about 130 segregated institutions. The Ministry of Finance provides regular support for about 750 private companies throughout the country for serving as local centres for the employment of disabled people. 92% of the disabled live in private households; the homes of the remaining 8% are operated predominantly by the local authorities.

(286) About 80% of Hungarian waterworks are controlled by nearly 400 local waterworks, which are owned predominantly by the local authorities. The biggest of them, the Waterworks of Budapest, is owned in 25% by international private companies. Local authorities are competent to set rules for the local waterworks that they operate, including pricing. The 5 regional waterworks are owned 90-100% by the state; in some of them the local authorities' and the waterworks' own employees have a minor share. These, however, control only 20% of the total drinking water supply in Hungary. There has been much debate recently about the privatisation of waterworks. The Parliament recently decided that the regional waterworks should remain in at least 75% in the possession of the state.

(287) Waste water management is performed by companies owned predominantly by the local authorities. Sometimes private shareholders are also involved (in 25% in the Budapest). In smaller towns a new form is emerging now, that is the co-operatives of all property owners in the given area.

(288) The local authorities usually provide rentable flats for the needy, who have to apply for them regularly for set periods.

environment, transport²⁸⁹, heating²⁹⁰, etc.).

The counties are in charge of services of supra-municipal interest or services that cannot be ensured by municipalities. They have competences in the fields of health (specialised and hospital health services), social action, secondary and vocational education, culture and sport, environment.

The division of competences between counties and municipalities is relatively complex; they can even agree to allow municipalities to carry out missions which are normally the counties' responsibility or to transfer a responsibility of a municipality to a county when it cannot properly ensure it.²⁹¹

Almost one third of local "public services" are ensured directly, by the "budgetary institutions" (kölségvetési intézmények) of municipalities. They are used mainly to ensure equipments for educational, medical, cultural, sport and social services. Services such as water provision and waste water are managed by local public companies.

According to the Act on associations and cooperation of local authorities (1997), the municipalities may combine their resources to ensure more efficient and higher quality "public services".

D. Delegated management and externalisation

In Hungary, both simple contract (for example between municipalities and privately owned schools providing a public service, or between family physicians, who are private entrepreneurs, and the national health insurance), and concessions are common.

E. "New Public Management"

PPP is a relatively new phenomenon and is used in the development of the infrastructure necessary for the provision of services in a limited range of sectors: (i) in the field of sport services (the building of gymnasia, swimming pools, sports halls), (ii) road transportation (the building of motorways), (iii) cultural services (the "Palace of Arts" in Budapest), and (iv) secondary and higher education (the building and renovation of student halls and dormitories). (Some prisons are also being built and reconstructed in the framework of PPP programmes.) The yearly budgetary spending on PPP programmes is around 80-100 billion HUF.

The Evaluation of SGIs. As for SGI evaluation in Hungary, on the homepage of the Committee for the Reform of the State there are methodological guidelines for public administration agencies for measuring user sat-

(289) The majority owner of most bus companies (Volán companies, operating as regional near-monopolies) is the state. In two cities, Pécs and Kaposvár, the local public transport company is owned jointly by the state and the local authority. The local public transport company of Budapest is owned by the Municipality of Budapest (since 1990, when the newly formed Municipality of Budapest became the owner of the local public transportation company). In respect of local public transportation the local authorities are competent to set some specific regulations, including pricing.

(290) About 18% of the households use district heat supply, provided mainly by local government-owned companies. Issuing of licences for combined power stations producing both electricity and district heat became the responsibility of the National Energy Office, whereas local government became responsible for the issuing of licences for every other producer and provider of district heat. Pricing for provision for households is in the authority of the local councils. It is within the competence of local authorities to regulate district heating providers, which predominantly they themselves operate, including pricing.

(291) ***, Les collectivités territoriales dans l'Union européenne. Organisation, compétence, finance, 2008, Dexia, p. 384

isfaction, and various national surveys about the attitudes towards them are regularly published. Evaluated aspects are accessibility, quality, affordability, availability of electronic services, waiting time, transparency, and responsibility for the environment.

Evaluation and participation in surveys are not in general compulsory for SGI providers. Voluntary evaluations, however, are made frequently. The Hungarian Energy Office, the regulatory authority for several SGI sectors, publishes surveys on consumer satisfaction yearly on its website, and so do several providers. For end-user providers of gas supply the yearly measurement of consumer satisfaction is mandatory. The Central Statistical Office maintains a database about the accessibility of SGI.

There are national and regional prizes for SGI providers offering high quality services in several sectors.

F. Regulatory Agencies

The market is regulated in terms of the issues specific to the sector (technological and other), competition and the rights of the consumers. The respective authorities controlling the operation of market players are the following:

- National Communications Authority (Nemzeti Hírközlési Hatóság - www.nhh.hu), reporting to the Ministry of Transport, Telecommunication and Energy (Közlekedési, Hírközlési és Energiaügyi Minisztérium - www.khem.hu);
- Hungarian Competition Authority (Gazdasági Versenyhivatal - www.gvh.hu);
- The National Consumer Protection Authority (Nemzeti Fogyasztóvédelmi Hatóság - www.nfh.hu), reporting to the Ministry of Social Affairs and Employment (Szociális és Munkaügyi Minisztérium - www.szmm.gov.hu). This is a multilateral council of many interested parties, giving advice to the government on the regulation of the market.
- The different aspects of regulation and control of energy markets are ensured by the Hungarian Energy Office (Magyar Energia Hivatal - www.eh.gov.hu), a control authority responsible for the issues specific to the sector and reporting to the Ministry of Transport, Telecommunication and Energy.

The market of telecommunications and postal services is regulated in terms of the issues specific to the sector (technological and other), competition and the rights of the consumers. The respective authorities controlling the operation of market players are the National Communications Authority (Nemzeti Hírközlési Hatóság - www.nhh.hu), reporting to the Ministry of Transport, Telecommunication and Energy (Közlekedési, Hírközlési és Energiaügyi Minisztérium - www.khem.hu).

For the railway transport market the control authority responsible for the issues specific to the sector is the National Transport Authority (Nemzeti Közlekedési Hatóság - www.nkh.hu), reporting to the Ministry of Transport, Telecommunication and Energy, of which the former Hungarian Railways Authority has become part.

The Act on Radio and Television Broadcasting (1 of 1996) defined a public authority specifically responsible for the sector, which has a role in the creation of some specific detailed regulations, as well as in the control of the activities of the broadcasters – the National Radio and Television Commission (Országos Rádió és Televízió Testület - www.ortt.hu). The Commission is not a government agency. Unlike other sectoral authori-

ties, it is not subordinated to the government. It is a political body in which the political parties of the Parliament have delegates, who are subordinated only to the law. The president of the Commission is nominated jointly by the president of the republic and the prime minister. In theory the Commission is evenly balanced between the government and the opposition. It performs the duties of a public administration authority responsible for broadcasting.

In the field of water and waste water, the control authorities responsible for the issues specific to the sector are the 11 Regional Directorates for Environment and Water, the Central Directorate for Water and Environment (Vízügyi és Környezetvédelmi Központi Igazgatóság), www.ovf.hu, reporting to the Ministry for Environment and Water (Környezetvédelmi és Vízügyi Minisztérium), www.kvvm.hu. Their main responsibility is to ensure the quality and quantity of drinking water supply, and the environmentally safe management of waste water. They basically have the authority to approve the technologies and organisation of these services. They also participate in the drafting of the applicable legislation. Beyond that, they do not regulate the market.

The health care services are controlled and supervised by the Health Insurance Supervisory Authority and the Hungarian National Public Health and Medical Officer Service. The competence of the Health Insurance Supervisory Authority (Egészségbiztosítási Felügyelet - www.ebf.hu), covers mostly issues related to patient rights, the information made available to the patients and quality assurance. The Hungarian National Public Health and Medical Officer Service (Állami Népegészségügyi és Tisztiorvosi Szolgálat, ÁNTSZ - www.antsz.hu), is a three-level institution organised at the sub-regional (micro-regional), regional and the national level. The national centre is the Office of the Chief Medical Officer which reports to the Minister of Health (www.eum.hu)²⁹².

III/ Social dialogue

In Hungary²⁹³ there are at least three levels of collective bargaining according to the legal regulations, as follows.

At tripartite level, the framework for the social dialogue at the national level is provided (since 1988) by the National Council for the Reconciliation of Interests (Országos Érdekegyeztető Tanács, OÉT)²⁹⁴. In the field of services of general interest there are some specific sectoral institutions. The National Public Service Interest Reconciliation Council (Országos Közszolgálati Érdekegyeztető Tanács, OKÉT), founded in 2002, consists of the representatives of various civil service trade unions, the representatives of various associations of local authorities, and the representatives of different ministries of the central government²⁹⁵. The National Labour Council of Public Employees (Közalkalmazottak Országos Munkaügyi Tanácsa), founded in 2001, has an

(292) <http://www.antsz.hu/portal/portal/bemutatkozasangol.html>

(293) References: studies on representativeness of the European social partner organisations in Finland (<http://www.eurofound.europa.eu/eiro/>)

(294) For a summary about its statute and practices, see the homepage of the Ministry of Social Affairs and Employment, <http://www.szmm.gov.hu/main.php?folderID=16238&articleID=30381&ctag=articlelist&iid=1>

The Hungarian Economic and Social Council was set up in August 2004 as a consultative forum for discussing major national-level strategic plans and programmes for the medium and long term. GSZT comprises the social partners, including all employer organisations and trade unions represented in the OÉT. It also encompasses various business organisations as well as experts from the Hungarian Academy of Sciences.

(295) The outcome of these negotiations is a percentage figure for the annual rise and modified tariff tables for civil servants and public sector employees, which is promulgated by amendments to the relevant laws.

analogous constitution. There is a separate forum for the dialogue between the government and the civil servants working in the central administration (Köztisztviselői Érdekegyeztető Tanács), and another one for the dialogue between the civil servants and public employees working for local government, the local authorities and the central government (Országos Önkormányzati Köztisztviselői Érdekegyeztető Tanács). Some issues are discussed by these two bodies together²⁹⁶. There are more than 20 different further sectoral councils and forums for social dialogue operated by the relevant ministries of the government²⁹⁷. Some local authorities also operate tripartite councils.

Another level of collective bargaining is represented by the so called multi-employer collective agreements that are possible both in the private sector and in public institutions under the Law on Public Service Employment. They can be concluded without a sectoral organisation and in practice only a proportion of such agreements can be deemed as genuine sectoral accords.

The third level of collective bargaining is concluded at **company or institution level**, which, in Hungary, **is the dominant level**.

In terms of the sectoral distribution of collective agreements, the highest overall coverage rates were reported in sectors of SGIs for the publicly owned enterprise sector and major public utility companies such as transport, telecommunications and postal services (98%) and in the energy, water supply and sewage sector (90%). Sectoral agreements can be extended by ministerial decree. Workplace-level agreements are also common in the public sector, although most issues concerning terms and conditions of employment are regulated by law. Private services are less regulated by collective agreements.

As the wage scale and the budget of the **public sector institutions** are set by law, collective bargaining, in the strict legal sense, is limited to **workplace level agreements**. Moreover, **in central administration even workplace level bargaining is not allowed**, the scope of the legislation being limited to **participation in higher consultative bodies**.²⁹⁸

In the Hungarian **hospital sector**, hospitals are usually owned by public institutions, mainly by local authorities. Trade union organisations usually represent hospital workers as well as the professional employees of the healthcare sector and conclude **collective agreements at company or institution level**. There is no multi-employer agreement in the sector; the Hungarian Hospital Association (Magyar Kórhákszövetség, **MKSZ**) is the only employers' organisation in the sector.²⁹⁹ Given the dominance of public hospitals – in which wage tariffs are determined by law and budgetary decisions are made by public bodies – the role of local pay agreements is limited.³⁰⁰

Traditionally, Hungary's **post and courier services sector** only included the Hungarian Post Company (**Magyar Posta**) and the trade unions active in this company. Since the country's economic transition in 1989,

(296) See: <http://www.szmm.gov.hu/main.php?folderID=14114>

(297) They are listed (in Hungarian) on the Social Ministry's homepage <http://www.szmm.gov.hu/main.php?folderID=14121>

(298) Public employees and civil servants organised themselves into the Trade Unions' Cooperation Forum (Szakszervezetek Együttm ködési Fóruma, SZEF). The Confederation of Unions of Professionals (Értelmiségi Szakszervezeti Tömörülés, ÉSZT) primarily organises people from academic and higher education institutes.

(299) An autonomous committee operating within the framework of the Ministry of Health is responsible for coordinating social dialogue in the sector. Its establishment was separate from the sectoral dialogue system of Hungary; therefore, it does not perform the role of traditional social partners, and chambers and civil organisations of the healthcare system's professions are also represented.

(300) For all public employees (including the vast majority of the health sector employees) annual pay agreements are regularly concluded in the KÉT.

a number of private companies have been established to provide courier services. Nonetheless, industrial relations actors can only be found at Hungarian Post; as a result, the social dialogue body is composed of Hungarian Post and the major trade unions operating in this company³⁰¹, which form a Subsectoral Social Dialogue Committee. Besides social dialogue, there is no sectoral or multi-employer collective agreement. There is **one company collective agreement** in the sector concluded by Hungarian Post and covering all of the company's employees. Given the Hungarian Post's importance as an employer (Hungarian Post makes up 97% of the sector in terms of employment), industrial relations of the institution cover the majority of employees in the sector.

The electricity sector has an important rate of unionisation in Hungary (compared to other sectors). Collective bargaining is organised at **company and sectoral level**.

The sector of railway transport is dominated by the Hungarian State Railways Company. The union structure is extremely fragmented in the railway sector (general unions, unions for specialised groups, smaller unions representing local interests). The **collective agreements are concluded at company level** (in the Hungarian State Railways Co. – MAV - and a regional company - the Győr-Sopron-Ebenfurt Railway Co.). Within MÁV, a number of **local-level agreements** have been drawn up, which are in legal terms **supplementary to the company-level agreement**, to adjust the general regulation of the company-level agreement to local conditions. Neither sectoral nor multi-employer agreements exist in the railway sector. Also, so far, sectoral social dialogue committees in the railway sector have not been established.

Intense social dialogue takes place in **the civil aviation sector** in Hungary. Although there is a forum for **sectoral-level dialogue** as well, **substantive agreements** are concluded **at company level**, in the case of four organisations. There is a peculiar craft union structure in the **civil aviation sector** with a large number of small trade unions. Despite an extremely fragmented trade union structure, the bargaining power of trade unions is strong due to the specificity of the sector and their organisation covering the entire company. With respect to their potential to exert pressure, craft or occupation-based trade unions are strong – such as those representing pilots, flight attendants, air traffic navigators and aircraft technicians. Altogether, the **company-level collective agreements** for three of the main companies (Budapest Airport Zrt; MALÉV Company Group; HungaroControl) cover more than half of the employees (in 2008).

Sources of national law on SGIs

Sector	Legal references	Web sites
Telecommunications	Act 174 of 2007 on the Amendment of Act 100 of 2003 on Electronic Telecommunication Act 154 of 2007 on the Amendment of Act 74 of 2007 on the Rules of Broadcasting and Digital Switchover and Act 1 of 1996 on Radio and Television Broadcasting Act 74 of 2007 on the Rules of Broadcasting and Digital Switchover Act 100 of 2003 on Electronic Telecommunication	http://www.complex.hu/kzidat/10700174.htm http://www.complex.hu/kzidat/10700154.htm www.nih.hu/dokumentum.php?cid=12386 http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0300100.TV In English: http://www.nih.hu/index.php?id=dokumentumtar&mid=626=en
Postal services	Government Decree 79 of 2004 on the Provision of Postal Services and the Their Quality Requirements Government Decree 68 of 2004 on the Entry into the Market of Providers of Postal Services Act 101 of 2003 on the Post	http://www.nih.hu/dokumentum.php?cid=8255 www.nih.hu/dokumentum.php?cid=8245 in English: www.nih.hu/dokumentum.php?cid=10619
Production of electricity, Electric networks (transport-distribution), marketing of electricity	Act 70 of 2008 on Certain Questions Concerning Electricity Act 86 of 2007 on Electricity	http://www.complex.hu/kzidat/10800070.htm http://net.jogtar.hu/jr/gen/getdoc.cgi?docid=a0700086.tv
Gas transport-distribution, marketing of gas	Act 40 of 2008 on Gas Supply	http://net.jogtar.hu/jr/gen/getdoc.cgi?docid=a0800040.tv http://www.eh.gov.hu/gcpdocs/200807/faqongas.doc
Railway transports of passengers	Act 46 of 2009 on the Amendment of Act 183 of 2005 on Railway Transportation Act 184 of 2005 on the Inspection of Air, Railway and Water Transport Accidents. Act 183 of 2005 on Railway Transportation	http://www.complex.hu/kzidat/10900046.htm http://www.complex.hu/kzidat/10500184.htm http://www.complex.hu/kzidat/10500183.htm

(301) According to the National Agreement on Sectoral Social Dialogue in a subsector, if one company in a sector represents at least 80% of the employees, this company should be deemed a representative social partner.

Freight rail transport	Act 46 of 2009 on the Amendment of Act 183 of 2005 on Railway Transportation Act 77 of 2006 on the Proclamation of the COTIF Agreement of 3 June 1999. Act 184 of 2005 on the Inspection of Air, Railway and Water Transport Accidents. Act 183 of 2005 on Railway Transportation	See above. http://www.complex.hu/kzldat/0600077.htm/0600077.htm
Regional and local transport of passengers	Act 54 of 2009 on the Amendment of Act 33 of 2004 on the Transportation of Passengers by Regular Bus or Coach Act 110 of 2006 on the Amendment of Certain Acts on Transportation Act 184 of 2005 on the Inspection of Air, Railway and Water Transport Accidents. Act 183 of 2005 on Railway Transportation Act 33 of 2004 on the Transportation of Passengers by Regular Bus or Coach Parliament Resolution 36 of 2004 on the Hungarian Transportation Strategy between 2003 and 2015	http://www.complex.hu/kzldat/0900054.htm/0900054.htm http://www.complex.hu/kzldat/0600110.htm/0600110.htm http://www.complex.hu/kzldat/0400033.htm/0400033.htm http://www.nkh.hu/en/railways/images/stories/legal%20background/gy/19-2004.pdf
Air transport	Act 104 of 2009 on the Proclamation of the Agreement between the European Union and the United States of America on Passenger Name Records, and on the Amendment of Act 97 of 1995 on Air Transport Act 184 of 2005 on the Inspection of Air, Railway and Water Transport Accidents. Act 97 of 1995 on Air Transport	http://www.complex.hu/kzldat/0900104.htm/0900104.htm http://www.complex.hu/jr/gen/hjegy_doc.cgi?docid=99500097.TV
Inland water transport	Act 3 of 2009 on the Proclamation of the European Agreement Concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN) of Geneva, 26 May 2000 Government Decree 261 of 2008 on the Terms of Passenger Shipping Act 184 of 2005 on the Inspection of Air, Railway and Water Transport Accidents. Act 25 of 2004 in the Amendment of Certain Acts on Transportation Act 42 of 2000 on Water Transport	http://www.complex.hu/kzldat/0900003.htm/0900003.htm http://www.complex.hu/kzldat/0400025.htm/0400025.htm http://www.complex.hu/jr/gen/getdoc2.cgi?dbnum=1&docid=A0000042.TV&cel=P(54)
Maritime transport	Act 42 of 2000 on Water Transport (Applicable for vessels sailing on foreign waters under Hungarian flag unless otherwise ruled by international agreements.)	See above.
Water, Waste water	Government Decree 21 of 2002 on the Operation of Public Waterworks Act 57 of 1995 on Water Management Government Decree 38 of 1995 on Public Waterworks and Waste Water Drainage Act 65 of 1990 on Local Governments	http://www.vizmuvek.hu/pdf/rendelete_a_vizkozmuvek_uzemeltetesrol.pdf http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500057.TV http://www.vizmuvek.hu/pdf/ivovizellatasrol.pdf http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99000065.TV In English: http://www.mtaki.hu/docs/cd2/Magyarorszag/6-1990-65ang.htm
Heating	Act 40 of 2008 on Gas Supply Act 18 of 2005 on District Heat Supply	http://net.jogtar.hu/jr/gen/getdoc.cgi?docid=a0800040.tv http://www.complex.hu/kzldat/0500018.htm/0500018.htm
Broadcasting	Act 154 of 2007 on the Amendment of Act 74 of 2007 on the Rules of Broadcasting and Digital Switchover and Act 1 of 1996 on Radio and Television Broadcasting Act 12 of 2006 on the Amendment of Act 1 of 1996 on Radio and Television Broadcasting Act 20 of 2002 on the Amendment of Act 1 of 1996 on Radio and Television Broadcasting with the Purpose of Harmonisation with the European Law Act 1 of 1996 on Radio and Television Broadcasting	http://www.complex.hu/kzldat/0900001.htm/0900001.htm And see above at Telecommunication. http://www.nnh.hu/index.php?id=dokumentumtar&mid=626 =en www.nnh.hu/dokumentum.php?cid=10622
National public administration	Act 60 of 2009 on Electronic Services of Public Interest Act 106 of 2008 on the Amendment of Act 140 of 2004 on the General Rules of the Proceedings and Services of Public Administration Authorities Government Decree 29 of 2008 on the Responsibilities and Competences of the Minister of Prime Minister's Office Act 57 of 2006 on the Branches of Central Public Administration and the Statute of the Members of the Government and State Secretaries Act 140 of 2004 on the General Rules of the Proceedings and Services of Public Administration Authorities Act 18 of 2002 on the Amendment of Act 23 of 1992 on the Statute of Civil Servants and of Act 43 of 1996 on the Service of Professional Military Personnel Act 23 of 1992 on the Statute of Civil Servants	http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0900056.TV http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=a0400140.tv http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0800029.KOR http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99200023.TV
Regional or local public administration	Act 106 of 2008 on the Amendment of Act 140 of 2004 on the General Rules of the Proceedings and Services of Public Administration Authorities Act 107 of 2007 on the Amendment of Act 107 of 2004 on the Multi-functional Micro-regional Associations of Local Municipalities Act 99 of 2007 on the European Regional Associations for Co-operation Act 140 of 2004 on the General Rules of the Proceedings and Services of Public Administration Authorities Act 107 of 2004 on the Multi-functional Micro-regional Associations of Local Municipalities Act 44 of 2000 on Certain Questions Concerning the Service of Mayors and on the Amendment of Act 64 of 1994 on the Payment of the Members of Local Councils Act 92 of 1999 on the Amendment of Act 21 of 1996 on Regional Development and Physical Planning Act 21 of 1996 on Regional Development and Physical Planning Act 64 of 1994 on the Payment of the Members of Local Councils Act 33 of 1992 on the Statute of Public Employees Act 20 of 1991 on the Responsibilities and Competences of the Local Governments and Their Agencies, Commissioners of the Republic and Certain Centrally Subordinated Agencies Act 65 of 1990 on Local Governments	http://www.huro-cbc.eu/uploads/editors/file/XCIX_2007_tv-1.pdf http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=a0400140.tv http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0400107.TV http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99600021.TV http://www.complex.hu/kzldat/09400064.htm/09400064.htm http://www.complex.hu/kzldat/09100020.htm/09100020.htm http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99200033.TV http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99000065.TV
Hospital health services. Ambulatory health services	Act 106 of 2008 on the Amendment of Certain Acts Concerning Health Care Act 132 of 2006 on the Development of the Health Care System Act 116 of 2006 on the Authority Supervising Health Insurance Act 98 of 2006 on the Secure and Economic Supply of Medicines and Medical Appliances, and the General Rules of the Trade of Medicines Act 107 of 2001 on the Provision of Health Care Services and on the Forms of the Activity of Medical Doctors Act 154 of 1997 on Health Care Act 11 of 1991 on the Public Administration of Health Care	http://www.complex.hu/kzldat/0800106.htm/0800106.htm http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0600132.TV http://www.complex.hu/kzldat/0600116.htm/0600116.htm http://www.complex.hu/kzldat/0600098.htm/0600098.htm http://www.complex.hu/kzldat/0100107.htm/0100107.htm http://www.complex.hu/kzldat/09700154.htm/09700154.htm http://www.complex.hu/kzldat/09100011.htm/09100011.htm
Primary and secondary education	Act 31 of 2008 on the Amendment of Certain Acts Concerning the Equality of Chances in Public Education Act 98 of 2007 on the Amendment of Act 37 of 2001 on the Market of School Textbooks Act 87 of 2007 on the Amendment of Act 79 of 1993 on Public Education Act 79 of 1993 on Public Education	http://www.opten.hu/cgi-bin/jogiforumpub/torvtar/torvlst.cgi?tdisp=00100&teu=0&twich=50212&tssearch=#firstnew http://www.okm.gov.hu/leto/t/kozokt/kozokt_tv_modosito_070823.pdf http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99300079.TV

Higher education	Act 138 of 2009 on the Amendment of Act 139 of 2005 on Higher Education Act 71 of 2009 on the Amendment of Act 139 of 2005 on Higher Education Act 104 of 2007 on the Amendment of Act 139 of 2005 on Higher Education Act 73 of 2006 on the Amendment of Act 139 of 2005 on Higher Education Act 139 of 2005 on Higher Education	http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0500139.TV In English : http://www.okm.gov.hu/letolt/nemzel/naric/act_cxxxii_2005.pdf
Vocational training	Act 31 of 2008 on the Amendment of Certain Acts Concerning the Equality of Opportunity in Public Education Act 102 of 2007 on the Amendment of Certain Acts Relevant to the Realisation of the Reform Programme on Vocational Training and Adult Education Act 104 of 2006 on the Amendment of Certain Acts Concerning Vocational Training and Adult Education Act 76 of 1993 on Vocational Training	http://www.complex.hu/kzidat/t0800031.htm/t0800031.htm http://www.complex.hu/kzidat/t0600114.htm/t0600114.htm In English : http://www.okm.gov.hu/letolt/nemzel/naric/szt_angol.pdf
Compulsory social protection. Complementary social protection	Act 107 of 2008 on the Amendment of Certain Social and Employment Acts Act 107 of 2006 on the Amendment of Certain Social Acts Act 170 of 2005 on the Amendment of Act 3 of 1993 on Social Administration and Social Provisions Act 126 of 2005 on the Reform of the Family Support System Act 70 of 2005 on the Amendment of Act 4 of 1991 on the Facilitation of Employment and the Provisions Made Available to the Unemployed Act 136 of 2004 on the Amendment of Certain Social Acts Act 4 of 2003 on the Amendment of Certain Social Acts Act 33 of 2002 on the Amendment of Act 84 of 1998 on Family Support Decree of the Minister Affairs and Family Support 1/2000 on the Duties and Conditions of Operation of Social Institutions Providing Services Directly to the Person Act 122 of 1999 on the Amendment of Certain Acts Concerning Labour and Social Protection Act 100 of 1999 on the Proclamation of the European Social Charter Act 73 of 1999 on the Amendment of Act 3 of 1993 on Social Administration and Social Provisions Act 84 of 1998 on Family Support Act 120 of 1997 on the Amendment of Act 4 of 1991 on the Facilitation of Employment and the Provisions Made Available to the Unemployed, and of Act 64 of 1994 on the Wage Guaranty Fund Act 84 of 1997 on the Amendment of Act 3 of 1993 on Social Administration and Social Provisions Act 107 of 1996 on the Amendment of Act 4 of 1991 on the Facilitation of Employment and the Provisions Made Available to the Unemployed Act 22 of 1996 on the Amendment of Certain Acts Concerning Social Provisions Act 3 of 1993 on Social Administration and Social Provisions Act 4 of 1991 on the Facilitation of Employment and the Provisions Made Available to the Unemployed Act 65 of 1990 on Local Governments	http://www.opten.hu/cgi-bin/jogiforumpub/torvar/torvist.cgi?tdisp=00100&teu=0&which=112069&tsearch=#firstnew http://www.complex.hu/kzidat/t0600117.htm/t0600117.htm http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0500126.TV http://www.complex.hu/kzidat/t0500070.htm/t0500070.htm http://www.complex.hu/kzidat/t0400136.htm/t0400136.htm http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0000001.SCM http://www.1000ev.hu/index.php?a=3&param=10095 http://www.1000ev.hu/index.php?a=3&param=9793 http://www.opten.hu/cgi-bin/jogiforumpub/torvar/torvist.cgi?tdisp=00100&teu=0&which=1100&tsearch=#firstnew http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99800084.TV http://net.jogtar.hu/jr/gen/getdoc2.cgi?dbnum=1&docid=99300003.TV In English : http://www.elderly-care.eu/downloads/legal-framework/act-iii-of-year-1993-on-social-administration-and-social-transfers/details.html
Social housing	Act 31 of 1997 on Child Protection and Guardianship Administration Act 78 of 1993 on the Rules of the Renting of Homes or Rooms and the Trade of Rented Homes Act 3 of 1993 on Social Administration and Social Provisions The detailed rules of social housing are to be found in the decrees of local governments.	http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700031.TV http://www.complex.hu/jr/gen/hjegy_doc.cgi?docid=993000078.TV
Childcare services (0-6 years)	Act 79 of 2009 on the Amendment of Act 31 of 1997 on Child Protection and Guardianship Administration and of Certain Social Acts Act 31 of 2008 on the Amendment of Certain Acts Concerning the Equality of Opportunity in Public Education (pre-school education.) Act 43 of 2006 on the Amendment of Act 31 of 1997 on Child Protection and Guardianship Administration Act 33 of 2002 on the Amendment of Act 84 of 1998 on Family Support Act 84 of 1998 on Family Support Act 154 of 1997 on Health Care Act 31 of 1997 on Child Protection and Guardianship Administration Act 79 of 1993 on Public Education (Pre-school education) Act 64 of 1991 on the Proclamation of the Convention on the Right of the Child, Signed in New York, 20 November 1989	http://www.complex.hu/kzidat/t0900079.htm/t0900079.htm http://www.complex.hu/kzidat/t0800031.htm/t0800031.htm http://www.complex.hu/kzidat/t0600043.htm/t0600043.htm http://www.complex.hu/kzidat/t0200033.htm/t0200033.htm http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99800084.TV http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700031.TV http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99300079.TV
Care of the disabled	Act 125 of 2009 on the Hungarian Sign Language and Its Use Act 79 of 2009 on the Amendment of Act 31 of 1997 on Child Protection and Guardianship Administration and of Certain Social Acts Act 121 of 2007 on the Amendment of Certain Social Acts Act 87 of 2007 on the Amendment of Act 79 of 1993 on Public Education Act 23 of 2007 on the Amendment of Act 26 of 1998 on the Rights of the Disabled and the Equality of Their Chances Government Decree 362 of 2004 on the Equal Treatment Authority and the Detailed Rules of its Procedures Act 1 of 2004 on Sport Act 125 of 2003 on Equal Treatment and the Promotion of the Equality of Opportunity Act 101 of 2001 on Adult Education A 41 of 2001 on the Amendment of Some Acts Concerning Transfers Payable to the Disabled Act 122 of 1999 on the Amendment of Certain Acts Concerning Labour and Social Protection Act 100 of 1999 on the Proclamation of the European Social Charter Act 84 of 1998 on Family Support Act 26 of 1998 on the Rights of the Disabled and the Equality of Their Chances Act 31 of 1997 on Child Protection and Guardianship Administration and of Certain Social Acts Act 3 of 1993 on Social Administration and Social Provisions 79 of 1993 on Public Education	www.szmh.gov.hu/openlink.php?linkID=1269 http://www.opten.hu/cgi-bin/jogiforumpub/torvar/torvist.cgi?tdisp=00100&teu=0&which=122827&tsearch=#firstnew http://www.complex.hu/jr/gen/hjegy_doc.cgi?docid=A0400362.KOR http://www.iuris.hu/printform.php?id=304 http://www.okm.gov.hu/letolt/kozok/kozok_tv_modosito_ixxxvii_070823.pdf http://www.complex.hu/kzidat/t0700023.htm/t0700023.htm http://www.complex.hu/kzidat/t0400001.htm/t0400001.htm http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0300125.TV http://www.complex.hu/kzidat/t0100041.htm/t0100041.htm http://www.1000ev.hu/index.php?a=3&param=9793 (For some links see above.) In English: http://www.egyenlobanasmod.hu/data/Act_CXXV_2003%20English.pdf http://www.egyenlobanasmod.hu/data/SZMM094A.pdf

Elderly care	<p>Act 127 of 2009 on the Amendment of Act 81 of 1997 on the Social Security Pensions of the Elderly (to come to effect on the 1st of January 2010)</p> <p>Act 126 of 2009 on the Amendment of Certain Acts Concerning Labour</p> <p>Parliamentary Resolution 81 of 2009 on the National Strategy for the Elderly</p> <p>Act 40 of 2009 on the Amendment of Act 81 of 1997 on the Social Security Pensions of the Elderly</p> <p>Act 156 of 2007 on the Amendment of Act 81 of 1997 on the Social Security Pensions of the Elderly</p> <p>Act 121 of 2007 on the Amendment of Certain Social Acts</p> <p>Act 117 of 2007 on Employer's Pensions and Their Institutions</p> <p>Act 106 of 2006 on the Amendment of Act 81 of 1997 on the Social Security Pensions of the Elderly, and Certain Related Acts</p> <p>Act 156 of 2005 on Private Pension Accounts</p> <p>Act 98 of 2005 on the Proclamation of the 1988 Additional Protocol to the European Social Charter</p> <p>Act 122 of 1999 on the Amendment of Certain Labour and Social Acts</p> <p>Act 82 of 1997 on the Private Pensions of the Elderly</p> <p>Act 81 of 1997 on the Social Security Pensions of the Elderly</p> <p>Act 22 of 1992 on the Labour Code</p>	<p>http://www.complex.hu/kzldat/10900127.htm/10900127.htm</p> <p>http://www.complex.hu/jr/gen/hjegy_doc.cgi?docid=A0900126.TV</p> <p>http://www.opten.hu</p> <p>http://www.complex.hu/kzldat/10900040.htm/10900040.htm</p> <p>http://www.iuris.hu/printform.php?id=304</p> <p>http://www.complex.hu/kzldat/10700117.htm/10700117.htm</p> <p>http://www.complex.hu/kzldat/10600106.htm/10600106.htm</p> <p>http://jab.complex.hu/hjegy.php?docid=A0500156.TV</p> <p>http://www.1000ev.hu/index.php?a=3&param=9793</p> <p>http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700082.tv</p> <p>http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700081.tv</p> <p>http://www.jogforum.hu/torvenytar?id=113</p>
Financial services	<p>Concerning only services provided by credit institutions</p> <p>Act 150 of 2009 on the Amendment of Certain Acts Concerning Finance</p> <p>Act 148 of 2009 on Amendment of Certain Acts Concerning Finance with the Purpose of Increasing the Efficiency of the Regulation of the Financial Mediator System</p> <p>Act 86 of 2009 on the Amendment of the Provisions of Act 112 of 1996 on Credit Institutions and Financial Entrepreneurs Concerning Payment Services and Their Institutions</p> <p>Act 85 of 2009 on Payment Services</p> <p>Act 41 of 2009 on the Amendment of the Provisions of Act 112 of 1996 on Credit Institutions and Financial Entrepreneurs Concerning the Insurance of Deposits</p> <p>Act 104 of 2008 on the Promotion of the Stability of the Financial Mediator System</p> <p>Act 137 of 2007 on the Amendment of Certain Acts Concerning Finance with the Purpose of Harmonisation with the European Law</p> <p>Act 136 of 2007 on the Prevention of Money Laundering and the Financing of Terrorism</p> <p>Act 135 of 2007 on the Hungarian Financial Supervisory Authority</p> <p>Act 188 of 2005 on the Amendment of Act 112 of 1996 on Credit Institutions and Financial Entrepreneurs</p> <p>Act 27 of 2004 on the Amendment of Certain Acts Concerning Finance with the Purpose of Harmonisation with the European Law</p> <p>Act 22 of 2004 on the Amendment of Certain Acts Concerning the Protection of Investors and Depositors</p> <p>Act 30 of 1997 on Mortgage Credit Institutions and on Debenture Mortgage</p> <p>Act 112 of 1996 on Credit Institutions and Financial Entrepreneurs</p>	<p>http://www.opten.hu/cgi-bin/jogforumpub/torvar/torvist.cgi?tdisp=00100&teu=0&twich=132387&tsearch=#firstnew</p> <p>http://www.complex.hu/kzldat/10900086.htm/10900086.htm</p> <p>http://www.complex.hu/kzldat/10900085.htm/10900085.htm</p> <p>http://www.opten.hu/cgi-bin/jogforumpub/torvar/torvist.cgi?tdisp=00100&teu=0&twich=112066&tsearch=#firstnew</p> <p>http://www.complex.hu/kzldat/10700137.htm/10700137.htm</p> <p>http://www.complex.hu/kzldat/10700136.htm/10700136.htm</p> <p>http://www.complex.hu/kzldat/10700135.htm/10700135.htm</p> <p>http://www.complex.hu/kzldat/10500188.htm/10500188.htm</p> <p>http://www.complex.hu/kzldat/10400027.htm/10400027.htm</p> <p>http://www.complex.hu/kzldat/10400022.htm/10400022.htm</p> <p>http://www.complex.hu/kzldat/19700030.htm/19700030.htm</p> <p>http://www.complex.hu/kzldat/19600112.htm/19600112.htm</p>
Cultural services	<p>Act 140 of 1997 on the Protection of Cultural Heritage, Museums and Public Libraries</p> <p>Act 1 of 1996 on Radio and Television Broadcasting</p> <p>Act 45 of 2006 on the Amendment of Act 2 of 2004 on Cinematography, Act 2 of 2004 on Cinematography</p>	<p>http://www.complex.hu/kzldat/19700140.htm/19700140.htm</p> <p>http://www.complex.hu/kzldat/10600045.htm/10600045.htm</p> <p>http://www.complex.hu/kzldat/10400002.htm/10400002.htm</p>

Footnotes tables

(table01) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU German version <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:DE:HTML>

(table02) Public universities are sui generis legal persons under public law. 21 public universities exist. Reform makes them more similar to an enterprise, more power to the rector, more autonomy, new public management approach, performance agreements with the Ministry etc. Private enterprises may run universities as well, they require certification: nine exist (the first private university was created in 2000). Fachhochschulen (post secondary education, somewhere between college and university, focus on practice, not research or theory; students receive normal university degree) are either GesmbHs (Ltd), Vereine (registered associations/clubs) or Privatstiftungen (private trust/foundation). Twelve Fachhochschulen exist, and a further six organisations, who are allowed to offer Fachhochschule-degree programmes. About 190 programmes, 30 000 students.

(table03) Volkshochschulen started in the 19th century, due to the civic and left movements. Currently, some Länder and various state owned enterprises/agencies run own facilities for their employees (e.g. Verwaltungsakademie in Vienna), the Federation's one has been closed recently. Many companies have their own facilities. Worth a mention is the WiFi, created after the Second World War, run by the Chamber of Commerce, it has a market share of about 20%. Further the 270 Volkshochschulen (adult education centres, NPOs) are important, 67% are Vereine (registered associations/clubs), 21% are run by local administration and 6,5% are limited companies. Also, apprentices are trained on the job in all kinds of companies but the state trains many.

(table04) There is compulsory social protection for health, unemployment, accidents, and pensions. There are many different public compulsory insurance funds, for various aspects of these insurances and for various areas and for various professions. E.g. there are 9 health funds for the 9 Länder plus 6 additional health funds for certain professions. Overall there are 22 insurance funds. They are run by self administration various representative bodies with compulsory membership (e.g. chamber for workers) elect the administration. Only unemployment insurance is handled by the AMS (public company, dealing with many aspects of unemployment) under the guidance of the ministry (the AMS was part of the ministry until 1994).

(table05) Caritas and other social institutions have founded together with the Erste Sparkasse the "Zweite Sparkasse", a kind of social bank, which offers bank accounts without overdraft limits to those who are rejected by commercial banks.

(table06) Act of 8 August 1980 amended by Act of 8 August 1988

(table07) In 2008, the Belgian company S.A. Distrigas has 72,4% shares of the market. See the annual report of the national regulatory agency <http://www.creg.info>

(table08) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU Bulgarian version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:BG:HTML>

(table09) Most web sites are available in Bulgarian and English.

(table10) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU Greek version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:EL:HTML>

(table11) In the field of international "mail" and express deliveries

(table12) There is no private investment in the production of electricity despite the liberalisation of the sector. This situation could be explained by the small size of the country, the absence of interconnections with the countries of continental Europe and the lack of conventional energy resources other than heavy oil (imported).

(table13) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU Czech version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:CS:HTML>

(table14) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU German version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:DE:HTML>

(table15) All customers are free to choose among a variety of energy providers. The degree of competition is higher than in the generation market but local utilities do not have level playing field. Local utilities face several obstacles. The biggest are the German Municipal Economic Law (Gemeindewirtschaftsrecht) and public procurement laws

(table16) The reform system of summer 2006 provides greater competition among actors in the health system to increase efficiency and service quality.

(table17) More than 80% of the total amount is generated by the big four energy players. Therefore degree of competition is not yet satisfactory.

(table18) Furthermore, installing a system of fees is expected to reduce the number of unnecessary consultations (abusive).

(table19) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – Danish version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:DA:HTML>

(table20) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – Estonian version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:EE:HTML>

(table21) Services of general interest – üldhuviteenused (services that authorities believe are of general interest and therefore must meet the conditions required for some public services. These include non economic services (such as compulsory schooling, social protection), the country's obligations (for example, security and justice), and general economic services (energy, communications). Estonian definition: teenused, mis ametiasutuste meelest pakuvad üldist huvi ja peavad seetõttu täitma teatavaid avalikele teenustele esitatavaid tingimusi. Nende hulka kuuluvad majandusvälised teenused (näiteks kohustuslik kooliharidus, sotsiaalkaitse), riigi kohustused (näiteks julgeoleku- ja õigusküsimused) ning üldise majandushuvi teenused (energiavarustus, kommunikatsioonid). La réforme de l'Union européenne: institutions, politiques, de l'élargissement (Glossaire), Tallinn, Estonian Legal Translation Center, 1999,

<http://mt.legaltext.ee/esterm/concept.asp?conceptID=37371&term=%C3%BCldhuviteenused>

(table22) Services of general economic interest – üldist majandushuvi pakkuvad teenused commercial services that are economically for the public good and for which the authorities have set certain conditions of public service (Article 86 of the Treaty establishing the European Community). Such services include transport, energy and communications. Kommertsteenused, mis on majanduslikult üldkasulikud ja millele ametiasutused on seadnud teatavad avaliku teenuse tingimused (Euroopa Ühenduse asutamislepingu artikkel 90). Sellised teenused on näiteks transport, energiavarustus ja side.

<http://mt.legaltext.ee/esterm/concept.asp?conceptID=17041&term=%C3%BCldist%20majandushuvi%20pakkuvad%20teenused>

(table23) Everyone has the right to education. Education is compulsory for school-age children to the extent specified by law, and shall be free of charge in state and local government general education schools. In order to make education accessible, the state and local government shall maintain the requisite number of educational institutions. Other educational institutions, including private schools, may also be established and maintained pursuant to law. The provision of education shall be supervised by the state. Art. 37 of the Constitution

(table24) "Everyone has the right to the protection of health. An Estonian citizen has the right to state assistance in the case of old age, inability to work, loss of provider, or need. ... The state shall promote voluntary and local government welfare services. Families with many children and persons with disabilities shall be under the special care of the state and local governments. (art. 28 of the Constitution)

(table25) The state shall organise vocational training and shall assist persons who seek employment in finding work. (Art. 29 of the Constitution)

(table26) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – Spanish version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:ES:HTML>

(table27) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – Finnish version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:FI:HTML>

(table28) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – French version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:FR:HTML>

(table29) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – Greek version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:EL:HTML>

(table30) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – Hungarian version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:HU:HTML>

(table31) Public service broadcasters are funded by public foundations founded by the state and supported from the central budget. Their programmes are free of charge. The Broadcasting Fund of the National Radio and Television Commission supports non-profit broadcasters, operating a multi fold tendering system. Otherwise broadcasters operate on a commercial basis. There is a fixed television licence fee, whose amount is set in the Act on the yearly central budget. Currently the fee is about 1000 HUF per month. However, the Government pays the fee for all television set owners, except for bars, restaurants, hotels, or other public places, who pay 60% of the fee themselves.

(table32) The provision of primary and secondary education is the responsibility of the local authorities, which they can fulfil by maintaining schools of their own, or by contracting with other operators. The state provides the local authorities with normative financing (per capita financing with different categories) to support primary and secondary education. The local authorities or other operators can add from their own resources to this. In the yearly budget Act there is a subsidy set for the buying of textbooks by the maintainers, that otherwise circulate at a price set by the market. Private schools may ask for co-payment by the users (or, rather, by their parents).

(table33) There is a duality in higher education financing. Each higher education institution, for each course, has a quota for students whose studies are financed by the state, and they are also free to offer the same services for additional students who pay a fee. The state also pays maintenance normative for the institutions. Students not financed by the state buy the service at an extremely varied market price.

(table34) As far as training provided by vocational schools maintained by the local authorities is concerned, the state provides the funding for both the theoretical and practical part of the training, provided that the latter is carried out within the school. The details are similar to those in of primary and secondary education. In cases where the practical part of the training is carried out in companies, they are responsible for its funding. Companies are generally required to pay a vocational training contribution.

(table35) Active and retired electricity industry workers and their widows buy electricity at a reduced price. Several policies apply to disabled and protected customers. The notion of a protected customer is defined in the Social Administration Act (Act 3 of 1993). They may ask for delayed payment in several instalments, and the providers are not allowed to switch them off completely if they fail to pay.

(table36) Poor households receive a subsidy on the basis of income per consumer unit. The special provisions for disabled and protected customers are the same as in the case of electricity (see above).

(table37) Users under 6 and above 65 years of age travel for free. Students, pensioners, civil servants and public employees, disabled persons, refugees, jobseekers and some other groups pay reduced prices. Reductions range from 20 to 90% of the original price, and may be given for the use of the whole network or for only certain lines, for a limited or for an unlimited number of journeys. Reductions are regulated by a government decree (http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0700085.KOR; for the Minister's current Decree on the prices applicable in the public transport of passengers see http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0700048.GKM)

(table38) Social provisions are the same as in the case of gas supply (see above). For households in need home maintenance support is made available on the basis of income per consumer unit and the number of persons in the household.

(table39) Students, pensioners, homeless people, refugees, the poor under a certain level of income, and some other groups are entitled to use the services anyway. Everyone is entitled to emergency treatments that save life or prevent irreversible damage to health, but these may be subject to payment afterwards. The treatments that are not covered, or not covered fully by social security health insurance, but are available at providers of health services of general interest, are paid for, partly or wholly, by the users and are subject to official pricing by the government. The prices are set in Government Decree 287 of 1997 (http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700284.KOR)

(table40) Many museums and libraries have reductions or exemptions primarily for students, teachers and the elderly. Cinemas have discounts for students.

(table41) Procedures necessary for the exercise of basic constitutional rights and the fulfilment of constitutional obligations, procedures to promote social justice, and some other procedures specified in the relevant Act, are free of charge. The Act relevant for fees applicable in public administration is Act 93 of 1993 on Administrative Fees (http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99000093.TV)

(table42) For universal services there are maximum tariffs set by the Minister of Transport, Telecommunication and Energy, in agreement with the Minister of Finance. The Electronic Communication Act (Act 100 of 2003) rules that everyone should "have access to electronic communications services at an affordable price and at the highest quality, under the contractual terms and predetermined conditions made available to all end-users". Section 108 of the same Act rules that, when an analysis of the market indicates that it is necessary, the National Communications Authority has the right to impose cost orientation of prices on service providers, and prohibit gratuitously high/low prices.

(table43) For universal and reserved postal services the prices are set by the Minister for Transport, Telecommunications and Energy. The current Post Act rules that postal service fees should be "based on the costs of providing the service, pricing shall be transparent, fees shall be non-discriminative and affordable by the users. [...] With the exception of the fees for services related to cross-border postal items, the fees for reserved postal services shall be subject to official pricing pursuant to the act on pricing." (Act on Pricing is Act 87 of 1990.)

(table44) Official pricing by the Minister of Transport, Telecommunication and Energy. Setting the prices the Minister decides on a proposal prepared by the Hungarian Energy Office. The use of renewable sources is promoted by the pricing policy.

(table45) As far as universal service is concerned, the Minister of Transport, Telecommunication and Energy sets the general rules for pricing and an upper limit on the price margin used by end-user providers. When doing so, the Minister decides on a proposal prepared by the Hungarian Energy Office. <http://www.eh.gov.hu/home/html/index.asp?msid=1&sid=0&lng=2&hkl=279>

(table46) Official pricing by the Minister of Transport, Telecommunication and Energy. The Minister decides on a proposal prepared by the Hungarian Energy Office.

(table47) The homepage of the Hungarian Energy Office states that, as far as universal service is concerned, the price "consists of a market-based product price and an administrative charge for system use, as well as a profit. The initial universal service prices are determined in a ministerial decree. The prices in universal service are monitored by the Hungarian Energy Office. The universal supplier may ask for its modification once per quarter year." Modification is subject to approval by the Office.

(table48) Maximum prices are set by the Minister of Transport, Telecommunication and Energy in agreement with the Minister of Finance.

(table49) Minister of Transport, Telecommunication and Energy, in agreement with the Minister of Finance

(table50) The distribution of radio and television programmes is subject to official pricing by the Minister of Transport, Telecommunication and Energy.



MAPPING OF
THE PUBLIC SERVICES



PUBLIC SERVICES
IN THE EUROPEAN UNION &
IN THE 27 MEMBER STATES

COUNTRY SECTIONS

PART III - B



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Each country is divided into these different sections :

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 - A. The model of public administration and national public companies
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PUBLIC SERVICES IN IRELAND

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Ireland is a unitary state¹. Local government in Ireland consists of a number of local and regional authorities at two levels: 8 regional authorities² (Udaras Reigiunach) and 114 local government bodies (Comhairli)³.

Ireland has long recognized “activities of general interest”. The permission to exercise an activity of general interest is given by the Parliament, by specific legislation of the Oireachtas (National Parliament). Irish law, as in the UK, does not recognise the State power to set up public services without parliamentary approval. Nevertheless, a public authority (e.g. local authorities) can do whatever is necessary to achieve the statutory objectives assigned.⁴

As for the notion of “public services,” while one may regularly encounter the term “public services”⁵ in newspapers, governmental publications or scholarly articles, there exists no settled definition of the term in Irish statute law.

For recent examples of governmental use of the concept of public services:

Terms of Reference, Special Group on Public Service Numbers and Expenditure Programmes: “The objectives of the Group are . . . analyse and make recommendations on reducing the numbers employed in each area of the Public Service having regard to . . . the scope for rationalising and streamlining delivery of public services in the consumers’ interest.”⁶

(1) Until 1921, Ireland and the UK were one entity and the common law of both states remain common law legal systems that are based on largely similar principles and rules.

(2) There is no level of regional government although a regional level of administration has been in existence since 1994. The regional authorities co-ordinate some of the county/city and sub-county activities; they play a monitoring role in relation to the use of EU structural funds. Two regional authorities, known as Regional assemblies, were established in July 1999 under new structures for regionalisation. They promote co-ordination of the provision of public services in their areas, manage new regional operational programmes in the next Community Support Framework and monitor the general impact of all EU programmes of assistance under the CSF. Recent development: 2008 Green Paper proposes the introduction of a Regional Mayor for Dublin, elected directly by the people of Dublin, with strategic functions including planning, housing, waste, water provision and waste water disposal.

(3) The actual level of local government is introduced by the Local Government Act of 2001. The local level has two parts. There are twenty-nine county councils and five county borough (city) corporations that cover the five largest cities in the state and form the core of the local administrative system. There is however, no uniform system of sub-county administration and different systems exist in different parts of the country: five borough corporations, forty-nine urban district councils, and twenty-six boards of town commissioners. John Loughlin, “Ireland: From Colonized Nation to “Celtic Tiger”, in John Loughlin, Eliseo Aja, Subnational democracy in the European Union: challenges and opportunities, Oxford University Press, 2004, p. 64

(4) John Bell, T.P. Kennedy, « La notion de service public au Royaume-Uni et en Irlande », in Franck Marcou, Gérard Marcou, L'idée de service public dans le droit des Etats de l'Union européenne, l'Harmattan, 2001, p. 230, 231

(5) Not to be confused with notion of “public service,” i.e. those employees whose salary and pension bill is paid for, directly or indirectly, out of public funds. The Public Service includes the Civil Service, Local Government and State Agencies, amongst others.

(6) Report, published in 2009, is available at: <http://www.finance.gov.ie>

Green Paper on local government: Local government should offer “a credible system that central government can look to for delivering both new and existing public services.”⁷ (p. 11).

From a legal point of view, however, the concept of public services or other related EU concepts do not have conceptual equivalents in Irish law. For instance, while it would be consensual to state that it is for local authorities, under the general supervision of Government departments, to provide “public services”, such as social housing, water, waste removal and treatment, etc., the Irish law on local government refers to the “functions” of local authorities, which includes the power to provide a certain number of “services” required for the benefit of the whole community.⁸

To complicate matters further, a plurality of terms is used when referring to the bodies, other than Government departments and local authorities, responsible for delivering public services. For instance, “public bodies” or “state agencies” may be responsible for delivering specific “public services”. Unfortunately, and similarly to the term public services, the term public bodies is utilised ubiquitously yet has not been clearly defined in Irish statute law. One should note, however, that it is common to oppose non-commercial to commercial (or semi-commercial) public sector bodies and/or state agencies. Yet, in terms of legal status, there are no general/transversal statutory definitions of different types of public bodies/agencies in Ireland. Nor does a general law or framework exist on different types of public/bodies and agencies and the regulation of their autonomy and governance structures.

State-sponsored reports have sought to clarify the meaning and scope of the notions of public bodies or state agencies. In the 1969 Devlin Report – the first significant attempt to reform public services in Ireland – “State-sponsored bodies” are defined as “any autonomous public body with a Board appointed by the Government to discharge those functions assigned to it by the Government.”⁹ In a more recent work on the accountability of Irish public bodies, the authors defined “public bodies” as “all bodies responsible for developing, managing or delivering public services [our emphasis] or policies, or for performing public functions, under governing bodies with a plural membership of wholly or largely appointed person or persons nominated by groups representing particular interests, i.e. not representative through election of the citizen.”¹⁰

The notion of regulatory bodies has also been subject to an official report published by the Department of the Taoiseach.¹¹ In this report, a regulatory body is defined as a body that has statutory backing or recognition, and has functions in at least two of the following three areas of activities: (i) Formulation of goals, making of rules and/or setting of standards; (ii) Monitoring, gathering information, scrutiny, inspection, audit and evaluation; (iii) Enforcement, modifying behaviour, applying rewards and sanctions. On the basis of this definition, the report offers the following list of regulatory bodies in Ireland: Government departments; Local authorities; Independent statutory sectoral regulators (e.g. the Financial Regulator); Public bodies under the aegis of government departments/offices that have been delegated regulatory/enforcement functions;¹²

(7) Stronger Local Democracy - Options for Change, 22 April 2008, p. 11.

(8) See e.g. Local Government Act, 2001, section 63.

(9) Report of Public Services Organisation Review Group 1966-1969 (known as “The Devlin Report,” 1969)

(10) P. Clancy, G. Murphy, Outsourcing Government. Public Bodies and Accountability, TASC, March 2006, p. 64.

(11) Department of the Taoiseach. Better Regulation Unit. Bodies in Ireland with Regulatory Powers as of February 2007 (report available at: <http://www.betterregulation.ie/eng/Publications>)

(12) For the purposes of this Report, a public sector body is further defined as one which (a) has the majority of its Board members appointed by an Irish Minister, or (b) directly derives the majority of its revenue/funding from Irish public sources.

Private bodies mandated or approved by Government to regulate in particular areas of the economy.

Finally, the notion of public services bodies has been referred to in the 2009 Act providing the legislative basis necessary to facilitate a reduction in the remuneration of public servants.¹³ For the purposes of this 2009 Act, in addition to the Civil Service, the Gardaí, the Permanent Defence Force, a local authority, the Health Service Executive, the Central Bank and Financial Services Authority of Ireland, and any vocational education committee¹⁴, any statutory body or company or body corporate (or subsidiary) established and financed wholly or partly by a Minister, the Oireachtas or by the Central Fund, in respect of which a public service pension scheme exists, is considered a public service body. Amongst other bodies, this part of the definition covers universities and other third level bodies and non-commercial regulatory state bodies¹⁵.

Generally speaking, Irish law appears to refer exclusively to EU concepts such as “non-economic services of general interest” or “public service obligations” in a specific context: when Irish authorities must transpose EU directives or more generally, when they implement EU law by means of statutes or statutory instruments.

To give a single example, the Electricity Regulation Act, 1999, refers to the notion of Public Service Obligations and provides that the relevant Minister “shall by order direct the Commission to impose on the Board and holders of licences or authorisations, or holders of a permit under section 37 of the Principal Act, public service obligations which may include obligations in relation to (a) security of supply, (b) regularity, quality and price of supplies, (c) environmental protection, and (d) use of indigenous energy sources.” These PSOs, however, directly originate in EU law.¹⁶

(13) Financial Emergency Measures in the Public Interest No 2 Act 2009.

(14) An Foras Áiseanna Saothair (the Training and Employment Authority) is the state agency with responsibility for assisting those seeking employment.

(15) A Schedule to the Act provides specifically that the bodies listed below are exempted from the terms of section 2: Any body corporate established by Act of Parliament before 6 December 1922 that, upon its establishment, was of a commercial character; Dublin Airport Authority, Cork Airport Authority, and Shannon Airport Authority (public limited companies); Bord Gáis Éireann; Bord na gCon Bórd na Móna; Córas Iompair Éireann Coillte Teoranta; Electricity Supply Board; Eirgrid; A harbour authority within the meaning of the Harbours Act 1946 or company to which section 7 of the Harbours Act 1996 relates; Horse Racing Ireland; Irish National Stud Company Limited; Irish Aviation Authority; An Post; An Post National Lottery Company; Radio Teilifís Éireann; Teilifís na Gaeilge; Voluntary Health Insurance Board; Railway Procurement Agency; National Treasury Management Agency; A subsidiary of a body to which this Schedule relates, including a subsidiary of any such subsidiary.

(16) For an additional example of legislative use of PSOs, see Gas (Interim) (Regulation) Act 2002, section 21. See also The EC (Postal Services) Regulations S.I. No. 616 of 2002 which designates An Post “as a universal service provider for the purpose of the Directive and these Regulations with the obligation to provide a universal service.”

Competences of definition and organisation of SGLs

What is the level of government that actually defines the public service obligations and decides the modes of SGLs' organisation?

Central government	Regional authorities	Local government
Telecommunications		Water
Postal services		Waste water
Production of electricity		Cultural services
Electricity networks		Social housing
Marketing of electricity		
Gas transport-distribution		
Marketing of gas		
Railway transport of passengers		
Freight rail transport		
Regional and local transport of passengers		
Air transport		
Inland water transport		
Maritime transport		
Heating		
Broadcasting		
Hospital health services		
Ambulatory health services		
Primary and secondary education		
Higher education		
Vocational training		
Compulsory social protection		
Complementary social protection		
Childcare services (0-6 years) ^{table01}		
Care of the disabled ^{table02}		
Elderly care ^{table03}		
Financial services		
Cultural services ^{table04}		

B. Sectoral organisation and trends

Status of the operators of SGIs

National public providers	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
Telecommunications Postal services Production of electricity Electricity networks Marketing of electricity Gas transport-distribution Marketing of gas Railway transport of passengers Freight rail transport Regional and local transport of passengers Air transport Inland water transport Maritime transport Heating Broadcasting Hospital health services Ambulatory health services Higher education table05 Vocational training Compulsory social protection Care of the disabled Financial services Cultural services		Regional and local transport of passengers Water Waste water Hospital health services Ambulatory health services Complementary social protection Social housing Cultural services		Road transport Railway transports Water Hospital health services		Primary and secondary education table06 Higher education Childcare services (0-6 years) Elderly care

SGI markets

Liberalised market and competition	Liberalised market Public operators dominant	Public monopoly	Liberalised market Private operators dominant	Private monopoly	No market
Inland water transport Maritime transport Broadcasting Financial services	Postal services Production of electricity Electricity networks Marketing of electricity Gas transport-distribution Marketing of gas Railway transports of passengers Freight rail transport Regional and local transport of passengers Heating Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Compulsory social protection Social housing Care of the disabled Cultural services	Water Waste water	Telecommunications Air transport Complementary social protection Childcare services (0-6 years) Elderly care		

Main financing methods of SGIs

Fees/payment by users/clients	Public grants/aids	Insurance funds	Incomes from the activity	Social tariffs/prices
Broadcasting Primary and secondary education (for fee-paying secondary school)	Hospital health services (5) Water Waste water (2) Broadcasting (grant to RTE) Primary and secondary education	Complementary social security (6)		Regional and local transport of passengers (1) Water (3) Waste water (3) Heating (4) Hospital health services (free for some people) Primary and secondary education (students with disabilities) Higher education

(1) Special policy in relation to seniors (i.e. Free Travel Pass financed by State, entitling seniors to free travel at any time on bus, road, rail and DART services operated by Bus Átha Cliath, Bus Éireann, Iarnród Éireann, etc.)

(2) Costs of service provision are met from tax revenues transferred by the national government to local authorities, which are in charge of service provision. All water charges for domestic use in urban areas in Ireland were abolished on 1 January 1997. The situation will change in 2010. Non-domestic water charges - either flat rate or metered - are levied on businesses, schools, hospitals and other non-domestic users. Furthermore, members of rural “group water schemes” may pay for domestic water. Recent and significant development: Budget 2010 indicates that a system of water metering for homes will be introduced. Water charges will be based on the amount consumed above a free allocation

(3) In some local authority areas, low-income households can be given a waiver (that is, a reduction or total exemption) on waste and water charges made by private operators and by local authorities.

(4) Special allowances/schemes for those on welfare (see e.g. The National Fuel Scheme, which is a means-tested payment to help people who cannot afford their own heating costs). The Department of Social and Family Affairs, which inter alia offers welfare allowances in relation to heating: (i) a Fuel Allowance, a payment under the National Fuel Scheme, for people dependant on long-term social welfare or Health Service Executive (HSE) payments; (ii) People with specific heating needs due to infirmity or a particular medical condition may also receive a heat supplement through the supplementary welfare allowance scheme which is administered by Community Welfare Officers nationwide

(5) As a matter of principle, everyone living in the country is entitled to free maintenance and treatment in public beds in HSE and voluntary hospitals. There is no compulsory membership of a social security scheme yet; a medical card issued by the HSE allows the holder to receive certain health services free of charge.

(6) Health insurance is used to pay for private care in hospital or from various health professionals in hospitals or in their practices.

Until 1994, the only health insurance companies offering services in Ireland were the VHI and the restricted membership companies.

National authorities responsible for setting pricing and/or tariff policies

Central government	Local government	Regulatory agencies	Providers	(Others)
		Telecommunications Postal services		

II/ Approaches

A. The model of public administration and national public companies

In Ireland, traditionally, the territorial and political organisation is highly centralised and the concept of “public services” rather associated with the “public sector”. However, if compared with the UK, where the current system favours private market regulation rather than direct provision of services by the public sector, in Ireland almost all activities of general interest are managed by agencies or public bodies controlled by the state. The Irish particularity is based on the notion of state sponsored body and the direct involvement of the state in providing SGIs. Even if important sectors have been subject to progressive reforms to comply with EU law marked by the passage from nationalisation to liberalisation and to a regulatory State, the major providers of “public services” are public operators and most “public services” are organised at national level by state sponsored bodies established to solve specific tasks:

- 01.** Telecommunications. The state-owned largest service provider was sold in June 1999. Eircom is now an unlisted public limited company owned by Eircom Holdings Ltd. and Eircom ESOP Trustee Limited.
- 02.** Postal services. An Post is a state-owned limited company (i.e. with the Government as a shareholder).
- 03.** Irish energy sectors remain dominated by two state-owned firms. Electricity Supply Board (ESB) and Bord Gais Eireann (Irish Gas Board) are state-owned statutory corporations, vertically-integrated and dominant (each company is composed of several distinct, separate and legally demarcated companies).
- 04.** Irish rail is a private limited company by shares and a subsidiary of Córas Iompair Éireann (CIÉ). CIÉ was established as a private company by the Transport Act 1944 and it is a statutory corporation whose sole owner is the Irish Government. Until 1986 CIÉ operated as a single legal entity, although it was internally organised into rail services and two bus divisions - Dublin City Services and Provincial Services. Since the enactment of the Transport (Re-organisation of Córas Iompair Éireann) Act, 1986 CIÉ has been the holding company for Bus Éireann - Irish Bus, Bus Átha Cliath — Dublin Bus and Iarnród Éireann — Irish Rail the three largest internal transport companies in Ireland. It was originally intended to operate the Luas tram system in Dublin, but that project was transferred to the newly created Railway Procurement Agency. CIÉ is the holding company for the three largest internal transport companies in Ireland. Internal intercity, commuter and freight railway services are provided by Iarnród Éireann (Irish Rail), the national railway system operator of Ireland. Established on 2 February 1987, it is a subsidiary of Córas Iompair Éireann (CIÉ). Industrial rail networks are also operated by Bord na Mona, a semi-state company (private company limited by shares) created by the Turf Development Act 1946.
- 05.** Air transport. Aer Lingus was established as the national carrier under the Air Navigation and

Transport Act (1936). Airline deregulation began in 1986 (minority government shareholding has been retained in Aer Lingus); after the privatisation in 2006, the Irish State retains 25% of the company's shares. In 1937, the Irish government created Aer Rianta (now called Dublin Airport Authority), a company to assume financial responsibility for the new airline and the entire country's civil aviation infrastructure; the formal privatisation of Dublin Airport Authority gave it the status of state-owned limited company. The Irish Aviation Authority (IAA) was established in January 1994 as a commercial state-sponsored company and The Commission for Aviation Regulation was established in February 2001 as an independent public body under the auspices of the Department of Transport.

06. Waterways Ireland, established under the Belfast Agreement in 1999, is one of the all-Ireland North/South implementation bodies set up under this Treaty with the aim of bringing about cross-border cooperation in policy and programmes on a number of issues. This public body is responsible for the management, maintenance, development, and restoration of inland navigable waterways primarily for recreational purposes. Waterways Ireland is a public body/agency under the supervision of the Department of Culture and the Department of Community, Rural and Gaeltacht Affairs.

07. The Irish Maritime Development Office (IMDO) was established by statute in December 1999 as a promotional agency for the shipping, ports and shipping service sectors. Ports are operated by government-owned corporations/limited companies and the shipping by private companies.

08. Radio and Television Act, 1988 allowed the first legal stations not operated by RTÉ to come into existence. Prior to this, commercial broadcasting in Ireland had been unlicensed and illegal. Today, state-owned companies (e.g. RTÉ is a statutory corporation run by a board appointed by the Irish Government) and privately-owned broadcasters coexist under the control of an independent statutory organisation.

09. There are three different types of public health hospital in Ireland: (i) Health Service Executive hospitals, owned and funded by the Health Service Executive (HSE); (ii) Voluntary public hospitals, most of whose income comes directly from the government; (iii) Private hospitals, which receive no state funding. The National Ambulance Service was established in 2005 as part (sub-division) of the HSE. Prior to this, the statutory health authorities (i.e. the health boards) provided ambulance services for their functional area. The Health Service Executive (HSE) is a public body, established by the Health Act, 2004 and is responsible for the provision of healthcare providing health and personal social services for everyone living in Ireland, with public funds. It replaces the ten regional Health Boards and a number of other different agencies and organisations. A number of companies offer voluntary private health insurance in Ireland: The Voluntary Health Insurance Board (VHI) is a statutory corporation whose board is appointed by the Minister for Health and Children; QUINN-healthcare and Hibernian Aviva are private companies.

10. The cultural services are essentially provided by natural and legal persons funded by public entities, or by statutory/autonomous public bodies/agencies or local authorities.

B. Local autonomy

Local government in the Irish Republic owes its genesis to the (UK) Local Government (Ireland) Act of 1898. An overhaul of the system was reached with two important laws: Local Government Acts of 1991¹⁷ and 2001¹⁸ and with the recognition of local government's status in the Constitution of Ireland, as amended in 1999. The Department of the Environment and Local Government oversees the operation of the local government system and implements policy in relation to local government structures, functions, etc.

Since 1945, local authorities' powers have been gradually eroded, many of their functions being passed to Government departments or agencies. If compared with other local governments systems in Europe, local authorities are both producers and suppliers of public services and have fewer powers and functions; they are responsible for social housing and building¹⁹, road transportation and safety, water supply²⁰ and sewerage, environmental protection, recreation and amenity, support of economic development, and miscellaneous services.²¹

In the sector of vocational training, the Vocational Education Committees (statutory local education bodies) administer some secondary education and most adult education in the state. Vocational schools and community colleges are owned by the local vocational education committees. These are statutory bodies set up by local authorities.

For the provision of "public services", the local governments may create public or mixed local companies under private law.

C. "New Public Management"

Since the National Development Finance Agency Act 2002, local authorities may establish joint ventures in the form of PPP. At local level, most PPPs are concluded in the areas of water and sewerage. At national level the PPP projects involve the construction of roads/carriageway/services areas on the national roads network, building projects for services of justice, health, education, culture, etc²².

As for the evaluation of "public services", the methods/criteria/indicators/implementation vary depending on the Department/Regulator in charge.

(17) At local level, until 1991, local government powers were guided by the principle of ultra vires, according to which these authorities could exercise only the powers specifically enumerated by the law. Since the Act of 1991, local government has general powers to carry out any action of local interest. See Dominique Hoorens (dir.), Les collectivités territoriales dans l'Union européenne. Organisation, compétences et finances, Dexia, p. 405

(18) <http://www.environ.ie/en/LocalGovernment/LocalGovernmentAdministration/RHLegislation/FileDownload,1963,en.pdf>
The local elections have been introduced by the amendment of the Constitution in 1999.

(19) The Department of the Environment, Heritage and Local Government is the Department primarily responsible for the formulation and implementation of policy/legislation in relation to housing. The provision of social housing has traditionally been within the remit of the local authorities. Housing was included in the National Development Plan (2000-2006) under The Planning and Development Act 2000. Planning authorities have the power to require that up to 20% of land approved for residential developments is set aside for social and affordable housing. A 2009 law provides legislative basis for the provision of rented social housing by means of leasing or contract arrangements with private accommodation providers.

(20) Service provision of water and waste water is a local government responsibility with financial assistance from the central government to local authorities (public bodies).

(21) In 1980 and 1990, Ireland ranked lowest among the twelve EU countries for the level of local government spending as a percentage of national output

(22) <http://www.ppp.gov.ie/>; <http://www.environ.ie/en/DevelopmentandHousing/PlanningDevelopment/PPP/>

D. Regulatory Agencies

The first telecommunications regulator was established in June 1997 (the Office of the Director of Telecommunications Regulation), replaced in 2002 by the Commission for Communications Regulation (“ComReg”)²³. ComReg is the statutory body responsible for the regulation of the electronic communications sector (telecommunications, radio communications and broadcasting transmission) and the postal sector. ComReg facilitates market entry through a general authorisation to provide networks and services and by regulating access to networks, so as to develop effective choice for consumers in postal services. ComReg monitors the retail and wholesale prices of any operator who has been designated as having significant market power on their network. This is to ensure compliance with regulatory obligations imposed following detailed analyses of those markets. Such obligations include price controls such as Price Caps specifying how prices move over time, detailed reviews of actual costs incurred, and affordable pricing under the Universal Service obligations. ComReg has a statutory objective to “promote the development of the postal sector and in particular the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all users”. Specific functions of ComReg under the Postal Regulations include inter alia setting quality of service standards for An Post, monitoring compliance with Tariff Principles and specifying features of the universal service that An Post is obliged to provide. Under separate powers An Post cannot increase prices for reserved universal services without ComReg’s concurrence. On 27 February 2008, the European Community’s third Postal Directive came into force, mandating the opening of postal markets to competition no later than 31 December 2010. In anticipation of these developments, ComReg published its Postal Strategy Statement for the coming three years on 14 February 2008.

The Commission for Energy Regulation (CER) was established by the 1999 Act when certain regulatory functions were transferred from the Minister to the CER; the Act also provides for the imposition of an industry levy to finance the regulator. It is the independent body responsible for regulating the electricity and natural gas sectors in Ireland²⁴. The CER works to promote competition and to protect customer interests, license electricity and natural gas companies and to regulate the revenue that power stations, transmission operators, ESB distribution networks, etc., can earn. In the gas sector, CER or the Minister may regulate charges imposed for transportation; charges for connecting and using the transmission network or distribution network; CER also regulates prices in the retail gas market, etc.

The Department of Transport is responsible for the provision, development and regulation of competitive, safe and secure integrated sustainable transport services and transport infrastructure for the road, rail, air and maritime transport modes in Ireland. The National Transport Authority is the transport authority for Greater Dublin and the public transport licensing agency for the country created under the provisions of the Dublin Transport Authority Act 2008 and the Public Transport Regulation Act 2009 as a statutory body established in December 2009. The NTA took over certain functions from the Department of Transport and the entire role of the Dublin Transportation Office.

In the sector of civil aviation, Ireland possesses two separate regulators: IAA, which is responsible inter alia for the provision of air traffic management services in Irish controlled airspace, and CAR, which is

(23) The Department of Communications, Marine and Natural Resources has also responsibility for the telecommunications and broadcasting sectors.

(24) See also role of Department of Public Enterprise and of Eirgrid (responsible for operation of transmission grid).

responsible inter alia for setting the maximum level of airport and aviation terminal services charges. Among the functions of the CAR are: The regulation of airport charges, the regulation of aviation terminal charges, etc.

In respect of maritime transport, the Department for Transport is responsible (since 2006) for establishing, promoting, regulating and enforcing Maritime Safety and Security Standards, providing emergency response services and safeguarding the Maritime Environment. It is also responsible for ports and shipping policy.

The 1988 Act established the Independent Radio and Television Commission (IRTC), which became the Broadcasting Commission of Ireland (BCI) in 2001. The duties and responsibilities of the BCI have transferred to the Broadcasting Authority of Ireland (BAI), which was established in October 2009. The BAI is an independent regulator for radio and television broadcasters in Ireland. The roles and responsibilities of the Broadcasting Authority of Ireland are set out in the Broadcasting Act 2009. The Authority is funded through a levy on all broadcasters licensed in the State. The BAI took over the functions of the BCI and of the Broadcasting Complaints Commission, as well as certain powers of the RTÉ Authority and the board of T eilifis na Gaeilge (TG4).

The Health Insurance Authority is the independent statutory regulator for the private health insurance market.

The Central Bank and Financial Services Authority of Ireland regulates the provision of financial services. The Irish Financial Services Regulatory Authority (“Financial Regulator”) was also established in 2003 and the Financial Services Ombudsman for consumers was created in 2004. The Financial Regulator is a distinct component of this Authority and is responsible for the regulation of all financial services firms in Ireland and the protection of the consumers of those firms.

The Minister for the Environment, Heritage and Local Government is in charge of policies for the water and sanitation sector within the Executive. Drinking water quality regulation is a responsibility of the Irish Environmental Protection Agency (EPA). There is no economic regulator for water supply and sanitation in Ireland.

The Irish Competition Authority²⁵ mission statement is to promote greater competition in every sector of the Irish economy by tackling anti-competitive practices, thereby contributing to an improvement in economic welfare, in accordance with the various functions assigned to it under the Competition Act 2002.

III/ Social dialogue

In Ireland²⁶, the industrial relations system has historically been characterised by ‘voluntarism’, which means minimum intervention by the law rather than non-intervention by government in collective bargaining. The industrial relations system has changed quite significantly over the past 20 years or so, with some industrial relations commentators referring to a gradual erosion of voluntarism and growing legalisation of the employment

(25) <http://www.tca.ie>

(26) References: studies on representativeness of the European social partner organisations in Ireland (<http://www.eurofound.europa.eu/eiro/>)

relationship – particularly the growth of individual rights-based employment law resulting from both domestic law and European Union labour law.²⁷ Ireland’s social partnership model has, in recent years, been characterised by some as conforming to a competitive or liberal corporatist model. The introduction and evolution of national-level collective bargaining or concertation and social dialogue (‘social partnership’) represents another important change in Irish industrial relations in the last 20 years. Since 1987, the national level has been the most important arena for setting wages and working time through tripartite bargaining²⁸. While wages are set at national level, collective bargaining may also take place at company level. With the notable exception of the construction industry, however, the sectoral level is generally not a prominent level for collective bargaining. National agreements do not have legal effect and extension mechanisms are not common.

In Ireland there are no specific forms of social dialogue for SGIs. Social dialogue essentially takes place when “social partnership” agreements are negotiated.²⁹

In the sector of postal services An Post has been a semi-state company since 1984, which means that it has greater commercial freedom from state control even though it remains state-owned. It still occupies a largely monopoly-like position in the Irish postal sector and operates Ireland’s national postal service. It is one of Ireland’s largest companies. An Post is almost fully unionised. As there is no employer organisation specific to the post and courier services sector, companies in the sector have become members of a national, cross-sectoral, employer organisation which represent them **in national-level collective bargaining** through the social partnership pacts³⁰. **At company level, single-employer bargaining is used:** An Post occasionally negotiates collective agreements with its unions. As a result, at least 53% of employees in the sector are covered by single-employer collective agreements. By contrast, many of the growing emergent courier companies in the market are not unionised³¹. Although multi-employer agreements are not formally extended, in practice some employers who are not signatories use multi-employer bargaining agreements as a benchmark for their own individual arrangements. Unlike certain other European countries, sectoral-level bargaining does not take place in the Irish post and courier services sector.

A high degree of trade union representation exists in Ireland’s railway sector³². There are no employer associations specifically devoted to the railway sector in Ireland. Nevertheless, the country’s only rail operator, Irish Rail, concludes **collective agreements** with the various trade unions active **in the company**. Since there is only one employer, all agreements only involve that particular employer.

Collective bargaining in **the air transport sector** is characterised by two main models: the traditional highly unionised model in state and former state-owned airlines or airport authorities, and the anti-union model

(27) A list of the most important statutes governing industrial relations in Ireland is available at : http://www.entemp.ie/employment/industrialrelations/work.htm#_Industrial_Relations_Legislation

(28) While the process of social partnership is centred on the involvement of the government, employers and trade unions, over time a range of other groups, representing the community and voluntary pillar, have joined the process. High-level negotiations on macroeconomic strategies have been complemented by an expanding array of advisory committees, working groups, conferences and forums.

(29) For more information: see http://www.taoiseach.gov.ie/eng/Department_of_the_Taoiseach/Policy_Sections/Social_Partnership/. See also the role played by the Labour Relations Commission (established under the evolution of the Industrial Relations Act, 1990 - <http://www.lrc.ie>) and by the Labour Court (<http://www.labourcourt.ie>)

(30) The Irish Business and Employers’ Confederation (IBEC) – which is by far the largest employer representative body in Ireland – is the only organisation in the sector which represents its members in negotiations with the aforementioned trade unions.

(31) However, the sector retains a relatively high level of unionisation, with trade union density estimated to be in the region of 70%.

(32) All of the trade unions at Irish Rail have sectional overlap, in the sense that they only partly represent the railway sector and comprise many members outside this sector.

epitomised by the international low-cost airline (i.e. characterised by a form of in-house collective bargaining with its own internal employee representative committee and without the presence of a trade union). In the first model, which is marked by traditional industrial relations and collective bargaining practices, the unionised companies negotiate a **national-level multi-employer agreement** and an element of **local-level agreements** specific to the company concerned.

In the gas sector, all unionised workers in the sector are covered by **single-employer agreements**. There are no multi-employer agreements as any industry employer association exists for the gas sector. Most of the smaller gas-trading companies are non-union but employ very few workers.

The hospital services sector has extremely high trade union density and collective bargaining coverage, with a number of unions representing a substantial number of different grades, each with their own respective interests, and a number of tripartite bodies have been established specifically to improve industrial relations in the sector. The main employer body, the Health Service Executive (HSE), is the largest single employer in the sector in Ireland. Collective bargaining takes place at national, sectoral and local hospital levels. **Multi-employer bargaining** is most relevant given that it sets the parameters for pay and employment conditions across the whole public hospital system. **Single-employer bargaining** takes place at individual hospitals over various aspects of pay and terms and conditions of employment.

In the public sector, **civil servants** enjoy what can be termed a special status. The employment relationship of **central government** employees is regulated by a mixture of legislation and collective bargaining. Some of the legislation, such as provisions regulating working time and minimum wages, is general in that it covers all employees, but some is also specific to the civil service. Collective bargaining in the central government sector in Ireland predominantly takes place at national level.³³ In **the local administration** there is normal bargaining (no employees have specific status). In practice pay for the whole public sector is set as a part of the series of national pay agreements that have been in place for the last 20 years. For the employees of the local administration formally there are negotiations with the Local Government Management Services Board.

Sources of national law on SGIs

Sector	Legal references	Web sites
Telecommunications	Communications Regulation Act, 2002 Telecommunications (Miscellaneous Provisions) Act, 1996	http://www.comreg.ie
Postal services	Communications Regulation Act, 2002 The EC (Postal Services) Regulations 2002 S.I. No. 616 of 2002 ("the Postal Regulations").	http://www.comreg.ie
Production of electricity	Electricity and Gas Regulation Act 1999-2002	www.cer.ie
Electricity networks	Same as above	Same as above
Marketing of electricity	Id.	Id.
Gas transport-distribution	Id.	Id.
Marketing of gas	Id.	Id.
Railway transport of passengers	Transport (Railway Infrastructure) Act 2001	http://www.transport.ie http://www.rpa.ie http://www.rsc.ie
Freight rail transport	Turf Development Act, 1946	Id. See also www.bnm.ie
Regional and local transport of passengers	Transport (Re-organisation of Córas Iompair Éireann) Act, 1986; Dublin Transport Authority Act 2008; Public Transport Regulation Act 2009	www.cie.ie http://www.nationaltransport.ie/

(33) A copy of the « Public Service Agreement 2010-2014 » concluded last March between the government and trade unions is available at : http://www.onegov.ie/eng/Public_Service_Agreement_2010_-_2014.shortcut.html. Public service pay policy is dealt with at paras. 15-16. To implement this agreement, a body comprising an independent chair and 6 persons, 3 nominated by public service management and by the Public Services Committee of ICTU respectively, will be set up.

Air transport	Irish Aviation Authority Act 1993 Aviation Regulation Act 2001	www.aviationreg.ie www.iaa.ie
Inland water transport	1999 Belfast Agreement	www.waterwaysireland.org/
Maritime transport	Merchant Shipping Acts 1979 to 1992 Harbour Acts 1996 to 2005 Harbour (Amendment) Bill 2008	www.transport.ie
Water, Waste water	Water Services Act, 1997	www.environ.ie www.nfgws.ie
Heating	Relevant provisions to be found in several Social Welfare Acts	www.welfare.ie
Broadcasting	Radio and Television Act, 1988; Broadcasting Act, 2001 and Broadcasting (Funding) Act, 2003; Broadcasting Act, 2009	www.bci.ie www.bai.ie
National public administration	Ministers and Secretaries Act, 1924; Public Service Management Act, 1997 and subsequent amending legislation	www.finance.gov.ie www.cpsa-online.ie www.audgen.gov.ie
Regional or local public administration	Local Government Acts 1925 to 2003	http://www.environ.ie/ev/LocalGovernment/
Hospital health services. Ambulatory health services	See Compulsory social protection below	http://www.hse.ie/eng/ http://www.dohc.ie
Primary and secondary education	Irish Constitution, 1937 Education Act, 1998	www.education.ie
Higher education	Higher Education Authority Act 1971 and 2006 / Universities Act, 1997	www.hea.ie
Vocational training	Vocational Education Act 1930 as amended by the Vocational Education (Amendment) Act 2001 Institutes of Technology Act, 2006	Same as above http://www.ivea.ie/ www.fas.ie
Compulsory social protection	Health Act 2004 and subsequent amending Acts	www.welfare.ie http://www.dohc.ie http://www.hse.ie/eng/
Complementary social protection	Health Insurance Act, 1994 ; Health Insurance (Amendment) Act, 2001; Health Insurance (Amendment) Act, 2003	http://www.hia.ie/
Social housing	Housing Act, 1966 (amended on a certain number of occasions) Housing (Miscellaneous Provisions) Act, 2009	http://www.environ.ie/ev/DevelopmentandHousing/Housing/ http://www.icsh.ie/
Childcare services (0-6 years)	Child Care Act, 1991 and implementing measures: The Child Care (Pre-School Services) (No 2) Regulations 2006 and the Child Care (Pre-School Services) (No 2) (Amendment) Regulations 2006	http://www.omc.gov.ie
Care of the disabled	National Disability Authority Act, 1999 Disability Act, 2005	http://www.justice.ie/en/JELR/Pages/Disability http://www.nda.ie/
Elderly care	Health (Nursing Homes) Act, 1990 and subsequent amending Acts Health Act, 2007 Nursing Home Supporting Scheme Act, 2009	http://www.dohc.ie/about_us/divisions/services_old-er_people.html
Financial services (1)	Central Bank Act 1942 and subsequent amending Acts Central Bank and Financial Services Authority of Ireland Acts (2003 and 2004)	www.centralbank.ie www.ifsr.ie www.finance.gov.ie
Cultural services (1)	Heritage Act 1995 Arts Act 2003 National Monuments Acts 1930-2004 (a National Monuments Bill is in the drafting stage)	www.arts-sport-tourism.gov.ie www.artscouncil.ie www.heritagecouncil.ie www.cultureireland.com

PUBLIC SERVICES IN ITALY

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Italy is a unitary state organised in three levels of territorial entities: 20 regions (regioni³⁴), 110 provinces (province) and 8101 municipalities (comuni). The deconcentrated administration of the state is organised in 103 prefectures (prefetture).

The concept of “public service” (servizio pubblico) was enshrined in Italian law by the Law n° 103 of 29 March 1903 (the Giolitti reform) on municipalities’ direct action on public services, which regulated the local public services and enshrined the pre-eminence of the regime of public law. Originally, there were many similarities with the French legal conception of “service public”; the Italian doctrine and jurisprudence considered the public service as a basis of enlarged public administration prerogatives and an institution of administrative law. However, servizio pubblico played a secondary role in the establishment of Italian administrative law and it evolved differently from the similar French notion (service public). It is not considered a unitary but a split concept, which contains both the exercise of prerogatives and the accomplishment of activities which are not representing the public power.³⁵

The regulation of servizio pubblico is sectorally based (see the annex). However a Directive of the Cabinet’s President of 27 January 1994 fixed the generally valid “principles of public services’ supply”. It imposes respect of clarified principles as impartiality, continuity, users’ right to choose, users’ participation, efficiency and efficacy of services; the providers’ duty to adopt quality standards and instruments useful to guarantee information to users about all service aspects (prices, method of supply, complaints, etc); the providers’ duty to evaluate services; specific conditions for users’ protection.

The use of EU concepts is not generally common in Italy but they have been recently introduced into the legislation especially concerning the distinction between commercial and social services. The most widespread national concept is servizio pubblico. Also general is the notion of “public local services”/Servizi pubblici locali, which refers to services having as object the production of services and activities concerning the realization of social aims and the economic and social development of local communities (Article 112 of D.Lgs. n° 267/2000). In the Italian legal order, the necessity to distinguish between the industrial and

(34) 5, created in 1948, with a special status on autonomy; 15 created at the beginning of the 1970s with an ordinary status and narrower less large competences. The Constitution confers to regions legislative and administrative competences

(35) Paolo Sabbioni, « Le service public et l’Etat de droit en Italie », in Frank Moderne, Gérard Marcou (eds.), *L’idée de service public dans le droit des Etats de l’Union européenne*, L’Harmattan, 2001, pp. 259 ff

commercial services from the social services was absent for a long time in fact until the end of the 1980s when the notion of social service was defined in terms of any action which corresponds to the constitutional aims of physical and mental welfare development of the people.³⁶ However, it is admitted now that these activities may acquire an economic importance.

The services of general interest/ *Servizi pubblici che perseguono finalità di interesse generale* (Public services pursuing tasks of general interest; in literal translation *Servizi di interesse generale*), are considered as essentially based on the object of their activity, aimed at satisfying a general and “fundamental” need of community, meant as people associated with equality and solidarity bonds. For this reason services of general interest must ensure needs such as transports, energy (distribution of electricity and gas), water, telecommunications, postal services, which are important to guarantee the fundamental freedoms of people to improve their way of life. These are socio-economic activities that generally are not carried out only in freemarket operations, because public administrations take part in their regulation and control.

The services of general economic interest/*Servizi pubblici a rilevanza economica* (public services possessing economic relevance - income covers costs; in literal translation *Servizi di interesse economico generale*) concern the commercial activities which satisfy general interests and for which the State orders specific public service obligations (in accordance with Article 86 of the EC Treaty, formerly Article 90). The main examples are energy, transports and communications services. The Italian authorities grant special or exclusive rights or state ownership rights to the companies involved in the management of general economic interests. All these companies must observe the competition rules in so far as those rules do not conflict with their “mission”.

The non-economic services of general interest/*Servizi pubblici privi di rilevanza economica* (Public services not possessing economic relevance - income does not cover costs; in literal translation *Servizi di interesse generale privi di rilevanza economica*) present a “non-economic” character concerning services that, by their nature or for the rules regarding their management, cannot create any comparison so competition rules do not apply.

As for the social services of general interest/*servizi pubblici a carattere sociale che perseguono finalità di interesse generale* (public services with social relevance pursuing tasks of general interest; in literal translation *Servizi sociali di interesse generale*) Italian legislation uses a corresponding national term that refers to all the activities concerning the supply of services - free or with fee - that help people to satisfy specific needs and difficulties of life, with the exception of those one already ensured by the welfare and health systems and by the administration of justice (Article 128 of D.Lgs. n° 112/1998).

Terms in TEU and TFEU	Italian terms in TEU and TFEU table07
Services of general interest – SGIs	<i>servizi di interesse generale</i>
Services of general economic interest – SGEIs	<i>servizi di interesse economico generale</i>
Non-economic services of general interest – NESGIs	<i>servizi di interesse generale non economico</i>
Public service	<i>pubblico servizio</i>

(36) E. Ferrari, in Paolo Sabbioni, op. cit., p. 301

Competences of definition and organisation of SGLs

What is the level of government that actually defines the public service obligations and decides the modes of SGLs' organisation?

Central government	Regions	Local government
Telecommunications	Production of electricity	Local transport of passengers
Postal services	Regional railway transports of passengers	Water
Production of electricity	Regional transport of passengers	Waste water
Electricity network (transport-distribution)	Regional maritime transport	Compulsory social protection
Marketing of electricity	Water	Complementary social protection
Gas transport-distribution	Waste water	Social housing
Marketing of gas	Hospital health services	Childcare services (0-6 years)
Railway transport of passengers	Ambulatory health services	Care of the disabled
Freight rail transport	Primary and secondary education	Elderly care
Air transport	Higher education	
Maritime transport	Vocational training	
Broadcasting	Inland water transport	
Primary and secondary education	Compulsory social protection	
Higher education	Complementary social protection	
Vocational training	Social housing	
Financial services	Childcare services (0-6 years)	
Cultural services	Care of the disabled	
	Elderly care	

B. Sectoral organisation and trends

Statute of the operators

National public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
Postal services Freight rail transport Broadcasting Hospital health services Higher education Cultural services Maritime transport Railway transport of passengers	Production of electricity Electricity networks (transport-distribution) Marketing of electricity Gas transport-distribution Marketing of gas	Production of electricity Regional and local transport of passengers Inland water transport Water Waste water Ambulatory health services Vocational training Compulsory social protection Complementary social protection Social housing Childcare services (0-6 years) Care of disabled Elderly care	Gas transport-distribution Marketing of gas Production of electricity Electricity networks (transport-distribution) Heating Regional and local transport of passengers	Local transport of passengers (1)	Gas transport-distribution Marketing of gas Production of electricity Marketing of electricity	Telecommunications Production of electricity Marketing of electricity Gas transport-distribution Marketing of gas Freight rail transport Regional and local transport of passengers Air transport Inland water transport Maritime transport Heating Broadcasting Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Childcare services (0-6 years) Care of disabled Elderly care Financial services Cultural services

(1) This refers to the construction of new underground lines in Milan.

SGI markets

Liberalised market and competition	Liberalised market Public operators dominant	Public monopoly	Liberalised market Private operators dominant	Private monopoly	No market
Financial services	Hospital health services Ambulatory health services Primary and secondary education Higher education Childcare services (0-6 years) Care of disabled Water Waste water Regional and local transport of passengers Postal services Production of electricity (1) Marketing of electricity Gas transport-distribution (2) Marketing of gas Freight rail transport Vocational training Complementary social protection Elderly care Cultural services	Electricity networks Railway transports of passengers Compulsory social protection Social housing	Broadcasting (3) Telecommunications Air transport Inland water transport Maritime transport		

(1) The main producers are: Enel group, Edison group, Edipower, Endesa Italia, Eni group, Tirreno Power, ERG group, Saras group, Aem Milano, Electrabel/Acea.

(2) This activity is based on a concession that local authorities hold. The operators are about 560 distribution companies including Italgas SpA (Eni group) and Enel Gas Distribuzione (Enel group). The sale to customers of gas bought from wholesalers or imported is a free activity. There are about 400 operating companies, including Eni Gas&Power (Eni group) and Enel Gas (Enel group).

(3) The broadcasting system is a duopoly: the public operator Rai, public funded, and the private one Mediaset, share the market almost equally.

Main financing methods of SGIs

Fees/payment by users/clients	Public grants/aids	Insurance funds	Social tariffs/prices
Telecommunications	Regional and local transport of passengers		Telecommunications (100%-50% monthly fee reduction for disabled and disadvantaged categories of users)
Postal services	Broadcasting		Marketing of electricity (20% rebate on annual expense for economically disadvantaged and numerous families)
Production of electricity	Hospital health services		Railway transport of passengers (Disabled person and his/her companion)
Electricity networks (transport-distribution)	Ambulatory health services		Regional and local transport of passengers (Disabled person and his/her companion, students, workers, disadvantaged and large families have discounts on weekly-monthly tickets)
Marketing of electricity	Primary and secondary education		Ambulatory health services (payments exemption according to income)
Gas transport-distribution	Higher education		Higher education (payments exemption according to income)
Marketing of gas	Vocational training		Complementary social protection (payments exemption according to income)
Railway transport of passengers	Compulsory social protection		Social housing (payments exemption according to income)
Freight rail transport	Complementary social protection		Childcare services (0-6 years) (payments exemption according to income)
Air transport	Social housing		Care of the disabled (payments exemption according to income)
Maritime transport	Childcare services (0-6 years)		Elderly care (payments exemption according to income)
Water	Care of the disabled		Cultural services (payments exemption according to age)
Waste water	Elderly care		Higher education (payment exemption according to income)
Broadcasting	Cultural services		Passengers' air and maritime transport (PSO to Sardinia and Sicily islands)
Childcare services (0-6 years)			
Elderly care			
Financial services			

National authorities responsible for setting pricing and/or tariff policies

Central government	Regional government	Local government	Regulatory agencies	Providers
Railway transport of passengers (1)	Regional transport of passengers	Local transport of passengers	Telecommunications	Financial services
Freight rail transport (1)	Inland water transport	Water (2)	Marketing of electricity (AEEG)	Air transport
Higher education	Primary and secondary education	Waste water	Gas transport-distribution (AEEG)	
Maritime transport	Hospital health services	Social housing	Heating (AEEG)	
Broadcasting	Ambulatory health services	Childcare services (0-6 years)		
Primary and secondary education	Vocational training (3)			
Cultural services	Care of disabled			
	Elderly care			
	Complementary social protection			

- (1) CIPE (Comitato Interministeriale per la Programmazione Economica) regulates the tariffs' policies.
- (2) The local tariff policies (concerning the "Ambiti Territoriali Ottimali" ATO) fix a sole tariff for distribution and purification of water, so completely covering the operative and investment costs of service.
- (3) Regions regulate the costs policy through the administration of regional funds for vocational training.
- (4) The State promotes the assignment of funds (National Fund for Social Policies). Regions and Municipalities create specific funds.

II/ Approaches

A. The model of public administration and national public companies

According to article 43 of the Constitution, "For the purposes of the common good, the law may establish that an enterprise or a category thereof be, through a pre-emptive decision or compulsory purchase authority with provision of compensation, reserved to the Government, a public agency, a workers' or users' association, provided that such enterprise operates in the field of essential public services, energy sources or monopolies and is of general public interest."

Since the end of the the 19th century and especially during the fascist-corporatist regime of the economic intervention of the State has developed through enterprises-organs of the State or of other territorial communities, by enterprises that are legal persons under public law (for more operational flexibility) and by participation (total or partial) in the capital of enterprises organised according to the social model. The model of "enterprises-legal persons of public law" was used for the management of several public services such as railways (since 1985 until 1992), post, production and distribution of electricity, credit institutions (Banca d'Italia, Banca Nazionale del Lavoro, Istituto Mobiliare Italiano, etc.).³⁷

The economic and financial crisis of State intervention, the impact of the EC law and the demand for more local autonomy determined in the 1990s the reform of the organisation of the State, and of public services management in particular.³⁸ Consequently, the reorganisation of national public services providers and the privatisation process developed in general in a formal way:

01. From January 1, 1998, the telecommunications market was open to competition: it has passed from the monopoly of a single operator (Telecom Italia) to several operators offering, at national and local level, telecommunications service. Telecom Italia was born as a mixed company in 1994 from the fusion of 5 companies (operating in telecommunications'sector) - IRI-STET group: SIP, Iritel, Italcable, Telespazio and SIRM. In 1997 the Italian Government enacted Telecom Italia's full privatisation.

02. In postal services sector, further to Community directive 97/67/CE a gradual liberalisation de-

(37) Through the last mentioned model, partecipazioni statali, State intervention changed its object and scope, from the exploitation of public services to the industrial sector and economic development. The doctrine begins to analyse public enterprise and to distinguish it from the public service. Paolo Sabbioni, « Le service public et l'Etat de droit en Italie », in Frank Moderne, Gérard Marcou (eds.), *L'idée de service public dans le droit des Etats de l'Union européenne*, L'Harmattan, 2001, pp. 290, 291

(38) Paolo Sabbioni, op. cit. p. 295

created the national public operator's monopoly (Poste Italiane S.p.A.); still, it remains predominant on the market. Today the customer can use only Poste Italiane, the national provider of postal universal service, to send letters up to 50 grams of weight and 1,5 euro of tariff, not counting additional services.

03. In the sector of electricity, in 1992 Enel became a p.l.c., partially privatised. Till 1999 the Company had the national monopoly on energy services. Today the service also belongs to private companies. The Department of Economy and Finances is still now Enel's main shareholder. Terna S.p.A. is the Administrator of National Electric networks. It is responsible, as sole concessionaire, for national transport and distribution of energy, regardless of network (of which anyway it owns 98%).

04. In the gas sector, Eni.S.p.A. (created as a public company in 1953 by the Italian State) became on in 1992 a Public Limited Company. From 1995 to 2001, the Italian State sold a significant part of the share capital, maintaining a share higher than 30% for itself and keeping the company's control. In accordance to Law n. 474/1994, the State today has some special powers ("golden share").

05. Until 1985 the service of railway transport of passengers belonged to Azienda Autonoma Ferrovie dello Stato (AAFS). In 1985 it became "FS Company" and in 1992 a Public Limited Company of total state interest. Today the service also belongs to the public company (Trenitalia S.p.A.) operating in the passenger transport sector and in freight railway transport. Another relevant operator is FNM S.p.A (Ferrovie Nord Milano) mainly operating railway transport of passengers at local level in the Lombardy Region. Regional authorities own most of its capital. There are also different regional local authorities owners operating the regional railway transport of passengers on the base of utility contracts with Regions. The new company "Nuovo Trasporto Viaggiatori" is the first private operator which in 2011 will operate railway transport of passengers on the main High-Speed lines.

06. In the broadcasting sector the public operator RAI Radiotelevisione Italiana S.p.A. has operated along with different private operators since the market liberalisation of the beginning of the 1980s. The sectoral liberalisation process started after a judgment of Corte Costituzionale in 1974 stating the illegality of a public broadcasting monopoly.

The main Italian air transport public company (Alitalia S.p.A.) was privatised in 2008, so the air transport service today belongs to private investors.

B. Local autonomy

The Italian Constitution (in force on 1 January 1948) recognises the autonomy of local communities and confers a legislative power on regions. The process of decentralisation brought important developments starting in 1990. Law n°142 of 8 June 1990 on regulation of local entities (Ordinamento delle autonomie locali) confirmed the principle of statutory autonomy of the local entities, established a new division of competences and reformed the legal arrangements available to municipalities to provide public services. This Law defines the municipalities' and provinces' competences. In accordance with Article 22 of this law

(amended), a municipality may provide services by: a) direct management³⁹; b) licences to third parties⁴⁰; c) special undertakings (*azienda speciale*) through a separate administrative accounting entity; d) institutions (*istituzione*) for the provision of social services lacking commercial importance; e) corporate companies managed and controlled by local public entities.⁴¹ The Article 23-bis of Law-decree n° 112/2008 identifies a duty to introduce public procurement procedures for all local public services, with a deadline of 31 December 2010 for all existing cases of in-house provision, except for particular economic, social and geographical situations in the local area. The Bassanini reform of 1997 transferred about 40% of administrative tasks to the territorial entities and consolidated their autonomy.

The constitutional reform of 2001 granted widespread competences in the field of local services to regions, in particular in the field of local public transportation, waste management and water distribution (some health care responsibilities were transferred to the regions in 1995). In principle, administrative responsibilities must be conferred with respect for the principle of proximity and for the capacity of the administrative level nearest to the citizens.

C. Delegated management and externalisation

In the past two decades, the management methods of public service were enlarged by the Italian legislator both for national and local public services. Direct labour is widespread in most local public services and in all non-network activities. Delegated management by concession was introduced in the Italian legal order by the Law n°103 of 29 March 1903 under the public law regime. Today⁴² it is used, at national level, in the public broadcasting sector and at regional-local level mostly in the areas of regional and local transport sectors and other local services such as childcare, and school transport and meals.

The third (ie, voluntary) sector, composed of a complex of institutions placed between State and market, plays an important role today. These are privately organised entities (charity associations and organisations, cooperatives, not-profit organisations) which aim to produce and supply social services of general interest. The Law n° 328/2000 permits contracting out for the supply of social services. The article 5, paragraph 3, of Law n. 328/2000 attributes to Regions the function to take measures in order to regulate the relationship between local authorities and the third sector, with particular regard to the contracting out system of services to individuals. For this reason the d.P.C.M. 30.03.2001 n. 15241 ("Act of direction and co-ordination of contracting out system of services to person according to article 5 of Law n. 328/2000") which applies to both Regions and local authorities has been adopted. Article 3 of this mentioned d.P.C.M specifies that public authorities should establish forms of collaboration with voluntary organisations using the instrument of Convention according to the Law n. 266/1991. Articles 5 and 6, instead, specify that municipalities, in

(39) Where, by reason of the small size or the characteristics of the service, the creation of an institution or an undertaking (*gestione in economia*) would not be efficient.

(40) When justified by technical or economic considerations or by reasons of social expediency (*concessione a terzi*).

(41) Where participation by other public or private persons appears expedient by virtue of the nature of the service to be provided. Elisabeta Bergamini, in M. Krajevski, U. Neergaard, J. van de Gronden (eds.), *The changing legal framework for services of general interest in Europe. Between competition and solidarity*, T.M.C. Asser Press, 2009, p. 296

(42) Service Concessions are contracts of the same nature as public service contracts, except in that the provision of services consists either solely of the right to exploit the service or the right plus payment.

order to implement the integrated system of interventions and social services ensuring essential levels, may purchase services and interventions organized by the third sector or may contract out their management while respecting the national and EU rules which regulate the contracting out of services by the government. Municipalities contract out based on the most economically advantageous tender having regard to specific qualitative elements (as instruments qualifying work organisation, knowledge of the specific social problems of land and social resources of the community, etc.).

Recent analysis has shown that the contracting out percentage by a sample of local authorities calculated relating the expenses for these services to total expenses, varies between 10% and 30% of their total.⁴³

D. New Public Management

Since the 1990s, the use of PPP has been widespread in Italy, primarily in the sectors of transport infrastructure, utilities, hospital health services, housing, management of waste, etc. A special public structure was created in 2000 to support investment projects in the public sector (Unita Tecnica Finanza di Progetto - UFP). In 2006, the work concession under private initiative was the most widespread procedure in the Italian PPP market; the service concession accounted for 23,6% in value of total PPP market.⁴⁴

For the “public services” evaluation, the “Service Chart” instituted by a Directive of 27 January 1994 indicates seven basic principles characterising public services: equality, impartiality, continuity, right to choose, accessibility, efficiency and efficacy. The “Service Chart” adoption is compulsory and, consequently, the service evaluation, which is realised annually with the evaluation of proper criteria and indicators. Independent authorities, when instituted⁴⁵, or different services providers identify the criteria and indicators used for the evaluation of their service. Providers have the duty to check and control the quality and the efficiency of services through a specific relation that they must show and publish by 31 March each year. The achieved results are analysed in relation to fixed standards concerning services’ quality and quantity. The indicators used are: supplies/affordability of demands; resources used in the production process and in the supply of services; performed activities; achieved results; quality of services. The evaluation is considered important in order to guarantee the development of affordability and high quality of services of general interest. At regional and local level art. 2§461 L. n. 244 24-12-2007, introduces a compulsory yearly meeting between local public authorities, local service suppliers and consumers’ organisations concerning the matching of the service delivered with the criteria and indicators declared in the “Service Chart”.

E. Regulatory Agencies

(43) La gestione dei servizi pubblici locali, Nomisma, Osservatorio economico sui servizi pubblici locali, luglio 2009. These figures refer to 43% of a sample of local authorities considered.

(44) Laura Martiniello, Italian PPP at a glance, http://www.utfp.it/docs/Italian%20PPP%20at%20a%20glance_Martiniello_2008.pdf

(45) At national level, Autorità per le garanzie nelle comunicazioni and Autorità per l’energia elettrica e il gas ensure that in the respective sectors the correspondence the service delivered matches the standards defined in the “Service Chart”.

In Italy, the independent structures of regulation were first created⁴⁶ in the sectors of the electricity services, gas and telecommunications and their establishment was initially consider only for services to be privatised in order to ensure a competitive market and to avoid consequences similar to those resulting from a monopoly. Their activity ensures that the management of the service respects the rules that enable the operational activity to achieve the public service objectives.

In telecommunications and broadcastin sectors, the competent authority is Autorità per le garanzie nelle comunicazioni (Agcom - <http://www.agcom.it/>). It has functions concerning regulation, control and security of communications services which include: audiovisual (including advertising incidence), telecommunications, and publishing.

In energy sectors, electricity was the first liberalised market to have a regulatory authority. Market regulation is entrusted to Gestore del Mercati Energetici (GME - <http://www.mercatoelettrico.org>), also well known as “Italian electricity exchange”, that provides to market economic administration and organisation, dealing with criteria such as neutrality, transparency, and objectivity and producers competition⁴⁷. The Document concerning the regulation is the “Testo integrato della Disciplina del Mercato elettrico” adopted in 2003.

In the sector of maritime transport, the Direzione Generale for maritime and river transport exercises state functions of regulation. This Authority also oversees companies’ activity.

The Antitrust Authority (Autorità garante della concorrenza e del mercato – AGCM) established by the Law n° 287/1990 ensures market protection and the competition system.

(46) Act n° 481 of 14 November 1995 establishing regulatory authorities for public utilities services

(47) It's, consent to producers, customers and wholesaler to stipulate hourly contracts. The business transacts take place on a telemetric platform, to which operators log on through digital certificates.

III/ Social dialogue

Italy⁴⁸ follows a voluntarist tradition concerning industrial relations and collective bargaining. Except for the Statuto dei Lavoratori (Workers' Statute, approved in 1970) and a legal code for strike action in essential public services (approved in 1990 and partially reformed in 2000) there is hardly any legal framework⁴⁹. Currently the dominant level of wage bargaining is the sector⁵⁰. Collective agreements signed by representative trade unions are generally binding for the companies and employees affiliated to the associations that sign the collective agreement.

As in many other countries of the European Union, in Italy the representation of **public sector** workers has always been much denser than in the private sector. Certain categories of workers in the public administration have an employment relationship based on a unilateral administrative act and therefore regulated by the relative legal order⁵¹. As regards 'contractualised' personnel, despite the reduction of the legal differences between the employment relationship in the public and private sectors, a number of significant differences still persist. Relations between the social partners in the public sector and methods to regulate the employment relationship have undergone major changes, with transition from unilateral regulation to recognition of collective bargaining. Compared with the private sector, however, the negotiating procedures in the public sector are more closely defined, mainly to enable scrutiny of financial compatibility by the Court of Auditors and of agreement contents by the government. The law **envisages two bargaining levels**: the **national** one, which covers both the collective bargaining divisions and autonomous areas, and which may establish draft or framework/procedural agreements ensuring the uniform regulation of certain matters among all or some divisions, and the **decentralised** level which concerns individual administrations or their local branches⁵².

In Italian regional and local authorities the social dialogue operates on different levels with the support of trade unions, associations and organisations which represent providers. The forms of social dialogue include the providers' consultation on important aspects concerning the organisation of work, the negotiation of conditions of work, the implementation of joint agreements and implementation through different procedures of involvement. At regional and local level, the aim of social dialogue is to improve the work methods; improve the quality and the efficacy of local and regional services; support innovations; develop the conditions of work; and increase employment.

The hospital sector in Italy is composed of public and private structures. **Bargaining** in the sector takes place on two levels – **national and company** (hospital) – together with a third **regional level of bargaining**

(48) References: studies on representativeness of the European social partner organisations in Italy (<http://www.eurofound.europa.eu/eiro/>)

(49) Even if there is no institutionalised tripartism, from 1993 until the early 2000s, a central tripartite agreement was reached defining a new institutional framework for income policy, a restructuring of bargaining procedures, modification of forms of workplace union representation, policies on employment, and measures to support the production system. This practice has been abandoned by the government over the last few years.

(50) It is estimated that the coverage of company level bargaining is about 30% of companies and 50% of employees in the industrial and service sector.

(51) Ordinary, administrative and financial magistrates; State barristers-at-law and prosecutors; military and law enforcement personnel; diplomatic and prefecture personnel; university lecturers and researchers

(52) As regards decentralised collective bargaining, according to the organisational structure of the administration concerned, it may conclude with a supplementary collective agreement. The law stipulates that bargaining at this level must concern issues defined by the national-level collective agreements within the budgetary constraints set at the higher level.

directly between the regional administration and the trade union organisations which operate at regional level. In the hospital sector, there are two areas of autonomous negotiations: one concerning all employees and another for medics. The employer organisations that represent the public service are distinctly different from both the associations in the private service and the associations of religious origin in the private sector. The public structures are represented by the State Bargaining Relations Agency (Agenzia per la rappresentanza negoziale delle pubbliche amministrazioni, ARAN⁵³).

The postal and courier activities sector is traditionally one of the sectors with a large and consolidated trade union presence. The sector has changed considerably over the last 15 years, from a state monopoly into a free market concern. These changes have influenced many occupational and organisational aspects and also the industrial relations in the sector. Poste Italiane Spa (joint-stock company, predominantly public-owned) is the largest operator in the sector⁵⁴; it also uses other external companies for delivery services and also outsources numerous other services. Poste Italiane will maintain a monopoly of the universal service (servizio universale) until the process of liberalisation of the sector has been completed, planned for 2011. In the courier services sector, many private enterprises exist, in competition with Poste Italiane, which are mostly multinational and large in size. Working conditions in the sector are regulated **by national collective agreements** undersigned by the various trade union organisations⁵⁵. Most of the operators, depending on their specific field of operation, currently apply the national collective agreements. The workers in the private companies of the courier services subsector have limited **second-level bargaining**.

In the electricity sector the national single collective agreement for the electricity sector of 25 July 2001 created industrial relations structures at sectoral level through the establishment of a joint observatory and regulated the sector's collective bargaining into a two-tier system of **sectoral** and **company-level bargaining**, with defined roles for both.

The railways sector is characterised by the presence of several large and numerous minor trade unions. The Confederal Transport and Services Agency (Agenzia Confederale dei Trasporti e Servizi, Agens) is the main employer organisation in the transport sector, with particular regard to railway activities and associated services. The Transport Association (Associazione Trasporti, ASSTRA) represents local public transport companies and is signatory to the related industry-wide agreement. Some small companies set up since the liberalisation of railway transport do not apply any type of agreement. **The industry-wide agreement** for railway workers covers almost all employees in the sector. Coverage of **company-level bargaining** is also close to 100%.

The companies and trade unions of **the civil aviation industry** are very different from the organisations operating in other sectors of economic activity as they are characterised by considerable fragmentation

(53) The administrations and agencies, whose personnel, executive or otherwise, is 'contracted', are mandatorily represented in collective bargaining by the ARAN, which undertakes all activities relative to the negotiation and definition of the collective agreements covering personnel in the various divisions of the public sector, including definitive interpretations of contractual clauses and the regulation of trade-union relations in the public administrations. ARAN is the statutory negotiator for all the public administrations, with the exception of the special statute regions (Sicily, Sardinia Trentino Alto Adige, Friuli Venezia Giulia and Valle d'Aosta) and the autonomous provinces of Trento and Bolzano.

(54) Poste Italiane occupied 98% of the market in postal and courier activities (in 2006).

(55) For the employees of Poste Italiane, the 'National collective agreement for non-management personnel of Poste Italiane Spa' negotiated directly at company level is applied. For the workers of delivery service enterprises, the 'National collective agreement for distribution, consignment and postal services' is applied, while the workers of the enterprises which operate as contractors for Poste Italiane apply the 'National collective agreement for postal service contractors'. The companies involved in express courier services apply the 'National collective agreement for logistics, transport of goods and consignment'.

and a corporative tendency in sectoral bargaining. Enterprises in the sector tend to stipulate **company contracts**, given that there is no united representative organisation to negotiate collective agreements. The only **national collective agreements**, reached through multi-employer bargaining, concern the ground staff – that is, airport services and catering. The micro-enterprises which have recently been set up and some small cooperatives operating in ground services do not apply the national collective agreement; instead, they stipulate company agreements with the trade unions. Flight-related personnel – pilots and flight attendants – are regulated exclusively by contracts stipulated at company level, meaning single employer bargaining.

Sources of national law on SGIs

Sector	Legal references	Web sites
Telecommunications	Law n. 249/1997- foundation of "Autorità per le Garanzie nelle Comunicazioni" (AGCOM); D.M. 25th november 1997, Rules concerning the issue of individual authorization in the telecommunications sector; L. n. 59/2002 Rules concerning the provision of internet service; D.Lgs. n. 259/2003, "Code of electronic communications"; D.Lgs. n. 82/2005 "Code of digital administration";	www.comunicazioni.it www.sviluppoeconomico.gov.it ; www.agcom.it
Postal services	D.L. n. 487/1993 conv. L. n. 71/1994 "Transformation of post and telecommunication Administration in public economic authority and reorganization of Department"; Decision CIPE n. 244/1997 – the "Ente Poste Italiane" becomes a S.p.A.; D.M. n. 75/2000 "Regulation of general authorizations in the postal service"; D.M. 12 maggio 2006 "Rules about mail falling within universal postal services. Tariffs and prices of internal and foreign sending".	www.comunicazioni.it www.sviluppoeconomico.gov.it ; www.poste.it
Production of electricity	L. n. 9/1991 "Rules about the new national Energy Plan"; L. n. 481/1995 "Institution of Autorità per l'energia elettrica e il gas"(AEEG); D.Lgs. n. 112/1998 – devolution to regional and local authorities of functions related to energy search, production, transport and distribution, with the exception of the function expressly reserved to State; D.Lgs. n. 79/1999 "Implementation of directive 96/92/CE concerning rules of internal market of electricity"; D.L. 239/2003 conv. L. 290/2003 "Rules on safety and development of national electricity system"; L. n. 239/2004 "Reorganization of electricity service".	www.sviluppoeconomico.gov.it www.autorita.energia.it www.enel.it www.terna.it www.gse.it
Electric networks (transport-distribution)	D.Lgs. n. 79/1999 "Implementation of directive 96/92/CE concerning common rules about the internal electricity market."; D.L. 239/2003 conv. L. 290/2003 "Rules on safety and development of national electricity system"; L. n. 239/2004 "Reorganization of electricity service".	www.sviluppoeconomico.gov.it www.autorita.energia.it www.enel.it
Marketing of electricity	D.Lgs. n. 79/1999 "Implementation of directive 96/92/CE concerning common rules about the internal electricity market."	www.sviluppoeconomico.gov.it www.tesoro.it www.autorita.energia.it www.acquirenteunico.it www.mercatoelettrico.org
Gas transport-distribution	L. n. 481/1995 "Institution of Autorità per l'energia elettrica e il gas"(AEEG); D.Lgs. n. 164/2000 "Implementation of directive n. 98/30/CE concerning common rules about internal natural gas market, in accordance with art. 41 of L. N. 144/1999"; L. n. 239/2004 "Reorganization of electricity service".	www.autorita.energia.it www.acquirenteunico.it
Marketing of gas	D.Lgs. n. 625/1996 "Implementation of directive 94/22/CEE concernig authorizations in the hydrocarbons sector"; D.Lgs. n. 164/2000 "Implementation of directive n. 98/30/CE concerning common rules about internal natural gas market, in accordance with art. 41 of L. N. 144/1999"; L. n. 239/2004 "Reorganization of electricity service".	www.sviluppoeconomico.gov.it www.autorita.energia.it www.eni.com www.stogit.it
Railway transport of passengers	L. n. 210/1985 "Institution of "Ferrovie dello Stato"; D.Lgs. n. 188/2003 "Implementation of directives 2001/12/CE - 2001/13/CE; 2001/14/CE concerning the railway sector"; L. n. 194/1998 "Interventions in the transport sector". D.Lgs. n. 163/2007 "Implementation of directive 2004/50/CE concerning the "Interoperabilità del Sistema ferroviario Transeuropeo".	www.trasporti.gov.it www.mit.gov.it www.trenitalia.it
Freight rail transport	D.Lgs. n. 41/1999 "Freight rail dangerous transport (Implementation of directives 96/49/CE e 96/87/CE)";	www.trasporti.gov.it www.trenitalia.it
Regional and local transport of passengers	d.P.R. n. 5/1972 "Devolution to regional authorities of administrative statal functions concerning automobile lines of regional interest, navigation, river port and related offices and staff"; d.P.R. n. 616/1977 "Implementation of enabling act to Government in accordance with art. 1 of L. 22 382/1975"; L. n. 151/1981 Law for regulation, reorganization and improvement of local public transports. Creation of "Fondo nazionale per il ripiano dei disavanzi di esercizio e per gli investimenti nel settore"; D.Lgs. n. 422/1997 "Devolution to local and regional authorities of functions concerning the public local transport"; D.Lgs. n. 345/1998 "Division of administrative functions between regional and local authorities"; L. n. 194/1998 "Interventions in the transport service"; D.L. n. 400/1999 "Ordination to local and regional authorities of functions related to the local public transport sector. Modifications and integrations to D.L. 422"; D.Lgs. n. 267/2000 "T.U. of laws concerning the rules of local authorities"	www.trasporti.gov.it www.mit.gov.it
Air transport	R.D. 30 marzo 1942, n. 327 Code of Navigation; L. n. 194/1998 "Interventions about transport sector". Convention of Montreal del 1999; Community Regulations n.2027/97, n. 889/2002, and n. 261/2004.	www.trasporti.gov.it
Inland water transport	R.D. n. 327/1942 + Regulation about the internal navigation ; d.P.R. n. 5/1972 "Devolution to regional authorities of administrative statal functions concerning automobile lines of regional interest, navigation, river port and related offices and staff" and following d.P.R. n. 616/1977; D.Lgs. n. 112/1998; L. n. 16/2000 "Ratification and implementation of european agreement on the waterway of international importance, with attached, made in Geneva on 19th January 1999"; Regional Laws in implementation of D.Lgs. n. 112/1998;	www.trasporti.gov.it
Maritime transport	R.D. n. 327/1942 Code of Navigation; D.Lgs. n. 45/2000 "Implementation of directive 98/18/CE concerning regulation and safety rules about passengers ship used as national journey".	www.trasporti.gov.it
Water	R.D. n. 1775/1933 "T.U. of water and electrical system regulation"; L. n. 183/1989 Rules about protection of public land; L. n. 36/1994 "Rules about water resources"; D.Lgs. n. 31/2001 "Implementation of directive 98/83/CE concerning the quality of water for human use "; D.Lgs. n. 195/2005 "Implementation of directive 2003/4/CE concerning people's access to environmental informations"; D.Lgs. n. 152/2006 and D.Lgs. n. 284/2006 "Rules on environmental sector";	www.mit.gov.it
Waste water	L. n. 319/1976 "Rules about protection of water from pollution"; L. n. 183/1989 Rules about protection of public land; D.P.C.M. 04.03.1996 "Rules about water resources"; D.Lgs. n. 152/1999 as modified and integrated by d.lgs. n. 258/2000, " Rules about protection of water from pollution and taking in of directive 91/271/CEE concerning the treatment of urban waste water".	www.mit.gov.it
Heating	As for electricity and gas legal references	
Broadcasting	Law n. 223/1990 "Regulation of public and private broadcasting system"; Law n. 249/1997- foundation of "Autorità per le Garanzie nelle Comunicazioni" (AGCOM); Law n. 5/2000 "Rules concerning local broadcasting activities"; D.Lgs. n. 259/2003, "Code of electronic communications"; Law n. 112/2004 "Rules of principle on the broadcasting and RAI-Radiotelevisione italiana S.p.A. organization". D.Lgs. n. 177/2005 "T.U. of Broadcasting"; D.Lgs. n. 82/2005 "Code of digital administration"; D.Lgs. n. 9/2008 "Regulation of sports audiovisual rights assignment and marketing Resources' division"; D.M. n. 33827/2008, recante "Definition of a calendar concerning the opening to DTTV".	www.comunicazioni.it www.sviluppoeconomico.gov.it www.agcom.it
National public administration	Italian Constitution; L. Cost. n. 3/2001 "Modifications to Title V of Constitution"; L. n. 131/2003 "Rules for the adjustment of Republic rules to the constitutional law 18th october 2001, n. 3".	www.governo.it
Regional or local public administration	D.Lgs. n. 267/2000 "T.U. of laws concerning the rules of local authorities" ; L. Cost. n. 3/2001 "Modifications to Title V of Constitution"; L. n. 131/2003 "Rules for the adjustment of Republic rules to the constitutional law 18th october 2001, n. 3".	www.affariregionali.it

Hospital health services	Art. 32 Italian Constitution; L. n. 833/1978 "Institution of National Italian Health Service"; D.Lgs. n. 112/1998 "Ordination of administrative statal functions ti regional and local authorities, in implementation of L. 15 marzo 1997, n. 59"; L. n. 421/1992 and D.Lgs. n. 502/1992 – Reform of National Health Service; D.Lgs. n. 229/1999 "Rules for National Health Service rationalization, in accordance with article 1 of L., n. 419/1998".	www.ministerosalute.it
Ambulatory health services	As for Hospital health services.	www.ministerosalute.it
Primary and secondary education	L. n. 144/1999 "duty of frequency until 18 years old"; L. n. 62/2000 "Rules concerning school equality and the right to education"; D.M. n. 61 luglio 2003 "National Indications for Customised Study Plans of primary and secondary schools"; D.Lgs. n. 59/2004 "Definition of general rules concerning infant school and first step of education, in accordance with article 1 of Law 28th march 2003, n. 53"; D.L. n. 137/2008 "Rules about education and University sector";	www.miur.it www.pubblica.istruzione.it
Higher education	D.L. n. 137/2008 conv. L. n. 169/2008 "Rules about education and University sector";	www.miur.it www.pubblica.istruzione.it
Vocational training	L. n. 845/1978 "Rules concerning vocational training"; L. n. 53/2003 "Enabling act to Government for definition of general rules about education and essential levels of services concerning education and vocational training". D.Lgs. n. 276/2003 (artt.47-53 Titolo V) novitate and engagement's contract;	www.lavoro.gov.it
Compulsory social protection	D.Lgs. n. 503/1992 "Rules concerning organization of social protection of public and private workers, in accordance with article 3 of L. 23rd october 1992, n. 421" (riforma Amato); L. n. 335/1995 "Reform of compulsory and complementary pension system " (riforma Dini); L. n. 247/2007 "Rules of implementation of Protocol 23rd july 2007 concerning social protection, work and competitiveness in order to improve equity and sustainable increase(. . .)";	www.tfr.gov.it www.lavoro.gov.it www.inpdap.it
Complementary social protection	D.Lgs. n. 124/1993 "Rules concerning complementary pension forms in accordance with article 3 of Law n. 421/1992"; D.Lgs. n. 252/2005 "Regulation of complementary pension forms";	www.tfr.gov.it www.lavoro.gov.it www.inpdap.it
Social housing	R.D. 30.11.1919 "T.U. concerning building of social housing"; L. n. 408/1949 "Rules concerning the increasement of building"; L. n. 167/1962 "Rules aimed to improve the acquirement of building areas for social housing"; L. n. 457/1978 "Rules concerning housing building"; L. n. 179/1992 "Rules concerning public housing building. L. n. 328/2000 "Rules concerning the realization of an integrated system of interventions and social services";	www.mef.gov.it www.mit.gov.it
Childcare services (0-6 years)	L. n. 1044/1971 Plans for institution of municipality day nursery"; L. n. 451/1997 "Institution of parliamentary commission for childcare and adolescence and of the national Observatory for childcare and adolescence"; L. n. 328/2000 "Rules concerning the realization of an integrated system of interventions and social services"; d.P.R. n. 103/2007 "Regulation concerning the national Observatory for childcare (. . .)";	www.lavoro.gov.it www.politichefamiglia.it www.minori.it
Care of the disabled	L. n. 104/1992 "Law for assistance, social integration and rights of disables"; L. n. 68/1999 "Rules concerning the disable's right to job"; L. n. 328/2000 "Rules concerning the realization of an integrated system of interventions and social services"; L. n. 53/2000 and D.Lgs. n. 151/2001 this rules ensure the respect of right to freedom and autonomy of disabled, so furthering their integration in family, school, University, work and society; L. n. 288/2002 "Benefits for grave disables".	www.disabili.com www.lavoro.gov.it
Elderly care	L. n. 328/2000 "Rules concerning the realization of an integrated system of interventions and social services"; D.P.C.M. 29-11-2001 "Definition of assistance's essential levels"; L. n. 152/2001 "New regulation for patronage and social assistance institutes".	www.politichefamiglia.it
Financial services (1)	D.Lgs. n. 154/1992 "Rules concerning the openness of bank and financial operations and services;" D.Lgs. n. 385/1993 "Testo Unico of laws on bank and credit matter"; L. n. 108/1996 "Dispositions concerning usury", L. n. 328/2000 "Rules concerning the realization of an integrated system of interventions and social services"; L.n. 262/2005 "Rules concerning the protection of saving and financial market regulation"; D.Lgs. n. 206/2005 "Code of consumer"; D.Lgs. n. 164/2007 Implementation of directive 2004/39/CE concerning financial instruments market (directive "MIFID").	www.ministerosviluppoeconomico.gov.it
Cultural services (1)	Art. 113 bis D.Lgs. n. 267/2001 "T.U. of laws concerning the rules of local authorities"; D.Lgs. n. 42/2004 "Code of cultural heritage and landscape"; D.M. 29.01.2008 "Private supply and administration of services in cultural places".	www.beniculturali.it

PUBLIC SERVICES IN LITHUANIA

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Lithuania is a unitary state, the largest and the most populous of the three Baltic States. The Constitution adopted on 25 October 1992⁵⁶, concerns Local Government and Administration and grants autonomy to the administrative units of the territory within their jurisdiction (chapter 10)⁵⁷. Lithuania has 60 municipalities (savivaldybė)⁵⁸, out of which 8 are city municipalities (miestas). At sub-municipal level, the municipalities are divided into about 546 heterogeneous “neighbourhoods” (seniunija) in terms of size and population⁵⁹. There is no difference of status or competencies between these categories.

The Lithuanian municipalities are among the most heavily populated in the European Union. They are even considered as too large and a reform of the territorial organisation is proposed to facilitate the relationships between people and local politicians by increasing their number (by a few municipalities rather than up to 90).⁶⁰

At territorial level, the country has also a deconcentrated administration⁶¹, composed of 10 provinces (apskritis). Since 2003 some powers from central government have been transferred to municipalities and, since 2007, following the distribution of EU subsidies, the scope of competences at provincial level has also been expanded. Although in the end of 2009 the Lithuanian government decided to abolish the county administrations and announced this as a political priority.

Amendments due to EU legislation resulted in a wide range of changes in SGI sectors (telecommunications, postal services, energy, rail transport, air transport, regional and local transport of passengers, in land and maritime transport, water and wastewater, heating, broadcasting, regional and local public administration, compulsory social protection, financial and cultural services) and stimulated steps towards effective

(56) See the modifications in 2002, 2003, 2004 and 2006
http://www3.lrs.lt/pls/inter3/dokpaieska.susije_e?p_id=21892&p_rys_id=15

(57) See article 119 of the Constitution.

“The administrative units of the territory of the State of Lithuania and their boundaries shall be established by law” (article 11 and 66 of the Constitution). Already on 12 February 1990, before the independence, the Supreme Council of the Lithuanian Soviet Socialist Republic had adopted the Law on the foundation of Local Self-government.

(58) A law of 1994 transformed the 581 existing administrative units in 56 municipalities. Four new municipalities were created between 1994 and 2000.

(59) The neighbourhoods are structural subdivisions of the municipal administration. They rely on old territorial divisions and manage local services in part of the municipality.

(60) Dominique Hoorens (dir.), *Les collectivités territoriales dans l'Union européenne. Organisation, compétence et finances*, Dexia Editions, 2008, p. 465-466

(61) At higher level administrative units, the governance is organised by the Government. (Article 123 of the Constitution)

liberalisation. There is no general (horizontal) law framing the SGIs but numerous laws deal with specific sectors.

The Community concepts are not used in national law. The most commonly used term is public services (Viešosios paslaugos – used both for activities of general interest and the civil service or public bodies⁶²), which covers the provision of services of general interest in all sectors and both services of general economic interest (Visuotinės svarbos ekonominės paslaugos – literal translation) and non-economic services of general interest (Visuotinės svarbos neekonominės paslaugos – literal translation). According to the Law on Public Administration, “Public service shall mean the activities of legal persons controlled by the state or municipalities when providing social services for persons, as well as services in the spheres of education, science, culture, sports and other services provided for by laws. Other persons may also provide public services in the cases and in the manner provided for by laws”.⁶³ The provision of administrative services⁶⁴ and the administration of the provision of public services⁶⁵ are part of the four main spheres of public administration.⁶⁶

According to the Law on Social Services, “Social services shall be the services aimed at providing assistance to a person (family) who, by reason of his age, disability, social problems, partially or completely lacks, has not acquired or has lost the abilities or possibilities to independently care for his private (family) life and to participate in society”. The Law defines two kinds of social services: 1) social services of general interest (Visuotinės svarbos socialinės paslaugos – literal translation) (information, counselling, mediation and representation, social and cultural services, organisation of transportation, organisation of catering, provision of necessary clothes and footwear as well as other services) and 2) special social services (social attendance and social care). Special social services are provided to a person in respect when social services of general interest are insufficient to develop or to compensate for the inability to care independently for his private (family) life and to participate in society.

Terms in TEU and TFEU	Lithuanian terms in TEU and TFEU ^{table08}
Services of general interest – SGIs	Bendrus interesus tenkinančios paslaugos
Services of general economic interest – SGEIs	Bendrus ekonominius interesus tenkinančios paslaugos
Non-economic services of general interest – NESGIs	Bendrus interesus tenkinančios neekonominės paslaugos
Public service	Viešosios paslaugos

(62) M. Mangenot, p. 92

(63) Law VIII-1234 on Public Administration of 17 June 1999 as amended by Law VIII-1234 of 27 June 2006 and Law VIII-1234 of 18 January 2007 http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=315906&p_query=&p_tr2=

(64) Issue of authorisations (licences), issue of documents that confirm certain legal facts, submission of information stipulated in laws and availability of an entity of public administration to people, carrying out of administrative procedure. Administrative services are provided only by entities of public administration. (article 15 Law on public administration)

(65) “Administration of the provision of public services shall mean the activities of entities of public administration when laying down the rules and arrangement for the provision of public services, setting up public establishments or issuing authorisations for the provision of public services to other persons as well as supervision and control of the provision of public services.” (article 1 of the Law on Public Administration)

(66) Article 5 of the Law on Public Administration

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs' organisation?

Central	Regional	Local
National public administration	Regional transport of passengers	Local transport of passengers
Telecommunications	Hospital health services	Primary health services
Postal services	Social services	Ambulatory health services
Electricity		Primary and secondary education
Gas		Complementary social protection
Broadcasting		Water
Financial services		Wastewater
Railway transports		Heating
Broadcasting		Social services
Higher education		Social housing
Cultural services		Cultural services
Air transport		
Inland water transport		
Maritime transport		
Compulsory social protection		
Vocational training		

B. Sectoral organisation and trends

Status of SGI operators

National public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	Mixed providers (majority of private shares)	Private providers
Telecommunications Postal services Production of electricity Electricity networks (transport-distribution) Marketing of electricity Maritime transport Heating Broadcasting Hospital health services Higher education Vocational training Complementary social protection Cultural services		Regional and local transport of passengers Water Waste water Hospital health services Ambulatory health services Primary and secondary education Vocational training Social housing Childcare services (0-6 years) Care of the disabled Elderly care Cultural services			Telecommunications Postal services Production of electricity Electricity networks (transport-distribution) Marketing of electricity Air transport Inland water transport Maritime transport Water Waste water Heating Broadcasting Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Complementary social protection Childcare services (0-6 years) Care of the disabled Elderly care Financial services Cultural services

SGI markets

Liberalised market and competition	Liberalised market Public operators dominant	Liberalised market Private operators dominant	Public monopoly	Private monopoly	No market
Telecommunications Postal services Air transport Inland water transport Maritime transport Regional/local transport of passengers Broadcasting Ambulatory health services Higher education Vocational training Complementary social protection Childcare services (0-6 years) Care of the disabled Elderly care Financial services Cultural services	Production of electricity Hospital health services Ambulatory health services Primary and secondary education	Telecommunication (land lines) Gas transport-distribution and marketing of gas	Transport-distribution of electricity Marketing of electricity Railway transport of passengers Freight rail transport Water Wastewater Heating Social housing	Water (reduced monopoly) Wastewater (reduced monopoly)	National public administration Regional and local public administration Compulsory social protection

Main financing methods of SGIs

Payment by users/clients	Public grants	Insurance funds	Incomes from the activity	Social tariffs/prices
Telecommunications	Railway transport of passengers	Hospital health services	Broadcasting	Electricity
Postal services	Regional and local transport of passengers	Ambulatory health services		Railway transport of passengers (for students, children, the disabled, seniors, social risk families, etc.)
Production of electricity	Water	Compulsory social protection		Regional and local transport of passengers (for students, children, disabled, seniors, social risk families, etc.)
Transport-distribution of electricity	Waste water			Air transport (children)
Marketing of electricity	Heating			Inland water transport
Gas transport-distribution	Broadcasting			Water (low-income families, single residents, large families, seniors, disabled, compulsory military soldiers, etc.)
Marketing of gas	Primary and secondary education			Waste water (low-income families, single residents, large families, seniors, the disabled)
Railway transport of passengers	Higher education			Heating (low-income families, single residents, large families, seniors, the disabled, compulsory military soldiers, etc.)
Freight rail transport	Vocational training			Ambulatory health services
Regional and local transport of passengers	Social housing			Primary and secondary education (free meals and learning tools for children raised in social risk families)
Air transport	Childcare services (0-6 years)			Higher education (students from low-income families, student families raising an own child, students from families with 3 or more children)
Inland water transport	Care of disabled			Vocational training
Maritime transport	Elderly care			Childcare services (0-6 years)
Water	Cultural services			Care of disabled (financial aid, tax exemption, etc.)
Waste water				Cultural services (social risk families, disabled, orphans, seniors, students)
Heating				
Hospital health services				
Ambulatory health services				
Primary and secondary education (for private schools)				
Higher education				
Vocational training				
Complementary social protection				
Social housing				
Childcare services (0-6 years)				
Care of disabled				
Elderly care				
Financial services				
Cultural services				

Authorities responsible for setting pricing and/or tariff policies

Parliament	Central government	Local government	Regulatory agencies	Providers
Compulsory social protection	Production of electricity (for operators with larger than 25% share of the market)		Telecommunications	Higher education

II/ Approaches

A. The model of public administration and national public companies

Main reorganisations of the status of SGIs public operators:

- 01.** In the postal sector, the state company “Lietuvos paštas” was reorganised in 2006 into a public limited company.
- 02.** The Lietuvos Energija AB, active in the transportation, distribution and marketing of electricity was reorganised first (1995) from a state-owned company to a special purpose joint stock company. In 2000, the non-core branches and subsidiaries of Lietuvos Energija AB were separated by establishing daughter companies instead. In 2001 shareholders approved the reorganisation project of the company and Special Purpose Joint Stock Company Lietuvos Energija was divided into independent companies: Lietuvos Elektrinė AB, Mažeikių Elektrinė AB, Rytų Skirstomieji Tinklai AB and Vakarų Skirstomieji Tinklai AB.
- 03.** In the heating sector, according to the Law on the reorganisation of the Lietuvos Energija, the whole district heating business was separated from the Lietuvos Energija, split into 6 major regional utilities and transferred to municipalities at the same time. Administrative regions were granted the right to take district heating into their ownership if they were ready to own and run the business. Consequently, in 1997 six regional and 13 municipal companies were established. The regional companies were owned by several (from 4 to 9) municipalities and were operating in broader regions, surrounding some bigger cities (Several hundred small companies having from several thousand to several dozen customers also supplied district heating). The bigger cities were not happy with the homogenous district heating tariffs, as it meant subsidies from the city with a dense concentration of consumers, including industrial ones to the more sparsely populated towns and settlements, where cost of heat supply was evidently higher. This discontent caused further legal changes and all but one regional company were split during 1998-2001 to a number of a single municipality owned companies.
- 04.** Railway transport (passengers and freight) - Joint-stock company Lietuvos geležinkeliai (100% owned by the state);
- 05.** Maritime transport - AB “Lietuvos jūrų laivininkystė” (Lithuanian Shipping Company) (established on 27th June, 2001 as the result of reorganisation of “LISCO”, established in 1969). Currently, Lietuvos jūrų laivininkystė AB (LJL) is a national company, with 56,66 per cent of its shares owned by the Government of Lithuania and the rest by private shareholders);
- 06.** Regional and local transport of passengers.

State enterprises for which no privatisation process examined:

01. postal services - state public limited company "Lietuvos paštas";
02. production of electricity - Ignalina NPP, state enterprise (closed since 2010)
03. Compulsory social protection - State enterprise "SODRA".

State enterprises privatised or in process of privatisation⁶⁷:

01. Telecommunications – TEO LT (ex Lietuvos Telekomas; 60% shares acquired by Swedish Telia AB and Finnish Sonera Oy, Amber Teleholding A/S)
02. Gas transport, distribution and marketing - AB Lietuvos Dujos privatised in 2004 (the two largest owners of the company are Russian "Gazprom" and German "E.ON Ruhrgas International");
03. Air transport - Until 2005 Lithuanian Airlines were 100% owned by the State. In 2005 company was privatised and changed its name to flyLAL. In 2009 the company was declared bankrupt.

B. Local autonomy

Lithuanian public administration and administrative-territorial systems are a mixture of the Western and Soviet traditions, where the Soviet tradition has a higher influence. After 1990, legal conditions were created for the reorganisation of the Soviet territorial administrative structure into a local self-government system. The Basic Law on Local Government passed in 1990, legitimised of self-government property and the Law on Local Self-Government (1994⁶⁸) divides local authority functions into autonomous ones⁶⁹ and those delegated by the State⁷⁰.

The local public services provision by the community (through an internal structure or a public association) is used in the sector of heating, treatment and distribution of water maintenance of municipal buildings, etc.⁷¹ The public services may be managed under contract by a municipal company, a private or a mixed one, which is the case particularly in the transport sector.

Intermunicipal cooperation is promoted as an alternative to the creation of a second level of local communities. There are two main forms of cooperation: agreements for joint activities or joint provision of public services made with state agencies and/or other municipalities (including construction and maintenance of equipment, urban and regional planning and basic public services); and participation in regional development councils.

(67) During the first phase of privatisation, the capital moved from the State to private enterprises was shown (at the end of 1995) about 30% of the total asset value of the Lithuanian State (31% of assets in the industry, 60% in the commercial sector, 6% in transport, and 4% in utilities). OCDE, Examens de l'OCDE sur l'investissement direct étranger, 2001, p. 59

(68) <http://www.litlex.lt/Litlex/Eng/Frames/Laws/Documents/167.HTM>

(69) General education and additional training of children and youth and the general training of adults, cultural education of the population and the promotion of general and ethnic culture, primary health care and disease prevention for residents, care for the sick, disabled and elderly, ensuring that the territory is sanitary and that the requirements for hygiene and environmental protection are being complied with, development the industry of recreation and tourism of the residents, organising the support, care and attendance of the disabled and single elderly persons, arranging charity events, and distributing accumulated funds and donations, establishing prices and tariffs for services rendered to residents by public municipal enterprises.

(70) Civil registration, keeping the register of municipal, state and private enterprises, as well as public organisations; they may also manage state parks (national and regional), organize the municipal police, civil security and fire prevention system, and other functions delegated by laws. (Article 16 of the Law)

(71) Dominique Hoorens (dir.), Les collectivités territoriales dans l'Union européenne. Organisation, compétence et finances, Dexia Editions, 2008, p. 467

C. Delegated management and externalisation

Municipal institutions and administration may not provide public services, except for the cases provided by law. They shall be provided by budgetary and public establishments, municipal undertakings, companies with share capital and other entities. Public services shall be provided by service providers established by municipalities or other legal and natural persons under contracts concluded with municipalities, who are chosen by public tender. In the absence of a provider of public services, a ward or neighbourhood may, by the decision of the municipal council, provide public services itself (article 5 and 8, 9 of the law on local self-government).

In general, the concession procedure may be used for the provision of public services in areas determined by law: energy, including heat and electricity energy, oil and natural gas extraction, transmission, distribution, supply, railway lines and systems, water economy, including water collection, pumping, treatment, purification and distribution; waste water, including waste water collection, transportation and treatment, and sludge treatment; utilisation, recycling and management of waste; infrastructure of road transport; health care system; telecommunications infrastructure; educational system; port and barrage infrastructure; airport infrastructure; public transport infrastructure; tourism objects, facilities and other infrastructure; culture, sports, leisure facilities, equipment and other infrastructure⁷².

D. “New Public Management”

The need to improve public infrastructure and public services situation and the limitations on the main country fiscal indicators set by international treaties (Stability and Growth Pact and Maastricht Treaty) and therefore Government inability to devote appropriate financial resources to meet those needs are determining the PPP development in Lithuania⁷³. PPP country process development was started by MOF in the middle of 2005 (PPP Projects Management and Coordination Division within State Treasury Department was established, in late 2007 incorporated into newly established Assets Management Department). Today the process is mainly spontaneous as there is no long term PPP strategy or action plan, no centralised PPP process development and management and supervision or a sufficient clearly developed legal system enabling effective application of different PPP forms. Public and private sectors cooperation possibility is foreseen by the Concession law of 1997 revised in 2003, the public procurement law, the Civil code, the Law on Management, Usage and Disposal of State and Municipal Property. Currently existing legal basis provides for 2 PPP forms application: concession (the most developed PPP type, on the grounds of Concession Law provisions), joint activity (joint ventures) - establishing mixed capital enterprises (on the grounds of Law on Management, Usage and Disposal of State and Municipal Property provisions, contract limited to 3 years). PPP projects are initiated and carried out mainly by municipalities. The State is not active in PPP field and there is a lack of strong political support for the PPP process (the first concession type project was in 2002 - long term lease of Vilnius city

(72) Law n° I-1510 on concession of 10 September 1996, last amended by Law n° X-749 of 11 July 2006

(73) See the actual strategic documents : Lithuania Convergence Programme 2007, National Lisbon Strategy Implementation Programme, 15-th Government Activities Programme for 2009-2012, MOF Strategic Activity Plan 2009

heating networks). According to the National Audit Office of Lithuania by September 2007, 45 concession type projects were initiated by 26 municipalities (above 43% out of total amount) and in many cases there was only one participant during tender.⁷⁴ The Lithuanian government decided to start implementing a new PPP programme from 2010.

No institutionalised or compulsory **evaluation** of the SGI provision is set up in Lithuania.

E. Regulatory Agencies

The regulator of the **telecommunication** market in Lithuania is the Communications Regulatory Agency (CRA). The Communications Regulatory Authority (RRT) is responsible for the protection of ICT and postal services (products), consumers' rights and legal interests, efficient and transparent competition in the ICT and postal services (products) markets and encouragement of long-term investments and development of innovative ICT.

The National Control Commission for Prices and **Energy** is an institution, responsible for the issue, revocation and suspension of licences and control of licensed operation of service providers. The National Control Commission for Prices and Energy approves the methodologies and procedures for setting state regulated prices, sets state regulated price caps, controls the application of state regulated prices and tariffs, approves charges for connection of energy facilities, approves the purchase price for electricity generated from renewable energy, grants a licence for electricity market operator and licenses for transmission, distribution, public supply and independent supply of energy, and controls over the licensed activities of energy undertakings. It also carries out the adjustment of the maximum levels of tariffs for road passenger **transport** over regular long-distance routes, local trains and inland water transport, and the tariffs for services provided by the carriers. The State Road Transport Inspectorate controls technical condition of vehicles, issues licences for freight transportation by domestic and international routes and for passenger transportation by long-distance and international routes.

In the **water** sector, the main task of the National Control Commission for Prices and Energy is the improvement of establishment cost-effectiveness in the supply of cold water services and in wastewater management by using benchmarking prepared by the Commission and with reference to the requirements for service quality and assets maintenance.

In the **heating** sector, the National Control Commission for Prices and Energy is responsible for (1) approval of the heat and/or hot water pricing methodologies, (2) determination of the basic heat and/or hot water prices for the heat supplier selling not less than 5 GWh of heat energy per year, (3) for estimation of validity of investments and operating costs. The Commission also regulates depreciation rates of long-term assets. Furthermore, the Commission is responsible for other functions assigned in establishing pricing principles for centralized district heat and hot water.

Drawing up the Strategy for Assigning Radio Frequencies to Broadcast and Transmit Radio and Television Programmes and drawing up and approving the Strategic Plan for the Assigning Radio Frequencies to

⁽⁷⁴⁾ Diana Vaitiek niene, Ministry of Finance of Lithuania, PPP process development in Lithuania, 29 January 2009, http://www.ppp.gov.lv/fetch_1856.html. See also some examples on http://www.ppp.gov.lv/fetch_1857.html

Broadcast and Transmit Radio and Television Programmes is in the remit of the Radio and Television Commission of Lithuania in conjunction with the **Communications** Regulatory Authority. Radio and Television Commission of Lithuania is also authorized to issue licences granting the right to establish and operate electronic communications networks.

Regulation and monitoring of the **higher education** sector is performed by the Centre for Quality Assessment in Higher Education (CQAHE). CQAHE is responsible for: (1) assessment of foreign qualifications; (2) provision of information on Lithuanian and foreign higher education systems; (3) assessment of higher education quality, research and institutions; (4) guidance for higher education institutions on self-analysis and provision of recommendations for quality improvement; (5) organization of the selection of higher education textbooks for awards; (6) participation in preparing draft legal acts on research and higher education; (7) cooperation with international organizations and spread of good practice.

Activities concerned with the licensing, analysis, and supervision of insurance undertakings, insurance broker companies, branches of non-member-country insurance undertakings and branches of independent insurance intermediaries established in the Republic of Lithuania are performed by the Insurance Supervisory Commission.

Supervision of competition in Lithuania is in the responsibility of the **Competition Council of the Republic of Lithuania**.

The **State Consumer Rights Protection Authority** under the Ministry of Justice coordinates and implements protection of consumer economic interests, supervises market of consumer products and services.

III/ Social dialogue

In Lithuania⁷⁵ the recent economic and legal developments did have a certain positive impact on the development of social dialogue and its institutions. Although the trade union density level is relatively low in the country, collective bargaining is present and collective agreements are signed in the majority of enterprises with functioning trade unions. **The company level is the only level of collective bargaining.** Social dialogue at the national level is considered more important than that at the company level in areas affecting the working conditions of all employees in the country, such as working time and minimum wage, which are set by regulatory legislation. Also, all legislation in the domain of the labour market and industrial relations is agreed on by the national social partners at the tripartite level prior to its adoption. **The national-level tripartite body** in Lithuania is the Tripartite Council (Lietuvos Respublikos Trišalė taryba, LRTT, established in 1995) consisting of representatives from central government, trade unions and organisations of employers⁷⁶. These bodies are considered to represent SGI providers too. Agreements signed at this level are more of a declarative nature and are not considered to be collective agreements⁷⁷.

(75) References: studies on representativeness of the European social partner organisations in Lithuania (<http://www.eurofound.europa.eu/eiro/>)
Before the re-establishment of independence in Lithuania in 1991, there was no social dialogue in the country. In the centrally planned economy, there were no employer organisations and no negotiations between governments and trade unions.

(76) By decision of the social partners, the number of its members has increased from 15 to 21 persons in 2009.

(77) The opinion of the national level social partners is often neglected at a later stage, when the drafts are being adopted.

In Lithuania, both private and **public sector employees** have the rights of association, to bargaining collectively and to strike. However, there are certain restrictions in the public sector, which differ for each group of public sector employees. **State and municipal institutions** rarely conclude collective agreements. Collective agreements in this area are made on **the level of individual institutions**. In addition, the civil service does not provide for an opportunity to bargain about finance-related issues. There is no collective bargaining **in the central government sector (at the ministries)**, because there are no employees' representatives (trade unions or labour councils) at this level. An Article regulating conclusion of collective agreements in the civil service was incorporated into the Law on Civil Service in 2003. This Article stipulated that 'a collective agreement is a written agreement between the employer and civil servants of a state or municipal institution or agency concerning the conditions of service (work) and other social and economic conditions'. However, collective agreement may not 'set additional conditions related to additional funds of the national and municipal budgets and state-owned money'.

The education sector is one of the best organised sectors of economic activity in Lithuania. It unites a considerable number of trade union members, but also has several trade union organisations: sectoral trade unions of education workers function in all of the national peak trade union organisations. On the other hand, it should be noted that trade unions apart from a few sectoral trade unions are rather polarised due to infighting. Therefore the education sector, despite a developed organisation, lacks efficiency. In addition, numerous independent education workers' trade union organisations exist.

The hospital sector is relatively well represented in Lithuania from a trade union perspective but no well-defined institution in this sector has assumed the function of employer organisation. It seems that collective bargaining coverage may be estimated at 20%–25% of hospital workers. Dialogue is maintained with the Ministry of Health and an agreement has been signed for a wage increase.

In the Lithuanian **post and courier activities sector** only one sectoral trade union⁷⁸ operates representing the joint-stock company Lithuanian Post⁷⁹, the largest state-owned enterprise in the post sector. It should be noted that besides trade unions of Lithuanian Post the aforementioned union also unites trade unions active in AB TEO LT (the largest integrated telecommunication, IT and television services provider in Lithuania), AB Lietuvos radijo ir televizijos centras (dominating supplier of transmitting on-the-ground radio and television programs) and UAB "Eitel Networks". The union concludes **collective agreements at company level**. As no employers' organisation exists in the postal sector, entering into a sectoral agreement is impossible. Neither trade unions are present in the small companies of the sector (about 70 in 2006).

The railways sector is better represented than any other economic sector in Lithuania but as **only one company** (the joint stock company Lithuanian Railways - Lietuvos geležinkeliai, LG) operates in the railways sector no sectoral employers' organisation exists to conclude a collective agreement. The **collective agreements are signed at company level** and cover 100% of employees.

Collective agreements in the Lithuanian **gas sector** may be signed **at enterprise level only** as there is no sectoral employers' organisation in the gas sector able to enter into sectoral collective agreements.

(78) The Lithuanian Communication Workers Trade Union also represents employees from other sectors (telecommunications, radio and television technical staff).

(79) This trade union represents not only Lithuanian Post, but also employees in telecommunications, radio, television etc.

Compared with other sectors, **civil aviation** is quite well represented: trade unions are active in many enterprises and several **collective agreements are signed at company level**. However, no sectoral-level collective bargaining takes place in the industry. This is mainly because of the absence of a sectoral-level trade union. The situation is similar for employers. It is estimated that company-level collective agreements cover about 69% of employees.

Sources of national law on SGIs

Sector	Legal references	Web sites
Telecommunications	The Law on Electronic Telecommunications, No. 69-2382 of 30 April 2004.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=242679&p_query=&p_tr2=
Postal services	The Law on Post, No. 60-2125 of 24 April 2004.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=241272
Production of electricity	The Law on Electricity, No. 107-3964 of 10 July 2004. The Law on Energy, No. 56-2224 of 16 May 2002.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=246666 http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=244185
Electricity networks (transport-distribution)	The Law on Electricity, No. 107-3964 of 10 July 2004.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=246666
Marketing of electricity	The Law on Electricity, No. 107-3964 of 10 July 2004.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=246666
Gas transport-distribution	The Natural Gas Law, No. 89-2743 of 25 October 2000	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=299447
Marketing of gas	The Natural Gas Law, No. 89-2743 of 25 October 2000	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=299447
Railway transports of passengers	The Law on the Approval, Entry into Force and Application of Railway Transport Code, No. 72-2489 of 30 April 2004. The Resolution of the Government of the Republic of Lithuania on licensing rules of passenger, baggage and freight carriage, No. 59-2677 of 20 June 2003.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=246832&p_query=&p_tr2=
Freight rail transport	The Law on the Approval, Entry into Force and Application of Railway Transport Code, No. 72-2489 of 30 April 2004. Government of the Republic of Lithuania Resolution on licensing rules of passenger, baggage and freight carriage, No. 59-2677 of 20 June 2003.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=246832&p_query=&p_tr2=
Regional and local transport of passengers	Republic of Lithuania Road Transport Code, No. I-1628 of 19 November 1996 Government of the Republic of Lithuania Resolution on Licensing of Road Transport Activities, No. 1170 of 29 October 1997.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=210070&p_query=&p_tr2= http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=312998&p_query=&p_tr2=
Air transport	Republic of Lithuania Aviation Law, No. 94-2918 of 3 November 2000. Order of the Minister of Transport and Communications on the rules of passengers, baggage, post and freight carriage on aircrafts, No. 45-1640 of 25 April 2006.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=226273&p_query=&p_tr2=
Inland water transport	The Code of Inland Waterway Transport, No. 105-2393 of 2 November 1996.	-
Maritime transport	The Code of Inland Waterway Transport, No. 105-2393 of 2 November 1996.	-
Water	Law on Drinking Water Supply and Wastewater Management, No. 82-3261 of 27 July 2006. Law on Water, No. VIII-474 of 21 October, 1999.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=337310&p_query=&p_tr2= http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=123809
Waste water	Law on Drinking Water Supply and Wastewater Management, No. 82-3261 of 27 July 2006.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=337310&p_query=&p_tr2=
Heating	Law on Heat Sector, No. IX-1565 of 20 May 2003. Order of the Minister of Economy on the Rules of Heat Supply and Consumption, No. 1-14 of 6 January 2009.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=305480
Broadcasting	The Law on the National Radio and Television, No 58-1712 of 19 July 2000. The Law on Provision of Information to the Public, No. I-1418 of 2 July 1996.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=120115 http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=286382
National public administration	The Law on Public Administration, No. 60-1945 of 9 July 1999.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=303622
Regional or local public administration	The Law on Local Self-Government, No. 55-1049 of 20 July 1994. The Law on the Governing of the County, No. 101-2015 of 30 December 1994.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=339914 http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=247898&p_query=&p_tr2=
Hospital health services	The Law on Health Care Institutions, No. 66-1572 of 12 July 1996.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=319030&p_query=&p_tr2=
Ambulatory health services	The Law on Health Care Institutions, No. 66-1572 of 12 July 1996.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=319030&p_query=&p_tr2=
Primary and secondary education	The Law on Education, No. 63-2853 of 28 June 2003.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=302510
Higher education	The Law on Higher Education, No. 27-715 of 31 March 2000.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=331400&p_query=&p_tr2=
Vocational training	The Law on Vocational Education and Training, No. 43-1627 of 19 April 2007.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=123796
Compulsory social protection	The Law on Social Services, No. 17-589 of 2 November 2006.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=277880&p_query=&p_tr2=
Complementary social protection	The Law on Social Services, No. 17-589 of 2 November 2006.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=277880&p_query=&p_tr2=
Social housing	The Law on the Provision of Housing, No. 116-5188, of 6 December 2002	-
Childcare services (0-6 years)	The Law on State Benefits to Families Raising Children, No. 88-3208 of 3 June 2004.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=244182&p_query=&p_tr2=
Care of the disabled	The Law on Social Services, No. 17-589 of 2 November 2006. The Law on the Social Integration of Disabled, No. 36-969 of 31 December 1991.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=277880&p_query=&p_tr2= http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=247328&p_query=&p_tr2=
Elderly care	The Law on Social Services, No. 17-589 of 2 November 2006.	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=277880&p_query=&p_tr2=

PUBLIC SERVICES IN LUXEMBOURG

I/ Diversity and unity

a) National traditions and structures. Europeanisation of services of general interest

Luxembourg is a unitary state with a single tier of sub-national government consisting of 116 municipalities (12 with the status of city). The deconcentrated administration of the state is organised in three administrative districts⁸⁰. The country has a tiny surface area (2586 km²) and has a population of approximately 490000 inhabitants, scales which closely link national and local governments.

The term “public services” represents the services ensured by the public administrations, public bodies, network services, health care and social services, education and training, public transports, culture, etc., without distinction between their commercial or non-commercial nature. The organic meaning of the term “public services” seems to be prevalent but there is no specific conceptualisation of “public services” in Luxembourg. The legal framework is organised on a sectoral basis. The EU notions (SGI, SGEI, NESGI, SSGI) are not common in the national vocabulary.

⁽⁸⁰⁾ See their competences on <http://www.syicol.lu/districts/attributions.php>

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs' organisation?

Central government	Local government
Telecommunications	Electricity networks (transport-distribution)
Postal services	Marketing of electricity
Production of electricity	Marketing of gas
Electricity networks (transport-distribution)	Regional and local transport of passengers
Marketing of electricity	Water
Transport-distribution of gas	Waste water
Marketing of gas	Compulsory social protection
Railway transport of passengers	Social housing
Air transport	Childcare services (0-6 years)
Inland water transport	Elderly care
Maritime transport	Cultural services
Water	
Waste water	
Heating	
Broadcasting	
Hospital health service	
Ambulatory health services	
Primary and secondary education	
Higher education	
Vocational training	
Compulsory social protection	
Complementary social protection	
Social housing	
Childcare services (0-6 years)	
Care of disabled	
Elderly care	
Financial services	
Cultural services	

B. Sectoral organisation and trends

Status of the operators

Public body	Inter-municipal union	Public enterprise	Company with public participation	Limited liability company	Private company	Non-profit association	Foundation	Independent private providers
Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Compulsory social protection Childcare services (0-6 years) Care of disabled Financial services Cultural services	Water Waste water Primary education Vocational training Childcare services Social services	Telecommunications Postal services Electricity networks (transport-distribution) Marketing of electricity Transport-distribution of gas Marketing of gas Railway transport of passengers Freight rail transport Regional and local transport of passengers Financial services	Production of electricity Electricity networks (transport-distribution) Marketing of electricity Transport-distribution of gas Marketing of gas Air transport Inland water transport Broadcasting Financial services	Electric networks (transport-distribution) Marketing of electricity Regional and local transport of passengers Broadcasting Complementary social protection Childcare services (0-6 years) Financial services Cultural services	Air transport Broadcasting Hospital health services Ambulatory health services Complementary social protection Childcare services (0-6 years) Financial services	Broadcasting Hospital health services Primary and secondary education Childcare services (0-6 years) Care of disabled Elderly care	Hospital health services Ambulatory health services Primary and secondary education Care of disabled Elderly care Cultural services	Cultural services

SGL markets

Liberalised market and competition	Liberalised market Public operators dominant	Public monopoly	Liberalised market Private operators dominant	Private monopoly	No market
Telecommunications Postal services Production of electricity Regional and local transport of passengers Air transport Inland water transport Heating Broadcasting	Electricity networks (distribution) (1) Marketing of electricity Distribution of gas Marketing of gas Freight railway transport Hospital health services (2) Ambulatory health services (2) Primary and secondary education (3)	Postal services (universal service, news papers distribution) Electricity networks (transport) Transport of gas Railway transport of passengers (domestic routes) Water Waste water Higher education (1 public body) Vocational training Compulsory social protection Social housing	Complementary social protection (private pension) Childcare services (0-6 years) Care of disabled Elderly care Financial services Cultural services		

(1) Liberalised market and weak competition; dominant position of the private company in which the State is a shareholder

(2) Hospital and ambulatory health services are delivered, in most cases are, or should be, in hospitals (which are either public institutions, foundations/institutions of public utility or private institutions). They are subject to a hospital plan that defines even the surgical acts that hospitals can undertake. They are not liberalised in the sense of free competition; they are under the supervision of the Ministry of Health, funded (up to a maximum threshold) by the State but managed according to private law. Public enterprises are dominant.

(3) The primary and secondary schools are the State responsibility. There are few private schools; their relation with the State is regulated by a law of 13 June 2003.

Main financing methods of SGIs

Fees/payment by users/clients	Public grants	Incomes from the activity	Social tariffs/prices
Compulsory social protection	Postal services	Telecommunications	Postal services (visually impaired - free, news papers distribution, publications of non profit associations)
Complementary social protection	Railway transport of passengers	Postal services	
Social housing	Regional and local transport of passengers	Production of electricity	
	Waste water	Electricity networks (transport-distribution)	
	Hospital health services	Marketing of electricity	
	Ambulatory health services	Transport-distribution of gas	
	Primary and secondary education	Marketing of gas	
	Higher education	Railway transport of passengers	
	Vocational training	Freight rail transport	
	Compulsory social protection	Regional and local transport of passengers	
	Complementary social protection	Air transport	
	Social housing	Inland water transport	
	Childcare services (0-6 years)	Water	
	Care of disabled	Waste water	
	Elderly care	Heating	
		Broadcasting	
		Hospital health services	
		Ambulatory health services	

National authorities responsible for setting pricing and/or tariff policies

Central government	Local government	Regulatory agencies	Others
Telecommunications			
Postal services			
Distribution of electricity			
Distribution of gas			
Railways transport of passengers			

II/ Approaches

A. The model of public administration and national public companies

Luxembourg is a relatively centralised state where the provision of services of general interest is largely ensured by public entities.

The national operator of postal services was created in 1842 as part of public administration (Administration des Postes); since 1992 it is a public enterprise (Entreprise des Postes et Télécommunications).

Luxembourg National Railway Company (CFL – Société Nationale des Chemins de Fer Luxembourgeois) was created by agreement between the governments of France, Luxembourg and Belgium in 1946. The missions of CFL include domestic, cross-border and international transport of passengers and freight by rail and/or by road. It also ensures the management of rail infrastructure in Luxembourg.

B. Local autonomy

The actual territorial and administrative structures of Luxembourg and the first tasks of the municipalities were established during the 18th and 19th century. The Constitution of 17 October 1868 recognised the principle of self-government (Article 107⁸¹). The Municipal Act of 13 December 1988⁸² strengthened the self-government of municipalities and conferred on the municipal council the general competence to meet all municipal interests (Article 28).

In Luxembourg, most municipal missions are shared with the State: electricity, gas, water, waste water, waste, pre-primary and primary education, vocational training, public social assistance, social housing⁸³, hospitals, school medicine, elderly care, childcare services, cultural services, emergency services, public transport.

(81) «(1) Les communes forment des collectivités autonomes, à base territoriale, possédant la personnalité juridique et gérant par leurs organes leur patrimoine et leurs intérêts propres.»

<http://www.legilux.public.lu/leg/textescoordonnes/recueils/Constitution/Constitution.pdf>

Luxembourg was the first country that ratified the European Charter of Local Self-government on 15 May 1987

(82) <http://www.legilux.public.lu/leg/a/archives/2001/0036/a036.pdf>

(83) In the field of social housing, Luxembourg developed a cooperative social housing policy between municipalities and national organisations.

Few missions are an exclusive responsibility of the municipalities (“purely” municipal tasks), such as municipal and inter-municipal transport, but not as compulsory mission.⁸⁴

The compulsory competences of municipalities are water⁸⁵, waste water, waste, pre-primary and primary education, public social assistance, school medicine, emergency services.

The complementary missions assumed by municipalities include gas⁸⁶, electricity, vocational training, childcare services, musical education, social housing, elderly care, and cultural services.

The local public services may be provided directly by municipalities or in cooperation with other municipalities. Inter municipal cooperation has been significantly intensified during recent years. The municipal syndicates (syndicates intercommunaux⁸⁷, established at the beginning of the 20th century) run services in various sectors: gas, transport, waste, waste water, pre-primary and primary education, vocational training, childcare services, and social services.

There is no local public enterprise in Luxembourg. From the legal point of view, the concept of local public enterprise does not exist in Luxembourg; instead, there are public enterprises which provide services in a certain area, as for example, the regional hospitals.

C. Delegated management and externalisation

The subcontracting of public services provision is not developed in Luxembourg⁸⁸; the majority of local public services are supplied by public structures.

D. “New Public Management”

There is no uniform system of evaluation of public services in Luxembourg; the operation of network industries is evaluated through the Eurobarometer survey. The Ministry of Health elaborated a specific system of evaluation of performances of health establishments.

E. Regulatory Agencies

The state supervision of sectors recently opened to competition exercised by the Competition Council⁸⁹, Inspection of Competition and the specialised sector regulators.

(84) SYVICOL, Syndicat des villes et communes luxembourgeoises <http://www.syvicol.lu/>

(85) Municipalities may choose to manage the water service by their own resources, by inter-municipal syndicates, or mixed management.

(86) Before the liberalisation of the energy market, the municipalities' missions in this sector were not compulsory.

(87) <http://www.syvicol.lu/syndicats/>; loi du 23 février 2001

(88) For example, canteens

(89) <http://www.concurrence.public.lu/autorites/conseil/moyens/index.html>

The Regulatory Institute of Luxembourg (Institut Luxembourgeois de régulation – ILR - <http://www.ilr.public.lu>) regulates the following economic sectors: telecommunications (networks and electronic communications), postal services, gas (transport-distribution) and electricity (transport-distribution).

The Independent Commission of Broadcasting decides and grants of some media frequencies.

The regulation of financial services and the insurance sector is ensured by the Committee on Financial Sector Supervision (www.cssf.lu), and by the Commissioner of Insurance (www.commassu.lu).

III/ Social dialogue

In the social-economic field, the so-called ‘Luxembourg model’⁹⁰ is based on cooperation and consensus between employers and workers, with the State playing an important role as a broker.⁹¹ This concept underlies the idea of a social dialogue organisation and culture capable of settling disagreements, and of bringing the main players from different backgrounds together in order to reach consensus in favour of the country’s economic and social well-being.⁹² Another characteristic of the Luxembourg social dialogue is its traditionally tripartite dimension, involving trade unions, employers’ organisations and the government. Today, the major social dialogue institution in Luxembourg is incontestably the Tripartite Co-ordination Committee (Comité de coordination tripartite)⁹³. There also exists a bipartite dialogue under the Economic and Social Council that joins 18 employers’ representatives, 18 employees’ representatives and 3 members named by the Government, who are independent experts (at least in theory) but who do not represent the Government and thus the bipartite nature of this organism.

The large majority of collective agreements in Luxembourg are negotiated at company level. The extension of the terms of a collective agreement to all employers and employees in a sector is permitted through a Grand-Ducal regulation.

There is no special social dialogue for SGIs. The right of association is regulated in the same way for the private and the public sector. The law on the conclusion of collective bargaining agreements is applied uniformly in the private and the public sector.

There are 3 types of personnel in the **national civil service**: civil servants, clerical employees and manual workers. The civil servants and the clerical employees have a “status” regulated by law⁹⁴. There are central negotiations for all those with specific status and non-manual employees; these negotiations are followed by legislation to give them legal effect. The manual workers’ status is regulated by a collective bargaining agreement called “Collective Contract of Central Government Manual Workers”. In local public administration,

(90) On the existence of a national “model” see Franz Clément, *Les relations professionnelles au Luxembourg*, 2008, p. 75 <http://www.eureslux.org/images/biblio/biblio-6-272.pdf>

(91) Frank Hendriks, “Luxembourg: Change and Continuities in the Local State”, in John Loughlin, Eliseo Aja, *Subnational democracy in the European Union: challenges and opportunities*, Oxford University Press, 2004, p. 176.

(92) References: studies on representativeness of the European social partner organisations in Luxembourg (<http://www.eurofound.europa.eu/eiro/>)

(93) It was created by the Act of 24 December 1977.

(94) At the central government level several « corps » include officials (fonctionnaires) from the general administration, the judiciary, security forces (army and police), education, religion and customs. At the local level it distinguishes only between officials of the general administration and of primary education.

for manual workers, there are direct negotiations in each municipality. In the private sector, most situations are regulated by collective bargaining agreement and by the Labour Code.

In the **postal services sector**, working conditions in the public sector establishment P&T Luxembourg are determined by the civil service staff regulations (for state employees) and by the **collective labour agreement** (state workers).

In the **sector of railway transport** one **collective agreement at company level** applies, to which an amendment was made concerning a limited number of workers. The 'tripartite ferroviaire' is a tripartite railways organisation that is not institutionalised and not permanent; the group occasionally launches discussions when a problem occurs in the sector.

In the **civil aviation sector** collective bargaining is organised and **collective agreements** are only concluded **at company level**. No employers' organisations operate in the sector. Air traffic controllers are state officials and are not involved in collective bargaining.

The gas sector is relatively small in Luxembourg and there is no employer association. As far as the conclusion of collective labour agreements is concerned, there are company agreements but not in each company of this sector.

Sources of national law on SGIs

Sector	Legal references	Web sites
Telecommunications	Loi du 10 août 1992 portant création de l'entreprise des postes et télécommunications Loi du 21 mars 1997 sur les télécommunications Loi du 30 mai 2005 sur les réseaux et les services de communications électroniques	http://www.légilux.lu/leg/a/archives/1992/0060/a060.pdf
Postal services	Loi du 10 août 1992 portant création de l'entreprise des postes et télécommunications Loi du 15 décembre 2000 concernant les services postaux et les services financiers postaux	http://www.légilux.lu/leg/a/archives/1992/0060/a060.pdf
Production of electricity	Loi du 1er août 2007	http://www.legilux.public.lu/leg/a/archives/2007/0152/2007A2764A.html
Electricity networks (transport-distribution)	Loi du 1er août 2007	http://www.legilux.public.lu/leg/a/archives/2007/0152/2007A2764A.html
Marketing of electricity	Loi du 1er août 2007	http://www.legilux.public.lu/leg/a/archives/2007/0152/2007A2764A.html
Gas transport-distribution	Loi du 1er août 2007	http://www.legilux.public.lu/leg/a/archives/2007/0153/index.html
Marketing of gas	Loi du 1er août 2007	http://www.legilux.public.lu/leg/a/archives/2007/0153/index.html
Railway transport of passengers	Loi du 22 juillet 2009 - Sécurité ferroviaire Loi du 19 juin 2009 - Ordre et sécurité – Transports publics Loi du 5 juin 2009 - Infrastructure ferroviaire Loi du 24 juillet 2006 - Infrastructure ferroviaire Loi du 25 janvier 2006 - Transports publics Loi du 29 juin 2004 - Transports publics Loi du 18 avril 2004 - Infrastructure ferroviaire Loi du 18 décembre 2003 - Infrastructure ferroviaire Loi du 3 juin 2003 - Infrastructure ferroviaire Loi du 24 juillet 2000 - Infrastructure ferroviaire Loi du 10 mai 1995 - Infrastructure ferroviaire Loi du 28 mars 1997 - Statuts SNCFL Loi du 17 décembre 1859 - Police des chemins de fer Règlement grand-ducal du 6 novembre 2009 – gestion de l'infrastructure Règlement grand-ducal du 20 décembre 1999	http://www.legilux.public.lu/leg/a/archives/2009/0169/2009A2466A.html ; http://www.legilux.public.lu/leg/a/archives/2009/0134/2009A1888B.html ; http://www.legilux.public.lu/leg/a/archives/2009/0134/2009A1888B.html ; http://www.legilux.public.lu/leg/a/archives/2006/0141/index.html ; http://www.legilux.public.lu/leg/a/archives/2006/0017/2006A0458A.html ; http://www.legilux.public.lu/leg/a/archives/2004/0107/2004A16621.html ; http://www.legilux.public.lu/leg/a/archives/2004/0064/index.html ; http://www.legilux.public.lu/leg/a/archives/2004/0065/index.html ; http://www.legilux.public.lu/leg/a/archives/2003/0195/index.html ; http://www.legilux.public.lu/leg/a/archives/2003/0084/index.html ; http://www.legilux.public.lu/leg/a/archives/2000/0066/index.html ; http://www.legilux.public.lu/leg/a/archives/1997/0025/index.html ; http://www.legilux.public.lu/leg/a/archives/1995/0040/index.html ; http://www.legilux.public.lu/leg/a/archives/2009/0224/2009A3924A.html ; http://www.legilux.public.lu/leg/a/archives/2000/0001/index.html
Freight rail transport	Loi du 22 juillet 2009 - Sécurité ferroviaire Loi du 5 juin 2009 - Infrastructure ferroviaire Loi du 24 juillet 2006 - Infrastructure ferroviaire Loi du 18 avril 2004 - Infrastructure ferroviaire Infrastructure ferroviaire Loi du 18 décembre 2003 - infrastructure ferroviaire Loi du 3 juin 2003 - Infrastructure ferroviaire Loi du 24 juillet 2000 - Infrastructure ferroviaire Loi du 11 juin 1999 - Infrastructure ferroviaire Loi du 28 mars 1997 - Statuts SNCFL Loi du 10 mai 1995 - Infrastructure ferroviaire Loi du 17 décembre 1859 - Police des chemins de fer Règlement grand-ducal du 6 novembre 2009 - Gestion de l'infra. – Contrat entre Etat et CFL Règlement grand-ducal du 21 septembre 2009 - Sécurité – Entreprises ferroviaires Règlement grand-ducal du 23 octobre 2003 - Validité licences – Entreprises ferroviaires Règlement grand-ducal du 20 décembre 1999 - Gestion de l'infra. – Contrat entre Etat et CFL	http://www.legilux.public.lu/leg/a/archives/2009/0169/2009A2466A.html ; http://www.legilux.public.lu/leg/a/archives/2009/0134/2009A1888B.html ; http://www.legilux.public.lu/leg/a/archives/2006/0145/2006A2356A.html ; http://www.legilux.public.lu/leg/a/archives/2004/0064/index.html ; http://www.legilux.public.lu/leg/a/archives/2004/0065/index.html ; http://www.legilux.public.lu/leg/a/archives/2003/0195/index.html ; http://www.legilux.public.lu/leg/a/archives/2003/0084/index.html ; http://www.legilux.public.lu/leg/a/archives/2000/0066/index.html ; http://www.legilux.public.lu/leg/a/archives/1999/0086/index.html ; http://www.legilux.public.lu/leg/a/archives/1997/0025/index.html ; http://www.legilux.public.lu/leg/a/archives/1995/0040/index.html ; http://www.legilux.public.lu/leg/a/archives/1859/0044/1859A0401A.html ; http://www.legilux.public.lu/leg/a/archives/2009/0224/2009A3924A.html ; http://www.legilux.public.lu/leg/a/archives/2009/0201/index.html ; http://www.legilux.public.lu/leg/a/archives/2003/0160/2003A31741.html ; http://www.legilux.public.lu/leg/a/archives/2000/0001/index.html ;

Regional and local transport of passengers	Loi du 25 janvier 2006 - Transports publics Loi du 29 juin 2004 - Transports publics Loi du 12 juin 1965 - Transports routiers	http://www.legilux.public.lu/leg/a/archives/2006/0017/2006A0458A.html ; http://www.legilux.public.lu/leg/a/archives/2004/0107/2004A16621.html ; http://www.legilux.public.lu/leg/a/archives/1965/0032/1965A06002.html
Air transport	Loi du 21 décembre 2007 - Direction de l'Aviation Civile / Administration de la Navigation Aérienne Loi du 21 décembre 2007 - Création de l'Adm. de la Navigation Aérienne Loi du 1er août 2007 – Loi du 26 juillet 2002 - Exploitation Aéroport / Construction Aérogare Loi 19 mai 1999 - Règlement – Sureté aérienne Loi du 31 janvier 1948 - Règlementation aérienne	http://www.legilux.public.lu/leg/a/archives/2007/0240/index.html ; http://www.legilux.public.lu/leg/a/archives/2007/0176/2007A3318A.html ; http://www.legilux.public.lu/leg/a/archives/2007/0134/2007A2116A.html ; http://www.legilux.public.lu/leg/a/archives/2002/0085/2002A17581.html ; http://www.legilux.public.lu/leg/a/archives/1999/0057/index.html#page=2 ; http://www.legilux.public.lu/leg/a/archives/1948/0011/1948A02031.html ; http://www.legilux.public.lu/leg/a/archives/2007/0176/2007A3318A.html ; http://www.legilux.public.lu/leg/a/archives/2003/0072/index.html ; http://www.legilux.public.lu/leg/a/archives/1998/0045/index.html ; http://www.legilux.public.lu/leg/a/archives/1993/0017/ ;
Inland water transport	Li du 28 juillet 1973 - Création Service de la Navigation Règlement grand-ducal du 31 mars 2000 - Administration – Exploitation du Port Metert	http://www.legilux.public.lu/leg/a/archives/1973/0043/index.html ; http://www.legilux.public.lu/leg/a/archives/2000/0028/index.html
Maritime transport	Loi du 17 juin 1994 - Création – Registre Public Maritime	http://www.legilux.public.lu/leg/a/archives/1994/0063/1994A11561.html ; http://www.legilux.public.lu/leg/a/archives/1990/0058/1990A08081.html ;
Water	Loi du 19 décembre 2008 Protection – Gestion des Eaux Loi du 23 août 2005 Partenariat Etat-Communes / Démarche scientifique Domaine Protec. Nature-Ressources Loi du 28 mai 2004 Création – Administration de la Gestion de l'Eau Loi du 19 janvier 2004 Protection – Nature / Ressources Naturelles Loi du 1er août 2001 Convention de Londres – Santé des cours d'eau et lacs internationaux Loi du 24 février 1999 Renforcement de l'alimentation en eau potable Loi du 31 juillet 1962 Renforcement de l'alimentation en eau potable	http://www.legilux.public.lu/leg/a/archives/2008/0217/index.html ; http://www.legilux.public.lu/leg/a/archives/2005/0135/2005A2430A.html ; http://www.legilux.public.lu/leg/a/archives/2004/0092/2004A15481.html ; http://www.legilux.public.lu/leg/a/archives/2004/0010/2004A01481.html ; http://www.legilux.public.lu/leg/a/archives/2001/0098/index.html ; http://www.legilux.public.lu/leg/a/archives/1999/0020/index.html#1999A05721 ; http://www.legilux.public.lu/leg/a/archives/1962/0047/1962A08981.html
Waste water		http://www.legilux.public.lu/leg/a/archives/2008/0217/index.html ; http://www.legilux.public.lu/leg/a/archives/1999/0149/1999A29271.html ; http://www.legilux.public.lu/leg/a/archives/1999/0020/index.html#1999A05721 ; http://www.legilux.public.lu/leg/a/archives/1999/0005/index.html ; http://www.legilux.public.lu/leg/a/archives/1999/0005/index.html ; http://www.legilux.public.lu/leg/a/archives/1999/0069/index.html#1999A14641 ; http://www.legilux.public.lu/leg/a/archives/1999/0069/index.html#1999A14641 ; http://www.legilux.public.lu/leg/a/archives/2002/0115/index.html ; http://www.legilux.public.lu/leg/a/archives/1994/0048/1994A09311.html
Broadcasting	Loi du 2 avril 2001 Fonctionnement – Conseil National des Programmes Loi du 27 juillet 1991 Médias Électroniques Règlement grand-ducal du 5 avril 2001 Règles – Publicité, Téléachat, autres Règlement grand-ducal du 13 février 1992 Limitation du volume de publicité	http://www.legilux.public.lu/leg/a/archives/2001/0042/2001A09241.html ; http://www.legilux.public.lu/leg/a/archives/1991/0047/1991A09721.html ; http://www.legilux.public.lu/leg/a/archives/2001/0042/2001A09361.html ; http://www.legilux.public.lu/leg/a/archives/1992/0007/1992A03271.html
National public administration	Art. 70 Basic Law; Bundesverwaltungsverfahrensgesetz vom 21.9.1991 (BGBL I S. 3050)	
Regional or local public administration	Landesverwaltungsverfahrensgesetze	
Hospital health services	Loi du 16 mars 2009 Soins palliatifs, directive anticipée, fin de vie Loi du 16 mars 2009 Euthanasie et assistance au suicide Loi du 29 avril 2005 Etablissement public 'Centre hospitalier neuropsychiatrique' Loi du 19 décembre 2003 Centre nat. de rééducation fonctionnelle et de réadaptation Loi du 28 août 1998 Etablissements hospitaliers Loi du 17 avril 1998 Etablissement public 'Centre hospitalier neuropsychiatrique' Loi du 27 juillet 1992 Réforme de l'assurance maladie et du secteur de la santé Règlement grand-ducal du 13 mars 2009 Plan hospitalier national	http://www.legilux.public.lu/leg/a/archives/2009/0046/2009A0610A.html ; http://www.legilux.public.lu/leg/a/archives/2009/0046/2009A0615A.html ; http://www.legilux.public.lu/leg/a/archives/2005/0060/2005A09141.html ; http://www.legilux.public.lu/leg/a/archives/2003/0195/2003A40751.html ; http://www.legilux.public.lu/leg/a/archives/1998/0078/1998A15641.html ; http://www.legilux.public.lu/leg/a/archives/1998/0031/ ; http://www.legilux.public.lu/leg/a/archives/1992/0052/1992A16581.html ; http://www.legilux.public.lu/leg/a/archives/2009/0054/
Ambulatory health services	Loi du 12 juin 2004 Administration des services de secours Loi du 10 janvier 1990 Protection civile Loi du 27 février 1986 Santé - Aide médicale urgente Règlement grand-ducal du 7 mai 1992 Organisation du service d'incendie et de sauvetage Règlement grand-ducal du 21 novembre 1980 Normes des établissements hospitaliers du service d'urgence Règlement grand-ducal du 29 août 1979 Normes des établissements hospitaliers au service d'urgence	http://www.legilux.public.lu/leg/a/archives/2004/0096/2004A15781.html ; http://www.legilux.public.lu/leg/a/archives/1990/0004/1990A00261.html ; http://www.legilux.public.lu/leg/a/archives/1986/0016/1986A08311.html ; http://www.legilux.public.lu/leg/a/archives/1992/0034/1992A11101.html ; http://www.legilux.public.lu/leg/a/archives/1980/0080/1980A20421.html ; http://www.legilux.public.lu/leg/a/archives/1979/0077/1979A14811.html

Primary and secondary education	<p>Loi du 6 février 2009 Organisation de l'enseignement fondamental Loi du 28 juillet 2006 Centre de psychologie et d'orientation scolaires (CPOS) Loi du 25 juin 2004 Organisation des lycées et lycées techniques Loi du 28 juin 1994 Enseignement et intégration scolaire d'enfants handicapés Loi du 3 juin 1994 Régime préparatoire de l'enseignement secondaire technique Loi du 4 septembre 1990 Formation professionnelle et enseignement secondaire technique Loi du 22 juin 1989 Réforme de l'enseignement secondaire Loi du 14 mars 1973 Création d'instituts et de services d'éduc. Différenciée Loi du 16 août 1965 Création de l'enseignement moyen</p>	<p>http://www.legilux.public.lu/leg/a/archives/2009/0020/2009A0200A.html ; http://www.legilux.public.lu/leg/a/archives/2006/0130/2006A2238A.html ; http://www.legilux.public.lu/leg/a/archives/2004/0126/2004A18561.html ; http://www.legilux.public.lu/leg/a/archives/1994/0068/1994A12122.html ; http://www.legilux.public.lu/leg/a/archives/1994/0056/1994A10681.html ; http://www.legilux.public.lu/leg/a/archives/1990/0043/1990A05691.html ; http://www.legilux.public.lu/leg/a/archives/1989/0046/1989A08621.html ; http://www.legilux.public.lu/leg/a/archives/1973/0016/1973A03951.html ; http://www.legilux.public.lu/leg/a/archives/1965/0060/1965A12051.html ;</p>
Higher education	<p>loi du 12 août 2003 Création Université de Luxembourg</p>	<p>http://www.legilux.public.lu/leg/a/archives/2003/0149/index.html ;</p>
Vocational training	<p>loi du 12 mai 2009 Création d'une École de la 2e Chance Loi du 19 décembre 2008 Réforme de la formation professionnelle loi du 31 juillet 2006 Introduction d'un Code du Travail loi du 1 décembre 1992 Développement de la formation professionnelle continue Loi du 4 septembre 1990 Formation professionnelle et enseignement secondaire technique</p>	<p>http://www.legilux.public.lu/leg/a/archives/2009/0105/2009A1550A.html ; http://www.legilux.public.lu/leg/a/archives/2008/0220/ ; http://www.legilux.public.lu/leg/a/archives/2006/0149/ ; http://www.legilux.public.lu/leg/a/archives/1992/0101/1992A30161.html ; http://www.legilux.public.lu/leg/a/archives/1990/0043/1990A05691.html ;</p>
Compulsory social protection	<p>Code du Travail Code de la Sécurité Sociale Statuts de la CNS Loi du 13 mai 2008 Introduction d'un statut unique Loi du 1 juin 1999 Création du droit à un revenu minimum garanti (RMG) Loi du 19 juin 1998 Assurance dépendance Loi du 6 juin 1994 Pensions des fonctionnaires de l'Etat Loi du 27 juillet 1987 Assurance pension Loi du 27 juillet 1978 Assurance maladie Loi du 30 juin 1976 Création fonds de chômage et indemnités de chômage Loi du 4 décembre 1967 Impôt sur le revenu Loi du 19 juin 1925 Code des Assurances Sociales</p>	<p>http://www.legilux.public.lu/leg/textescoordonnes/codes/code_travail/index.html ; http://www.legilux.public.lu/leg/textescoordonnes/codes/code_securite_sociale/index.html ; http://www.legilux.public.lu/leg/a/archives/2009/0152/#2009A2280A ; http://www.legilux.public.lu/leg/a/archives/2008/0060/2008A0790A.html ; http://www.legilux.public.lu/leg/a/archives/1999/0060/1999A13901.html ; http://www.legilux.public.lu/leg/a/archives/1998/0048/1998A07101.html ; http://www.legilux.public.lu/leg/a/archives/1994/0050/1994A09851.html ; http://www.legilux.public.lu/leg/a/archives/1987/0060/1987A11021.html ; http://www.legilux.public.lu/leg/a/archives/1978/0047/1978A10521.html ; http://www.legilux.public.lu/leg/a/archives/1976/0034/1976A05921.html ; http://www.legilux.public.lu/leg/a/archives/1967/0079/1967A12281.html ; http://www.legilux.public.lu/leg/a/archives/1925/0063/1925A0877A.html ;</p>
Complementary social protection	<p>Loi du 8 juin 1999 Régimes de pensions complémentaires</p>	<p>http://www.legilux.public.lu/leg/a/archives/1999/0074/index.html ;</p>
Social housing	<p>Loi du 8 juin 1999 Régimes de pensions complémentaires</p>	<p>http://www.legilux.public.lu/leg/a/archives/2008/0159/2008A2230A.html ; http://www.legilux.public.lu/leg/a/archives/2005/0109/2005A1888A.html ; http://www.legilux.public.lu/leg/a/archives/2004/0141/2004A19921.html ;</p>
Childcare services (0-6 years)	<p>Loi du 21 décembre 2007 Impôts directs et indirects et boni pour enfant Loi du 18 avril 2004 Maisons d'Enfants de l'Etat Loi du 21 novembre 2002 Modification législation - allocations, prestations familial Loi du 8 septembre 1998 Relations Etat - organismes sociaux-familiaux (ASFT) Règlement grand-ducal du 18 février 2009 Chèque-service accueil Règlement-grand-ducal du 20 juillet 2005 Maison relais pour enfants</p>	<p>http://www.legilux.public.lu/leg/a/archives/2007/0234/2007A3949A.html ; http://www.legilux.public.lu/leg/a/archives/2004/0062/2004A09501.html ; http://www.legilux.public.lu/leg/a/archives/2002/0135/ ; http://www.legilux.public.lu/leg/a/archives/1998/0082/1998A16001.html ; http://www.legilux.public.lu/leg/a/archives/2009/0026/2009A0376A.html ; http://www.legilux.public.lu/leg/a/archives/2005/0123/ ;</p>

Care of the disabled	<p>Code de la Sécurité Sociale</p> <p>Loi du 22 juillet 2008</p> <p>Accessibilité des lieux ouverts au public</p> <p>Loi du 28 novembre 2006</p> <p>Mise en œuvre du principe de l'égalité de traitement</p> <p>Loi du 12 septembre 2003</p> <p>Situation de revenu des personnes handicapées</p> <p>Loi du 29 mars 2001</p> <p>Accessibilité des lieux ouverts au public</p> <p>Loi du 8 septembre 1998</p> <p>Relations Etat - organismes sociaux-familiaux (ASFT)</p> <p>Loi du 19 juin 1998</p> <p>Assurance dépendance</p> <p>Loi du 28 juin 1994</p> <p>Enseignement et intégration scolaire d'enfants handicapés</p> <p>Loi du 17 décembre 1925</p> <p>Code des Assurances Sociales</p>	<p>http://www.legilux.public.lu/leg/textescoordonnes/codes/code_securite_sociale/index.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2008/0134/2008A2004A.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2006/0207/2006A3584A.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2003/0144/ ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2001/0043/index.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1998/0082/1998A16001.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1998/0048/1998A07101.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1994/0068/1994A12122.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1925/0063/1925A0877A.html ;</p>
Elderly care	<p>Loi du 22 décembre 2000</p> <p>Centres, foyers et services pour personnes âgées</p> <p>Loi du 23 décembre 1998</p> <p>Centres, foyers et services pour personnes âgées</p> <p>Loi du 8 septembre 1998</p> <p>Relations Etat - organismes sociaux-familiaux (ASFT)</p> <p>Loi du 19 juin 1998</p> <p>Assurance dépendance</p> <p>Loi du 27 juillet 1987</p> <p>Assurance pension</p> <p>Loi du 21 juillet 1978</p> <p>Droits à pension de la femme divorcée</p> <p>Règlement grand-ducal du 10 décembre 2009</p> <p>Agrément pour gestionnaires de services pour pers. âgées</p> <p>Règlement grand-ducal du 8 décembre 1999</p> <p>Agrément pour gestionnaires de services pour personnes âgées</p>	<p>http://www.legilux.public.lu/leg/a/archives/2000/0139/2000A30171.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1998/0122/1998A33661.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1998/0082/1998A16001.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1998/0048/1998A07101.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1987/0060/1987A11021.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1978/0042/1978A09971.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2009/0246/2009A4378A.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1999/0145/1999A26221.html ;</p>
Financial services (1)	<p>Loi du 10 novembre 2009</p> <p>Services de paiement</p> <p>Loi du 13 juillet 2007</p> <p>Marchés d'instruments financiers</p> <p>Loi du 18 décembre 2006</p> <p>Commercialisation à distance de services financiers</p> <p>Loi du 12 novembre 2004</p> <p>Lutte contre le blanchiment et le financement du terrorisme</p> <p>Loi du 5 juillet 2004</p> <p>Commerce électronique</p> <p>Loi du 1er août 2001</p> <p>Basculement en euro le 1er janvier 2002</p> <p>Loi du 15 décembre 2000</p> <p>Services postaux</p> <p>Loi du 14 août 2000</p> <p>Commerce électronique</p> <p>Loi du 23 décembre 1998</p> <p>Commission de surveillance du secteur financier</p> <p>Loi du 23 décembre 1998</p> <p>Statut monétaire et Banque centrale du Luxembourg</p> <p>Loi du 5 avril 1993</p> <p>Secteur financier</p> <p>Loi du 6 décembre 1991</p> <p>Secteur des assurances</p> <p>Loi du 24 mars 1989</p> <p>Caisse d'Épargne et Banque de l'Etat, Luxembourg</p>	<p>http://www.legilux.public.lu/leg/a/archives/2009/0215/ ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2007/0116/2007A2076A.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2006/0223/2006A3802A.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2004/0183/2004A27661.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2004/0125/ ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2001/0117/2001A24401.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2000/0135/2000A29631.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2000/0096/2000A21761.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1998/0112/1998A29851.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1998/0112/1998A29801.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1993/0027/1993A04621.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1991/0084/1991A17621.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1989/0016/1989A01841.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2007/0116/2007A2134A.html ;</p>
Cultural services (1)	<p>Loi du 25 juin 2004</p> <p>Réorganisation des instituts culturels de l'Etat</p> <p>Loi du 26 mai 2004</p> <p>Statut de l'artiste professionnel indépendant</p> <p>Loi du 25 avril 2003</p> <p>Fondation Henri Pensis (Orchestre philharmonique)/ Biens culturels / Abbaye de Neumünster</p> <p>Loi du 21 novembre 2002</p> <p>Etablissement public 'Salle de concerts G.-Duchesse Joséphine-Charlotte'</p> <p>Loi du 30 juin 1999</p> <p>Statut de l'artiste professionnel indépendant</p> <p>Loi du 28 avril 1998</p> <p>Fondation 'Musée d'Art Moderne Grand-Duc Jean'</p> <p>Loi du 27 janvier 1983</p> <p>Subventions pour gîtes ruraux et patrimoine culturel</p> <p>Loi du 5 décembre 1958</p> <p>Organisation de la bibliothèque nationale</p> <p>Loi du 22 mai 1902</p> <p>Création d'un conservatoire de musique à Luxembourg</p>	<p>http://www.legilux.public.lu/leg/a/archives/2004/0120/2004A17981.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2004/0090/2004A15361.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2003/0064/2003A10711.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2002/0128/ ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1999/0110/1999A20301.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1998/0035/ ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1983/0004/1983A00441.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1958/0064/1958A15511.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/1902/0033/1902A0441A.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2009/0190/2009A3104B.html ;</p> <p>http://www.legilux.public.lu/leg/a/archives/2000/0022/2000A06121.html ;</p>

PUBLIC SERVICES IN LATVIA

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

After the collapse of the USSR in the 1990-1991, Latvia together with Lithuania and Estonia regained their independence. The beginning of the 1990s was a period of sharp transformation in political, economic and administrative spheres. Economic changes included transformation of the economic regime from planned economy to market economy and liberalisation of the market. At the same time, administrative transformation resulted in a new division of functions between central and local level.

Latvia is a unitary state; it has organised in two levels of local governments: 26 districts (rajons) and 118 municipalities. Since 1998, due to territorial reform the number of local communities has varied constantly. The country has no deconcentrated level of central administration.

The concept of public service has not been absent from the legal order of the three Baltic states which were quite significantly influenced by German law.⁹⁵ In Latvia it was reintroduced into the legal vocabulary from the 1990s together with a relative conceptualisation of activities of general interest. The common national concepts overlap more and more areas but there are no clear specifications of which are currently the SGI activities in all sectors. “Public services” (“publiskie pakalpojumi”) are explained as “all services delivered by public administration and local self government institutions”⁹⁶. However, a strict definition of public services does not exist and no unified notion or concept of what exactly are services of general interest (in Latvian “sabiedriskie pakalpojumi” or “vispārējās nozīmes pakalpojumi”). According to the Law on Public Administration Structure, every service delivered by public administration (national, local) is a service of general interest. The Law on Public Administration Structure states that the Republic of Latvia is responsible for actions and services delivered by public administration in general.

In the Draft Law on Electronic Services, services of general interest are defined as material and non-material goods to be delivered by public organisations as a result of fulfilment of the functions entrusted.⁹⁷

The literal translation of SGEI would be “vispārējās nozīmes ekonomiskie pakalpojumi”. However, this translation is not used in Latvian language. These services are services regulated by the Public Utilities Commission. In the Law on Regulators of Public Utilities, these types of service are defined as “regulated public utilities” (in Latvia, the English concept of “public utilities” seems to correspond better to the Community term of SGEI; it is translated in Latvian as “regulētie sabiedriskie pakalpojumi” – regulated public services).

(95) M. Mangenot, op.cit., p. 86

(96) Cabinet of Ministers - <http://www.mk.gov.lv/lv/esstrukturfondi/es-fondu-vardnica>

(97) Draft Law on Electronic Services, http://www.eps.gov.lv/files/juridiskabaze/elektronisko_pakalpojumu_likums.pdf

The term used for the translation into Latvian is that of “public service”⁹⁸.

The national term for “social services” is, in literal translation, “sociālie pakalpojumi”. Social services are generally defined by the Law “On Social Services and Social Assistance” (approved on 31.10.2002) as services of social care, social rehabilitation, professional rehabilitation and social work. The Community concept social services of general interest, in literal translation “vispārējās nozīmes sociālie pakalpojumi” is not used in practice. The same for “non economic services of general interest”, in Latvian literal translation “vispārējās nozīmes ne-ekonomiskie sabiedriskie pakalpojumi”.

Latvia is one of the few Central and East European countries where there is transversal legislation even if only a few sectors of general interest.

Terms in TEU and TFEU	Latvian terms in TEU and TFEU ^{table09}
Services of general interest – SGIs	sabiedriskie pakalpojumi
Services of general economic interest – SGEIs	sabiedriskie pakalpojumi
Non-economic services of general interest – NESGIs	Ar ekonomiku nesaist tie sabiedriskie pakalpojumi
Public service	Sabiedriskie pakalpojumi

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs’ organisation?

Central	Regional	Local
Marketing of electricity	Regional and local transport of passengers	Water
Compulsory social protection		Waste water
Postal services		Heating
Production of electricity		Primary and secondary education
Electricity networks (transport-distribution)		Social housing
Railway transport of passengers		Care of the disabled
Freight rail transport		Elderly care
Air transport		Cultural services
Hospital health services		Regional and local transport of passengers
Broadcasting		
Telecommunications		
Inland water transport		
Maritime transport		
Higher education		
Complementary social protection		
Ambulatory health services		
Gas transport-distribution		
Marketing of gas		
Vocational training		
Primary and secondary education		
Social housing		
Care of the disabled		
Elderly care		
Cultural services		

(98) J.-C. Boual et al., op.cit., « La Lettonie », p. 89

B. Sectoral organisation and trends

Status of the operators

Public monopoly	National public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	Mixed providers (majority of private shares)	Private providers	Private monopoly
Marketing of electricity Compulsory social protection	Postal services Production of electricity Electricity networks (transport-distribution) Railway transports of passengers Freight rail transport Air transport Water Waste water Heating Broadcasting Hospital health services Ambulatory health services Primary and secondary education Higher education Financial services Cultural services		Water Waste water Heating Primary and secondary education Vocational training Social housing Childcare services (0-6 years) Care of the disabled Elderly care Cultural services			Telecommunications Production of electricity Railway transport of passengers Freight rail transport Regional and local transport of passengers Inland water transport Maritime transport Broadcasting Hospital health services Ambulatory health services Higher education Vocational training Complementary social protection	Gas transport-distribution Marketing of gas

SGEI markets

Liberalised market Public operators dominant	Public monopoly	No market	Liberalised market and competition	Liberalised market Private operators dominant	Private monopoly
Postal services Electricity Railway transport of passengers Freight rail transport Higher education Hospital health services Vocational training Childcare services (0-6 years)	Postal services Electricity networks Water (local monopolies) Wastewater (local monopolies) Heating (local monopolies) Primary and secondary education Care of disabled Elderly care Financial services Cultural services	National public administration Regional and local public administration Compulsory social protection Social housing	Telecommunications Post services (express) Gas transport Regional and local transport of passengers Air transport Inland water transport Maritime transport Broadcasting Ambulatory health services Higher education Complementary social protection Ambulatory health services	Transport-distribution of gas	-

Main financing methods of SGIs

Fees/payment by users/clients	Public grants	Insurance funds	Incomes from the activity	Social tariffs/prices
Telecommunications Postal services Production of electricity Transport – distribution of electricity Marketing of electricity Gas transport-distribution Marketing of gas Railway transport of passengers Freight rail transport Regional and local transport of passengers Air transport Inland water transport Maritime transport Water Waste water Heating Higher education Complementary social protection Financial services Cultural services	Railway transport of passengers Regional and local transport of passengers Broadcasting Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Compulsory state budget Social housing Childcare services (0-6 years) Care of disabled Elderly care Cultural services Financial services	Complementary social protection	Broadcasting Hospital health services Ambulatory health services Higher education Vocational training Childcare services (0-6 years)	Railway transport of passengers Regional and local transport of passengers Water Waste water Heating

Authorities responsible for setting pricing and/or tariff policies

Parliament	Central government	Local government	Regulatory agencies	Health insurance institute of Slovenia
Compulsory social protection	Gas Railway transport of passengers Regional and local transport of passengers Air transport Inland water transport Maritime transport Heating Primary and secondary education Higher education Vocational training Complementary social protection Social housing	Water Waste water Heating Primary and secondary education Vocational training Complementary social protection Social housing	Telecommunications Postal services Electricity Gas Railway transport of passengers Freight rail transport heating	Hospital health services Ambulatory health services

II/ Approaches

A. The model of public administration and national public companies

Since 1992, the public sector continues to diminish. The Law on competition and restriction of monopolies was passed in 1993. To a certain extent, the crisis of the 'old' state enterprise was counterbalanced by the rapidly growing private sector.⁹⁹

State enterprises for which no privatisation is envisaged:

01. Postal services - State stock company "Latvijas Pasts" (100% of stocks belongs to the country)
02. Electricity - State owned public limited company "Latvenergo group"; after the liberalisation in the electricity sector subsidiary companies of "Latvenergo group" were created
03. Railway transport of passengers – State stock company "Pasazieru vilciens", subsidiary company of state stock company "Latvijas Dzelzscels";
04. Freight rail transport – daughter company of state stock company "Latvijas Dzelzceļš" (10% of all freight is transported by two private companies)
05. Financial services – Latvian Guarantee Agency and Mortgage Bank
06. The same applies to the public companies providing services in the sectors of broadcasting, water, waste water, heating, hospital and ambulatory health services, primary, secondary and higher education, vocational training.

(99) In 1994, the government was committed to privatise 75 per cent of state property by the end of 1996. In Latvia in the mid-1990s, the private sector accounted for roughly 10 per cent of GDP, in mid-2001 the figure was 70 per cent.

B. “All Public”

As concerns the privatisation of utilities and large transport enterprises, land and housing, by June 1998 around 50 per cent of the assets in former state enterprises had been sold, including stakes in Ventspils Nafta oil terminal (56%) and Latvian Gas (58%). Of more than a thousand sales contracts concluded by the Latvian privatisation agency between 1994 and 1998, controlling stakes (over 50 per cent) were sold in only 12% of the enterprises.¹⁰⁰

Privatisation of large state owned companies was carried out alongside the general de-monopolisation of the sector:

01. shipping - Latvijas kuģniecība (Latvian Shipping Company Ventspils Nafta),
02. fixed telecommunications network, Lattelekom.

At the end of 2000, the share of state-owned capital in fixed assets of banks was 3.7%. In 2000, a more substantial share of state capital was found only in two banks – the Mortgage and Land Bank of Latvia – 100% and Latvijas Krājbanka (Savings Bank of Latvia) – 41%. The privatisation of Latvijas Krājbanka was completed in 2003.

In the context of the current crisis, the Economic Stabilisation and Growth Revival Programme of Latvia¹⁰¹ includes as a main direction for action by the government in the economy of Latvia (in both, the public sector – public administration and services, and the private sector), a decrease in the level of wages to align it with productivity trends and the number of those employed in the public sector. The government will encourage understanding and agreement with the private sector to promote the moderation of wages in all sectors; fostering the efficiency of the public administration, reforms of education, health and other public services sectors decreasing and restructuring the human resources employed in these sectors and optimising the activities and the number of ministries and their subordinated agencies.¹⁰²

C. Local autonomy

There is no explicit recognition of the principle of local autonomy in the Constitution of Latvia but indirect references to territorial communities.¹⁰³ In 2004, the Constitution was amended with a new part on human rights. Article 101 states “Every citizen of Latvia has the right, as provided for by law, to participate in the

(100) Janis Naglis, “Privatization has been completed in Latvia”, in Latvian Privatisation Agency, Privatisation newsletter, no. 12, http://www.lpa.bkc.lv/lpa/lpa.php?ID=11.1&file=Newsletter12EN.htm#B003__

(101) Adopted by the Saeima on December 12, 2008 and updated on June 16, 2009

(102) Ministry of Economics, 30th Report on Economic Development of Latvia, http://www.em.gov.lv/images/modules/items/EM_Report_June_2009_PDF.pdf

(103) Article 25 “The Saeima shall establish committees and determine the number of members and their duties. Committees have the right to require of individual Ministers or local government authorities information and explanations necessary for the work of the committees, and the right to invite to their sittings responsible representatives from the relevant ministries or local government authorities to furnish explanations. Committees may also carry on their work between sessions of the Saeima.”

Proposals are being prepared on amending the Satversme to include an additional chapter dealing with the functions and the role of local government. Edvins Vanags and Inga Vilka, “Local democracy in the Baltic countries: a new beginning?”, in Michal Illner, Harald Baldersheim, Hellmut Wollmann, Local democracy in post-communist Europe, VS Verlag

work of the State and of local government, and to hold a position in the civil service. Local authorities shall be elected by Latvian citizens and citizens of the European Union who permanently reside in Latvia. Every citizen of the European Union who permanently resides in Latvia has the right, as provided by law, to participate in the work of local authorities.”

The competencies of local authorities are listed by the law of 19 May 1994 on Local Government and many other laws regulating specific activities such as privatization, entrepreneurship, social assistance, and education, etc. The law of 1994 was the first law in the history of Latvia that applied to all types of self-government-rural municipalities, town/city municipalities and districts. They have both delegated competences¹⁰⁴ and autonomous powers. Some of their autonomous competences are mandatory, others are optional.

Section 88 (commercial activities of public persons) of the State Administration Structure Law of 2002 states that public persons may perform commercial activities if the market is not able to ensure the implementation of the public interest in the relevant field, in a sector in which a natural monopoly exists, thus ensuring availability of the relevant service, in a strategically important sector, for the development of the infrastructure for which large capital investments are necessary, or in a sector in which, in conformity with the public interest, it is necessary to ensure higher quality standards¹⁰⁵.

There are different forms of local service delivery: through an internal municipal body (*régie*/in house), by local institutions and enterprises (the local public companies operate primary in the areas of water¹⁰⁶, sanitation, waste, heating¹⁰⁷), to cooperate with public and private companies (the contractual delegation of public services to a private company or a local public company or PPP projects at local level), to privatise local government property in order to perform municipal services.

Also, the local services can be delivered by cooperation with other local authorities. Cooperation is even required in some fields, or when a municipality does not have the necessary infrastructure. In this case the municipality must enter into an agreement with a local community that has the infrastructure. This happens especially in sectors such as social services and education. The intermunicipal cooperation may take the form of in-house service provision, whose budget will be included in that of an associate municipality, an association principally financed by membership fees and by invoicing services, or a local public company. The main sectors involved in intermunicipal cooperation are refuse collection, socio-economic development and tourism.¹⁰⁸

(104) Part 5 on the delegation of specific administrative tasks of the State Administration Structure Law of 2002 sets up the basic provision for delegation of tasks. Section 41 of the respective law states: “A public person may delegate administrative tasks, the performance of which is in the competence of such public person or its institution. When delegating administrative tasks, the relevant public person shall be responsible for the performance of the function as a whole”. It is not allowed to delegate to public institutions: « 1) planning and approval of the policy and strategic development of the sector; 2) co-ordination of the activities of the sector; 3) supervision of institutions and administrative officials; and 4) approval of the budget of public persons, distribution of financial resources at the level of programmes and sub-programmes, and control of financial resources. It is not allowed to delegate the following functions to individuals: 1) issue of administrative acts, except in a case, when such is provided by law; 2) tasks related to the performance of the functions of the external and internal security of the State, except when such is provided for by law or Cabinet regulations; and 3) other tasks, which by their nature may be performed only by institutions » The delegation can be ensured either by the law or regulation of the Cabinet of Ministers, or by the contract. However, delegation is not widely used in Latvia since there is no defined procedure and criteria for delegation.

(105) <http://www.mk.gov.lv/en/mk/darbibu-reglamentejosie-dokumenti/administration-structure-law/>

(106) In the sectors of water and waste water, the services are operated by municipality owned companies (e.g., “R gas dens” in Riga, the largest municipality in the country).

(107) Heating - the largest heating joint stock “R gas Siltums” belongs to Riga municipality (49%), the Republic of Latvia (48,995%), private company “Dalkia City Heat” (2%), state owned company “Latvenergo” (0,005%). In other municipalities, heating is operated by the municipality-owned companies.

(108) Dominique Hoorens (dir.), *Les collectivités territoriales dans l’Union européenne. Organisation, compétence et finances*, Dexia Editions, 2008, p. 452, 453

D. Delegated management and externalisation

The contractual delegation of public services to a private company or a local public company is governed by the Law on concessions in force since 2000.

There are a few cases of delegation to NGOs – Latvian Association of Doctors, Latvian Association of Nurses, Latvian Association of Veterinarians, Latvian Association of Certified Auditors, Latvian Chamber of Crafts.

E. “New Public Management”

Since the mid-90ies, Latvia has taking ideas from traditional liberal countries – UK, USA and Australia, that are well known for the New Public Management ideas. As a result of policy transfer, Latvian public administration was supplemented with agencies, performance contracts, performance evaluation, internal audit, delegation of tasks.

On January 27, 2009, the Cabinet of Ministers approved the instruction “Procedures for Functional Audit Planning and Performance in Public Administration Institutions”. The goal of the functional audit in public administration institutions is to ensure sound decisions about decreases in number of employees in public administration institutions and their expenditure, thus avoiding mechanistic and mathematical expenditure cuts. The audit tasks are to evaluate the usefulness of functions of the institutions, their rationality and efficiency, as well as to prevent overlapping and duplication of functions; and to optimise structure and number of employees in public administration institutions thus increasing their productivity. The goal of the government is to reorganise the government and to establish efficient and economic public administration through revision of institutional functions handing over functions of separate institutions to ministries and merging several institutions.¹⁰⁹

In 2004, a new law on public procurement was enacted in Latvia with a provision on PPP and the adoption of specific legislation is in progress. PPP projects could also be realised under the concession regime (law of 2000). The first PPP projects at local level concern mainly the areas of housing, education, heating, street lighting, etc.). At national level, practical projects were planned for the transport sector, and energy infrastructure. A public policy framework on PPP (“Promotion Guidelines of Latvian Public Private Partnership”) and an action plan (“Action Plan for Implementation of Promotion Guidelines of Latvian Public Private Partnership for 2006–2009”) were adopted in 2005. The public procurement law adopted in 2006 sets the procedures for DBFO type PPP transactions¹¹⁰. The first Latvian law on PPP¹¹¹ came into effect recently, on 1st October 2009, more than one year after its adoption, and repeals the previous law on concessions¹¹². In 2008 there were 18 PPP concluded agreements (the first was concluded in 2001), 16 in the transport sector

(109) Ministry of Finance of the Republic of Latvia, Informative report on changes to wages and salaries and employment in the state, as well as optimisation measures in the public sector, http://www.fm.gov.lv/?eng/informative_reports_on_changes_in_wages_and_salaries/2042

(110) See the legislation on http://www.ppp.gov.lv/en/view_1277.html

(111) See the text on http://www.ppp.gov.lv/fetch_5917.html

(112) Latvijas Republikas Saeimas un Ministru Kabineta Zi ot js, 2000, No. 4; 2003, No. 2

(public transport service concession), 7 for communal services (waste water treatment service concession), 1 in education (art school renovation and operation), health care, natural resources, IT and tourism¹¹³.

In general, there is no common and tested methodology for the **evaluation** of SGI. All services can be divided into several groups from the perspective of their evaluation:

01. Regulated services. These are services where the Public Utilities Commission approves tariffs. Before approval the Public Utilities Commission evaluates prices/tariffs and quality/accessibility of the service.

02. Other services. There are no set standards or indicators to be achieved. If some evaluation is to be done, it is done on a voluntary basis by or on behalf of the respective ministry of the service delivery organisation.

In Latvia, any kind of policy evaluation as well as service evaluation is done rarely. Formally, all public organisations should define their performance indicators. But in practice these indicators do not show progress in the service delivery. Indicators mostly concentrate upon measurable outputs (e.g. number of meetings held), not on outcomes related to the services of general interest or outcome of policy actions.

F. Regulatory Agencies

Reflecting its growing economic importance, the service sector has been subject to considerable regulatory changes as state intervention in this traditionally highly regulated sector has diminished and competitive pressures have intensified.¹¹⁴

In accordance with the Law on Regulators of Public Utilities, a two-level regulation system of public utilities is established in Latvia at the state and local government level. The Public Utilities Commission regulates the public utilities at the state level, while the local government regulators regulate the sector of services in the respective municipal territories supervising heat supply (except combined heat and power), water supply and sewage, municipal waste management (with the exception of municipal waste recycling) sectors. Since the regulator functions independently, the Commission does not supervise the local government regulators and is not authorised to influence their operations. The Public Utilities Commission is a multi-sector regulator performing regulatory functions in the sectors of energy, electronic communications, postal services and railway transport. In analysing the Baltic regulatory agencies Latvia established a unified agency responsible for energy, electronic communications, railways, postal services, water and municipal waste – Public Utilities Commission, under the supervision of the Ministry of Economy¹¹⁵.

On November 20, 2007 a delegation agreement on regulation of public utilities in the Riga City administrative territory was been concluded, and since January 1, 2008 the Commission has been regulating the provision of public services in the municipal sectors (heat supply, water supply and sewage, waste management) in

(113) http://www.ppp.gov.lv/fetch_1849.html

(114) OECD, Promoting trade in services. Experience of the Baltic States, 2004, p. 32

(115) Law on regulators of public services in force since 1 June 2001 (Par sabiedrisko pakalpojumu regulatoriem <http://www.sprk.gov.lv/index.php?id=28&sadala=41>) law prepared with the assistance of experts from the World Bank (J.-C. Boual et al., p. 89).

the administrative territory of Riga City. In March, April and May 2009, the Saeima reviewed Amendments to the Law on Regulators of Public Utilities prescribing the establishment of a joint regulator adding municipal regulators to the Commission and creating regional structural units.¹¹⁶

The competition authority in Latvia is the Competition Council (<http://www.kp.gov.lv>).

III/ Social dialogue

In Latvia¹¹⁷, the social dialogue system was established at the beginning of the 1990s. The system is based on the principle of voluntary participation of its actors. At the beginning, the main actors were trade unions and employers; thus, social dialogue was a bipartite process like it was under Soviet rule (the Labour Code applicable during Soviet times was valid until 2002 when the new Labour Law was adopted). The tripartite system of social dialogue was established in 1993. In this case interests are balanced and consultations held among government (the Cabinet of Ministers, and ministries), employers's organisations and trade unions by forming the National Tripartite Consultation Council at the national level. In the Council, the Employers' Confederation of Latvia represents the employers' organisations and the Free Trade Union Confederation represents trade unions, which, at the same time, are involved in the bipartite social dialogue.

The largest trade unions are in state institutions covering also SGI sectors such as education and healthcare, the energy company Latvenergo, Latvian Railways (Latvijas Dzelzce š) and Latvia Post (Latvijas Pasts). In sectors such as inland water transport and the personal services sector, trade unions do not exist. Trade unions were recently established in the banking sector and a collective agreement was concluded. There is only one single politically independent union confederation and a single national-level employer organisation. Typically, trade unions have a sector-oriented structure in Latvia, while many sectors are not represented by an employer organisation. In some sectors of the economy, the largest companies act as social partners, while only in a small number of sectors – such as railways– are employers represented by an active organisation.

The most important level of collective bargaining for the setting of pay and working time is company-level bargaining. Sector-level bargaining – so-called 'general agreements' – occurs in some sectors such as railways, and regional agreements are concluded with local authorities and other regional organisations in other sectors. According to the Labour Law, Article 18 (4) – sector collective agreement (general agreement) is extended to all employees in the sector or branch if it covers 50% of total employment in the sector or branch.

Industrial relations **in the central administration** are weak, because major issues are regulated by law.

(116) The amendments to the law on public utilities regulators intended to simplify and streamline the regulatory process. The two-level regulatory system – national and municipal (until now, in addition to the state Public Utilities Commission, many municipal councils also regulated public utilities in their regions) – will be optimized into one unified body, for ensuring fair treatment of all regional providers and fix uniform fees in the regulation of public utilities. The restructuring is planned to be completed in 2010. It is anticipated that the new, single regulatory body will allow for more efficient coordination of policy and foster tariff reductions. In the course of the reform, 16 municipal regulators will be eliminated and 4 regional units will be established instead. The Latvian Institute Fact Sheet no. 36/May 14, 2009, http://www.rapl.gov.lv/uploads/filedir/2009.05.14._LI_FS_Nr.36.pdf

(117) References: studies on representativeness of the European social partner organisations in Latvia (<http://www.eurofound.europa.eu/eiro/>)

Some categories of public sector employees enjoy special status compared with private sector employees: elected persons, officials (who are not civil servants), civil servants¹¹⁸, workers of special services¹¹⁹. Public sector workers have rights of association; collective bargaining; the right to strike, except civil servants and armed special services (like police). However, there is not much room for negotiation, since all main issues concerning employment in the central government institutions are prescribed by laws and regulations. In regional and local administration no employees have specific status. The consultations and representation of employers' or employees' interests are underdeveloped at the **regional and local levels**. This is due to several factors: administrative territorial reform and functional changes at the regional and local level in 2008 and 2009; very limited number of employer organization in the regions; limited number of trade union organisations in the regions and sectors of industry.

Three **sectoral trade unions** represent **healthcare** workers¹²⁰. On the employer side, none of the professional or public organisations is a true employer organisation¹²¹; nevertheless, one of them represents employers. Taking into account sector-level activities, the overall rate of collective bargaining is 100%. **At company level**, the coverage is higher in the state and local government institutions. In private institutions, trade unions are not established.

In Latvia's **railway sector** the whole system of collective agreements is based on the **sectoral-level general agreement** (a multi-employer accord), which is concluded between the employer organisation – the Latvian Railway Sector Employers' Organisation (Latvijas Dzelzceļa nozares darba devēju organizācija, LDzDDO) – and the sectoral-level trade union – the Latvian Rail and Transport Industry Trade Union (Latvijas Dzelzceļnieku un satiksmes nozares arodbiedrība, LDzSA). LDzSA concludes **agreements** also **at company level** (the state-owned railway company LDZ employs more than 80% of all employees working in the railway sector; it had a good tradition of trade union activity, which was maintained during the transformation and restructuring processes.).

The post and courier services reflect the characteristics of former state-owned sectors after liberalisation in Latvia. State-run companies usually have strong trade unions, while emerging private companies do not have unions. The sector is currently composed of the state-owned company JSC Latvijas Pasts (which is the largest company in the sector) and about 30 private companies. Only Latvijas Pasts is unionised and involved in the collective bargaining process¹²². The union concludes **company-level agreements** with the former monopoly provider in the **telecommunications** sector (Lattelecom) and monopolies in other sectors such as post (Latvijas Pasts). No information is available about unionisation in private enterprises. Employer organisations do not exist in the sector.

The gas sector in Latvia is represented by a single employer, which has signed a collective agreement with the sector level trade union, considered a **company level collective agreement**. Employer associations do

(118) There is an ordinary civil service and a specialised civil service. The specialised civil service includes the diplomatic service, the State Revenue service (tax administration) and the "State Bureau of Court Expertise".

(119) Police, firemen, and border-guards, judiciary, prosecutors, other workers in courts and public prosecutor's office, etc.

(120) Overall, four trade unions represent the employees in the health sector, three of which also represent workers in hospital activities.

(121) The healthcare sector is represented by more than 20 associations of medical professions and these are structured in the sectoral-level professional and other organisations.

(122) In fact, the Union of Communication Employees covers not only the Latvian post, but also the Lattelecom - state owned company working in the telecommunication sector. Lattelecom also has a collective agreement. The collective group covers all enterprises belonging to the Lattelecom group.

not exist in the gas sector.

Latvia's **aviation industry** is composed of two large civil aviation companies and several small flight and airport operators, as well as airport service companies. Two state agencies fulfilling state administration functions are also included in the trade union domain. At sectoral level, no general agreement has been concluded. Also, multi-employer collective agreements are not concluded in the civil aviation industry. **All agreements are single-employer agreements.** Collective agreements are concluded in companies with trade unions, and these companies and relevant trade unions are mostly small.

Sources of national law on SGIs

Sector	Legal references	Web sites
Telecommunications	Electronic communication law Law on regulators of public utilities	www.sam.gov.lv www.likumi.lv www.ttc.gov.lv www.sprk.lv
Postal services	Postal law Law on regulators of public utilities	www.sam.gov.lv www.sprk.lv www.likumi.lv www.pasts.lv
Production of electricity	Electricity Market Law Energy law Electricity tax law Law on regulators of public utilities	www.latvenergo.lv www.likumi.lv www.ttc.gov.lv www.sprk.lv
Electricity networks (transport-distribution)	Electricity Market Law Energy law Electricity tax law Law on regulators of public utilities	www.latvenergo.lv www.likumi.lv www.ttc.gov.lv www.sprk.lv
Marketing of electricity	Electricity Market Law Energy law Electricity tax law Law on regulators of public utilities	www.latvenergo.lv www.likumi.lv www.ttc.gov.lv www.sprk.lv
Gas transport-distribution	Energy law Law on regulators of public utilities	www.likumi.lv www.ttc.gov.lv www.sprk.lv www.lg.lv
Marketing of gas	Energy law Law on regulators of public utilities	www.likumi.lv www.ttc.gov.lv www.sprk.lv www.lg.lv
Railway transports of passengers	Railway Law Law on regulators of public utilities	www.likumi.lv www.ttc.gov.lv www.sam.gov.lv www.sprk.lv www.ldz.lv
Freight rail transport	Railway Law Law on regulators of public utilities	www.likumi.lv www.ttc.gov.lv www.sam.gov.lv www.sprk.lv www.ldz.lv
Regional and local transport of passengers	Law on local self-governments Law on public transport services	www.likumi.lv www.ttc.gov.lv www.rapl.m.gov.lv
Air transport	Law on aviation	www.likumi.lv www.ttc.gov.lv www.lgs.lv www.sam.gov.lv
Inland water transport	Road Traffic Law	www.csdd.lv www.likumi.lv
Maritime transport	Maritime Administration and Marine Safety Law Law on ports	www.likumi.lv www.ttc.gov.lv www.jurasadministracija.lv www.sam.gov.lv
Water	Water management law Law on regulators of public utilities Law on local self-governments	www.likumi.lv www.ttc.gov.lv www.vidm.gov.lv www.sprk.lv

Sector	Legal references	Web sites
Waste water	Law on regulators of public utilities Law on local self-governments	www.likumi.lv www.ttc.gov.lv www.vidm.gov.lv www.sprk.lv
Heating	Law on regulators of public utilities Law on local self-governments	www.likumi.lv www.ttc.gov.lv www.vidm.gov.lv www.sprk.lv
Broadcasting	Radio and TV law Copyright law	www.likumi.lv www.ttc.gov.lv www.nrtp.lv
National public administration	Law on public administration structure Law on civil service Labour law	www.mk.gov.lv www.likumi.lv www.ttc.gov.lv
Regional or local public administration	Law on administrative territorial reform Law on regional development Law on local self-governments Labour law	www.likumi.lv www.ttc.gov.lv www.rapl.m.gov.lv
Hospital health services	Medical Treatment Law Epidemiological Safety law Pharmaceutical law	www.vm.gov.lv www.likumi.lv www.ttc.gov.lv
Ambulatory health services	Medical Treatment Law Epidemiological Safety law Pharmaceutical law Law on medical practice Law on legal circulation of narcotic, psychotropic substances and medicaments.	www.vm.gov.lv www.likumi.lv www.ttc.gov.lv
Primary and secondary education	Education law Law on local self-governments Law on general education	www.likumi.lv www.ttc.gov.lv www.izm.gov.lv
Higher education	Education law Law on institutions on higher education Law on scientific activity	www.likumi.lv www.ttc.gov.lv www.izm.gov.lv
Vocational training	Vocational education law	www.ttc.gov.lv www.izm.gov.lv www.izmpic.gov.lv
Compulsory social protection	Law on social security Law on social services and social assistance	www.lm.gov.lv www.likumi.lv www.ttc.gov.lv www.spf.lv
Complementary social protection	Law on insurance companies and supervision thereof Law on private pension funds Law on social security Law on social services and social assistance Labour law	www.fdk.lv www.likumi.lv www.ttc.gov.lv
Social housing	Law on social security Law on social services and social assistance	www.lm.gov.lv www.likumi.lv www.ttc.gov.lv www.spf.lv
Childcare services (0-6 years)	Protection of the Rights of the Child Law Law on social services and social assistance Law on general education	www.lm.gov.lv www.likumi.lv www.ttc.gov.lv www.izm.gov.lv
Care of the disabled	Law on social services and social assistance Law on social security	www.lm.gov.lv www.likumi.lv www.ttc.gov.lv www.spf.lv
Elderly care	Law on social services and social assistance Law on social security	www.lm.gov.lv www.likumi.lv www.ttc.gov.lv www.spf.lv
Financial services (1)	Credit Institution Law	www.lga.lv www.hipo.lv www.ttc.gov.lv
Cultural services (1)	Law on libraries; Law on copyrights; Law on cultural institution; Law on libraries; Law "On Latvian national library"; Law on archives; Law on financing building project of Latvian national library; Law on museums Law on Latvian national operaState Culture Capital Foundation law	www.km.gov.lv www.likumi.lv www.ttc.gov.lv

PUBLIC SERVICES IN MALTA

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

According to the Constitution of 21 September 1964, Malta is a unitary state, composed of seven islands of which only three are populated (Malta, Gozo and Comino). The country has one level of local government established in 1993 by the Local Councils Act n° XV of 30 June 1993, containing 68 local councils (kunilli lokali) of which 11 are considered towns (citta), the others having the status of municipalities¹²³. Since 1994, the local councils have been grouped in three administrative regions without clear administrative or executive functions.

The term « public service » is contained in the Constitution of 1964 but rather refers to the organic aspect of the notion, the public administration authorities, and has not generated a national specific conceptualisation of public services.

Some of the Community concepts are sometimes used (“Servizzi ta’ interest generali”=Services of general interest and “Servizzi ta’ interest generali ekonomiku”=Services of general economic interest), but they are not included in the legislation. The Community notion “Non-economic services of general interest” is not used in Malta and no other similar notion exists. But the term “Servizzi soċjali” (translated as – Social services) is used widely, can also be found in national law and is considered as similar to the Community term “Social services of general interest”.

Terms in TEU and TFEU	Maltese terms in TEU and TFEU ^{table10}
Services of general interest – SGIs	Servizzi ta’ interest ġenerali
Services of general economic interest – SGEIs	Servizzi ta’ interest ekonomiku ġenerali
Non-economic services of general interest – NESGIs	Servizzi non-ekonomiċi ta’ interest ġenerali
Public service	Servizz pubbliku

(123) <http://www.lca.org.mt/userfiles/Local%20Councils%20Act.pdf>

B. Sectoral organisation and trends

Status of the operators

National public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
Telecommunications Air transport Maritime transport Broadcasting Hospital health services Ambulatory health services Higher education Vocational training Social housing		Primary and secondary education Childcare services (0-6 years) Care of the disabled Elderly care		Cultural services		Telecommunications Postal services Gas transport-distribution Marketing of gas Regional and local transport of passengers Air transport Maritime transport Broadcasting Hospital health services Primary and secondary education Higher education Complementary social protection Childcare services (0-6 years) Care of the disabled Elderly care Cultural services

SGEI markets

Liberalised market and competition	Liberalised market Public operators dominant	Liberalised market Private operators dominant	Public monopoly	Private monopoly	No market
Telecommunications Regional and local transport of passengers Air transport Broadcasting	Hospital health services Ambulatory health services Vocational training Childcare services (0-6 years) Elderly care Primary and secondary education Higher education	Transport-distribution, marketing of gas Complementary social protection Care of the disabled Cultural services	Production, transport-distribution and marketing of electricity Gas transport-distribution Marketing of gas Maritime transport Water Compulsory social protection Social housing Waste water	Postal services (for some services)	

Main financing methods of SGIs

Fees/payment by users/clients	Government subsidies	Insurance funds	Incomes from the activity	Social tariffs/prices
Telecommunications Postal services Electricity Gas transport-distribution Regional and local transport of passengers Air transport Maritime transport Water Waste water Hospital health services (private operators) Primary and secondary education (private schools and church schools) Higher education (private universities) Vocational training (private schools) Complementary social protection Social housing Childcare services (0-6 years) (private operators) Care of disabled Elderly care Cultural services	Production of electricity Transport-distribution of electricity Marketing of gas Regional and local transport of passengers Maritime transport Water Waste water Broadcasting (public operators) Hospital health services (public operators) Ambulatory health services Primary and secondary education (public school and church school) Higher education Vocational training (public schools) Compulsory social protection Social housing Childcare services (0-6 years) Care of disabled Elderly care (public operators) Cultural services	Complementary social protection	Broadcasting	

Authorities responsible for setting pricing and/or tariff policies

Parliament	Central government	Local government	Regulatory agencies	Operators
Compulsory social protection Complementary social protection	Maritime transport Higher education Elderly care		Production of electricity Transport-distribution of electricity Gas transport-distribution Marketing of gas Regional and local transport of passengers Water Waste water Social housing	Cultural services

II/ Approaches

A. The model of public administration and national public companies

The Maltese economy is characterised by extensive state intervention and a relatively large public sector. Government involvement in services has been progressively reduced through a process of privatisation in the recent years meant to rationalise the public sector and to promote private investment.

However, currently, the public operators dominate most SGI sectors. In the energy sector, maritime transport (between Malta and Gozo) and water, the state-owned companies are the sole providers. In maritime transport, Gozo Channel, the main company transporting passengers in Malta is government-owned. The company has a monopoly on the transport between Malta and Gozo. The water service is provided by a public corporation called Water Services Corporation (WSC). In 2003 the operations of the Drainage Department were integrated into the WSC. Compulsory social protection and social housing are services provided only by public organisation(s).

In the field of telecommunications and broadcasting, until a few years ago, the sector had several mostly state-owned monopolies – in TV, radio and telephone subsectors. Sectors started to be liberalised after the Nationalists came to power in 1987. The telephone subsector was the last to be liberalised – by 2003. Currently, the state owns a TV and a radio station.

In air transport, Air Malta is a public limited company with a majority ownership by the Maltese government.

Hospital health services have remained largely part of the public sector and most ambulatory health services form part of the government services.

Public organisations are the biggest providers in the sectors of primary and secondary education, higher education, childcare services (0-6 years), elderly care. Also, the main two providers of vocational training are MCAST and ITS, which are public organisations.

B. Local autonomy

The system of local government was entrenched in the Constitution of Malta by the Act No. XIII of 24 April 2001 which establishes that: “The State shall adopt a system of local government whereby the territory of Malta shall be divided into such number of localities as may by law be from time to time determined, each locality to be administered by a Local Council elected by the residents of the locality and established and operating in terms of such law as may from time to time be in force.”

Local authorities were introduced by the Law XV of June 1993; the departments are now assuming further responsibilities.

In accordance with the provisions of law on local councils, their competences gradually expanded, and currently concern mainly domestic waste management and urban planning, street cleaning, public gardens and parks, cultural and sport centres, libraries. The councils may discharge themselves of some of their prerogatives, such as street lighting or local public order. Malta is part of the group of EU Member States in which local public expenditure is less than 5% of GDP (as Greece and Cyprus).

In the fields of public health, old people's homes, social action, kindergartens and primary education, local councils have shared competences with the central state.

The municipalities can manage their public services directly or delegate the management to a private company by public tender. There are currently no local public companies.¹²⁴

C. “New Public Management”

The new Public Administration Act (2009) aims to improve the service delivery of the Public Service, to promote an appropriate and accountable governance model, install a sound work ethic culture and mainly focuses on efficiency, results and meritocracy.

Price and accessibility tend to be major aspects of evaluation of services which are viewed as socially-oriented. Maltese citizens put considerable pressure on the government to keep the price of essential services such as electricity and water at an affordable level. When the services are government run, the government normally consults social partners before revising tariffs. This process might take place at different levels, including at the Malta Council for Economic and Social Development (MCESD), Malta's highest forum for tripartite consultation. MCESD includes representatives of the major trade unions and employers' associations in Malta. In the case of services provided by private enterprises, tariffs are often market-led.

D. Regulatory Agencies

In **telecommunication**, in the mid-1990s, the government decided to establish a regulator separate from the service provider and to this purpose in 1997 the Telecommunications (Regulation) Act was enacted. This Act empowered the Prime Minister to appoint a Telecommunications Regulator - a public officer to oversee the telecommunications sector. The Regulator was given specific powers and obligations including that of granting licences and deciding disputes which may arise between competing operators and operators and their customers. The Office of the Telecommunications Regulator (OTR) functioned until the end of 2000. The Malta Communications Authority (MCA) was nominated to be the Competent Authority to regulate Telecommunications as of the 1st January 2001, by virtue of L.N. 280 of 2000. The MCA inherited all the powers and duties of the Regulator, and assumed all the functions performed until this time (for postal services, too).

Legal Notice 199 of 2007 enables the **Broadcasting** Authority to license broadcasting content on the new

(124) Dominique Hoorens, *Les collectivités territoriales dans l'Union européenne. Organisation, compétences et finances*, Dexia, 2008, p. 499

digital radio platform. These regulations contain the procedure which the Broadcasting Authority will be following when licensing digital radio stations. The broadcasting sector is characterised by strong competition between several companies.

In the **energy** sectors no competition exists; the functions of regulation are exercised by the Malta Resources Authority

The Authority for Transport in Malta, set up by parliamentary act in 2010, regulates all forms of transport in Malta, including regional and local **transport** of passengers, **maritime transport** (which is not yet liberalised) and **air transport** (actually in strong competition).

Health services - Government is in the process of introducing a new Health Services Act to separate the regulatory from the operational and service-delivery functions of the Health Division. The administrative structures envisaged in the Act for the Health Sector have already been reformed, namely the separation of the regulator from the provider, which should improve the sustainability as well as the provision of Health Services in Malta.

Primary and secondary education - Recently, the Education Act was amended so that two separate General Directorates were formed. The Malta Educational Directorate acts as a central national policy maker and regulator for the Maltese educational system and is responsible for the setting of standards and ensuring the delivery of quality education. The Educational Services Directorate is responsible for the co-ordination of the operation of educational services and schools, and fulfils the role of a support and services resource.

Higher education - The setting up of the National Commission for Higher Education by an act of law in 2006 was meant to boost higher education by improving its standards. The Commission is also the regulatory organ for the services of vocational training.

The market for the complementary social protection is regulated by the Malta Financial Services Authority.

III/ Social dialogue

The Maltese industrial relations system¹²⁵ is based on the UK model and takes place between the trade unions and employers at company level, the usual collective bargaining level¹²⁶. Collective bargaining is carried out on a voluntary bipartite basis but collective agreements, carried out between the trade unions and the employers concerned, are legally binding. Such agreements are not extended by legislation or voluntary mechanisms.

As a general rule, employees in both the private and public sector are covered by the provisions of the Employment and Industrial Relations Act (EIRA) of 2002. Usually, collective agreements for **the private sector** follow the provisions laid down in EIRA, and hardly ever go beyond the standards set in this Act. On the other hand, the collective agreements of **public sector** (civil service and statutory organisations) employees

(125) References: studies on representativeness of the European social partner organisations in Malta (<http://www.eurofound.europa.eu/eiro/>)

(126) Where no trade unions are recognised by the employer, no collective bargaining takes place. Employers are obliged to recognise trade unions for the purpose of collective bargaining if a particular trade union can command a simple majority (50% and over) of the employees it seeks to represent. In the public sector, trade unions have been traditionally most powerful.

tend to include benefits that go beyond the provisions of this Act, especially with regard to family friendly measures. The issue of pay in the **central government sector** is determined through collective bargaining. All collective agreements signed on behalf of employees within the public sector (including central and local government) have to be inspected and accepted by the Collective Bargaining Unit (CBU) housed within the Ministry of Finance, which coordinates wage bargaining negotiation on behalf of the government with the representative trade unions in the different entities. Virtually the whole **public sector** is covered by **sectoral collective agreements**.

There are only **single-employer agreements** in **SGI sectors** such as: hospital health services, education (private sector), electricity (public sector), air transport. In the education sector, the collective agreement between the Malta Union of Teachers Authority and the government for the public schools is simply extended for the church schools. In the case of the gas sector, the agreement between distributors and the government is a service agreement, rather than an agreement covering the working conditions of workers (gas distributors tend to be self-employed, rather than employers).

Apart from the tripartite social dialogue at the level of the Malta Council for Economic and Social Development (Malta's highest body for tripartite concertation¹²⁷), there are particular trade unions and employers' associations and other organisations which represent workers in specific sectors and which carry out social dialogue with the government to safeguard the interests of their members. Thus, for example, the Malta Union of Teachers is the main union representing teachers in Malta; the Malta Chamber of Small and Medium Enterprises represents gas distributors; the Malta Transport Association represents public transport drivers, the Local Councils' Association represents local councils, etc. Over the years, trade unions have resorted progressively less to industrial action in favour of consultation and social dialogue. Social dialogue tends to be done at a national level.

Sources of national law on SGIs

Sector	Legal references	Web sites
Telecommunications	Electronic Communications Act (Chapter 399) Malta Communications Authority Act (Chapter 418)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_12/chapt399.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt418.pdf
Postal services	Postal Services Act (Chapter 254)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_6/chapt254.pdf
Production of electricity	Enemalta Act (Chapter 272) Malta Resources Authority Act (Chapter 423)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_6/chapt272.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt423.pdf
Electric networks (transport-distribution)	Enemalta Act (Chapter 272) Malta Resources Authority Act (Chapter 423)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_6/chapt272.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt423.pdf
Marketing of electricity	Enemalta Act (Chapter 272) Malta Resources Authority Act (Chapter 423)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_6/chapt272.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt423.pdf
Gas transport-distribution	Enemalta Act (Chapter 272) Malta Resources Authority Act (Chapter 423) Liquefied Petroleum Gas Market Regulations (423.31)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_6/chapt272.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt423.pdf http://docs.justice.gov.mt/lom/Legislation/English/SubLeg/423/31.pdf
Marketing of gas	Enemalta Act (Chapter 272) Malta Resources Authority Act (Chapter 423) Natural Gas (Marketing) Regulations (423.21)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_6/chapt272.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt423.pdf http://docs.justice.gov.mt/lom/Legislation/English/SubLeg/423/21.pdf
Railway transport of passengers	Sector does not exist	Sector does not exist
Freight rail transport	Sector does not exist	Sector does not exist
Regional and local transport of passengers	Public Transport (Regulation of Employment) Act (Chapter 214) Authority for Transport in Malta Act (Chapter 499) Malta Transport Authority Act (Chapter 332)	http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL_5/Chapt214.PDF http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL_16/Chapt499.PDF http://docs.justice.gov.mt/lom/legislation/english/leg/vol_7/chapt332.pdf

(127) The council has an advisory role and makes recommendations to the Maltese government prior to any reforms or measures of national and economic importance being implemented.

Air transport	Authority for Transport in Malta Act (Chapter 499) Civil Aviation Act (Chapter 232) Civil Aviation (Security) Act (Chapter 353) Civil Aviation (Air Operators' Certificates Act) (Chapter 218) Airports and Civil Aviation (Security) Act (Chapter 405)	http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL_16/Chapt499.PDF http://docs.justice.gov.mt/lom/legislation/english/leg/vol_5/chapt232.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_9/chapt353.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_5/chapt218.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_12/chapt405.pdf
Inland water transport	Sector does not exist	Sector does not exist
Maritime transport	Authority for Transport in Malta Act (Chapter 499) Malta Maritime Authority Act (Chapter 352)	http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL_16/Chapt499.PDF http://docs.justice.gov.mt/lom/legislation/english/leg/vol_9/chapt352.pdf
Water	Malta Resources Authority Act (Chapter 423) Water Services Corporation Act (Chapter 355)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt423.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_9/chapt355.pdf
Waste water	Malta Resources Authority Act (Chapter 423) Water Services Corporation Act (Chapter 355)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt423.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_9/chapt355.pdf
Heating	Sector does not exist	Sector does not exist
Broadcasting	Broadcasting Act (Chapter 350)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_9/chapt350.pdf
National public administration	Public Administration Act	http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL_16/Chapt497.pdf
Regional or local public administration	Local Councils Act	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_10/chapt363.pdf
Hospital health services	Department of Health (Constitution) Ordinance (Chapter 94) Mental Health Act (Chapter 262) Health Care Professions Act (Chapter 464)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_3/chapt94.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_6/chapt262.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_14/Chapt464.PDF
Ambulatory health services	Department of Health (Constitution) Ordinance (Chapter 94)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_3/chapt94.pdf
Primary and secondary education	Education Act (Chapter 327)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_7/chapt327.pdf
Higher education	Education Act (Chapter 327)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_7/chapt327.pdf
Vocational training	Education Act (Chapter 327) Employment and Training Services Act (Chapter 343)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_7/chapt327.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_8/chapt343.pdf
Compulsory social protection	Social Security Act (Chapter 318) Pensions Ordinance (Chapter 93)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_7/chapt318.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_3/chapt93.pdf
Complementary social protection	Special Funds Regulation Act (Chapter 450)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_14/chapt450.pdf
Social housing	Housing Act (Chapter 125) Housing Authority Act (Chapter 261) Housing (Extension) Act (Chapter 360)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_4/chapt125.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_6/chapt261.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_9/chapt360.pdf
Childcare services (0-6 years)	Commissioner for Children Act (Chapter 462) Children and Young Persons (Care Orders) Act (Chapter 285) Foster Care Act (Chapter 491)	http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL_14/Chapt462.PDF http://docs.justice.gov.mt/lom/legislation/english/leg/vol_6/chapt285.pdf http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL_16/Chapt491.pdf
Care of the disabled	Equal Opportunities (Persons with Disability) Act (Chapter 413) Persons with Disability (Employment) Act (Chapter 210) Mental Health Act (Chapter 262)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt413.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_5/chapt210.pdf http://docs.justice.gov.mt/lom/legislation/english/leg/vol_6/chapt262.pdf
Elderly care	No specific legislation exists	/
Cultural services (1)	Malta Council for Culture and the Arts Act (Chapter 444)	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_14/chapt444.pdf

PUBLIC SERVICES IN THE NETHERLANDS

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

The Netherlands is a unitary State, decentralised with two levels of territorial communities (12 provinces and, since November 2009, 438 municipalities/gemeenten; more concentration is expected in 2010). As in other European countries, there is no devolved administration at territorial level, even if State services operate at regional and local levels.

The Water authorities are a separate level of regional authority with a democratic structure, the power to pass laws and to implement taxes. Their authority is limited to water regulation (dams, canals etc. and water purification).¹²⁸

The Netherlands are a part of group of Western countries¹²⁹ undertaking less radical reforms in the public sector, « less iconoclastic, less doctrinaire and less carried away with privatisation, contractualisation and market mechanisms »¹³⁰. The recent decades were marked by changes in the utilities' sectors, from government intervention to administrative regulation, to corporative and privatised operators, and liberalisation. The Netherlands is characterised as a high 'open' economy, very dependent upon international trade and in which a number of large transnational corporations are located.

European integration had consequences for domestic socio-economic policies with the rapid implementation of the Single Market Programme (1993) and the shift of decision-making powers towards the European level. The country implemented the Community liberalisation measures, in order to create an open and competitive market and allow for the amendment of national legislation for transition from monopoly to competition in the sectors of telecommunications, postal services, electricity, gas, regional and local transport of passengers, health services.

The concept of "public service" is ignored by the Dutch law. The literal translation of the expression "public service" – openbare dienst, is the exclusive synonym of "Civil service"/"Fonction publique". The plural "public services" – openbare diensten, is common in everyday language but less so in legal language. But partially equivalent concepts can be found through the existence of public services (in organic or functional meaning¹³¹). The recognition of these services is based on sectoral intervention of the legislature, which is

(128) The Netherlands are maybe the first country that developed specific forms of public services (organic meaning) through the water authorities (waterschappen) whose origins go back to the Middle Ages, before the creation of the Dutch State. Jacques Ziller, "La notion de service public dans le droit des Etats du BENELUX", in Franck Moderne, Gérard Marcou, L'idée de service public dans le droit des Etats de l'Union européenne, L'Harmattan, 2001, p. 197

(129) With France and Nordic countries

(130) C. Pollitt, G. Bouckaert, in Hellmuth Wollmann (ed.), Evaluation in public-sector reform: concepts and practice in international perspective, Edward Elgar Publishing, UK, 2003, p. 22

(131) See the notion of public tasks (everheidstaak, in literal translation public tasks), which contains, according to Dutch doctrine, defence, police, public works, social aid, education. Jacques Ziller, op.cit., 2001, p. 194 ; 198

free to choose the field of public service.

The Netherlands has not adopted a legal definition of services of general interest. In fact, the European Community concepts are not common at national level. However in 2005 the Minister of economic affairs has tried to define these terms somewhat in a memorandum addressed to the parliament referring to the EC treaty (art. 16 and 86).¹³² In this same memorandum the Minister stated that an exact definition is not convenient in the Dutch situation. Considering technological, economical and legal developments the Minister does not want to hamper these dynamics. So the boundaries are fluid. Following this memorandum a law was drafted. On March 10, 2009 the new 'Dienstenwet' (literally, Services law) was been passed by Parliament. Its aim is to simplify the process of obtaining permits for suppliers of services and is an implementation of 2006/123/EG.

The term 'openbaar nut' (= public use) is used in law, mostly for infrastructural works like gas lines, electricity lines, railroads etc. and the term Nutsbedrijven (literally: useful companies (companies of public use)), is used, mainly for electrical, water and gas services.

Terms in TEU and TFEU	Dutch terms in TEU and TFEU ^{table11}
Services of general interest – SGIs	Diensten van algemeen belang DAB
Services of general economic interest – SGEIs	Diensten van algemeen economisch belang DAEB
Non-economic services of general interest – NESGIs	Niet-economische diensten van algemeen belang
Public service	“openbare dienst”

Social services of general interest = Sociale diensten van algemeen belang

(132) Notitie dienstenrichtlijn en diensten van algemeen economisch belang, 2 september 2005, EP/EIS/5056241, http://www.ez.nl/Actueel/Kamerbrieven/Kamerbrieven_2005/September/Dienstenrichtlijn_en_diensten_van_algemeen_economisch_belang

Competences of definition and organisation of SGLs

What is the level of government that actually defines the public service obligations and decides the modes of SGLs' organisation?

Central	Regional (provinces)	Water authorities	Local
National public administration Telecommunications Postal services Production of electricity Electricity networks (transport-distribution) Marketing of electricity Gas transport-distribution Marketing of gas Railway transport of passengers Freight rail transport Regional and local transport of passengers Air transport Inland water transport Maritime transport Water Broadcasting (Commissariaat voor de Media) Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Compulsory social protection Complementary social protection Social housing Childcare services (0-6 years) Care of the disabled Financial services Cultural services	Regional public administration Regional and local transport of passengers Waste water Social housing	Water	Local public administration Waste water Heating table12 Primary and secondary education Social housing Cultural services

B. Sectoral organisation and trends

Statute of the operators

National public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
Broadcasting Higher education		Waste water Heating Primary and secondary education Vocational training				Telecommunications Postal services Production of electricity Electricity networks (transport-distribution) Marketing of electricity Gas transport-distribution Marketing of gas Railway transport of passengers Freight rail transport Regional and local transport of passengers Air transport Inland water transport Maritime transport Waste water Broadcasting Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Complementary social protection Social housing Childcare services (0-6 years) Care of the disabled Elderly care Financial services Cultural services

SGEI markets

Liberalised market and competition	Liberalised market Public operators dominant	Liberalised market Private operators dominant	Public monopoly	Private monopoly	No market
Telecommunications Postal services Production of electricity Electricity networks Marketing of electricity Transport-Distribution of gas Marketing of gas Freight rail transport Air transport Inland water transport Maritime transport Broadcasting Vocational training Social housing (partial free market) Childcare services (0-6 years) (partial free market) Financial services	Regional and local transport of passengers Heating table13 Broadcasting Hospital health services Ambulatory health services Primary and secondary education	Railway transport of passengers Complementary social protection Care of the disabled Elderly care Cultural services	Water Waste water		National public administration Regional and local public administration Higher education Compulsory social protection

Main financing methods of SGIs

Fees/payment by users/clients	Public funds/subsidies	Operators	Payment by users through insurance funds	Incomes from the activity/ Other sources	Social tariffs/prices
Telecommunications Postal services Production of electricity Electricity networks Marketing of electricity Gas transport-distribution Marketing of gas Railway transport of passengers Freight rail transport Regional and local transport of passengers Air transport Inland water transport Maritime transport Water Wastewater (taxes on household) Heating Childcare services (0-6 years) Financial services Cultural services	Broadcasting (public operators) National, regional and local administration Primary and secondary education Higher education Vocational training Compulsory social protection Childcare services (0-6 years) Cultural services	Broadcasting (public operators) Social housing	Hospital health services Ambulatory health services Complementary social protection Care of disabled Elderly care	Broadcasting (private operators) Higher education Vocational training Childcare services (0-6 years) Cultural services	(1)

(1) Social tariffs:

01. National level

low incomes can apply yearly for a subsidy on their health insurance;

low incomes can apply for subsidy on house rent

certain care forms (for instance elderly care, disabled, psychiatric) are free or have reduced tariffs

public broadcasting is distributed free (antenna) or at low cost (cable)

primary and secondary schooling is free of charge

higher education and university is at a non cost covering rate

students get public transportation at a reduced rate

02. Local level

support for certain needs for elderly and disabled (wheelchair, transport, adaptation of the house, help in the house etc.) is allocated by the local authorities

some municipalities have arrangements to give lower incomes free or subsidised access to culture and sport within their territory

Authorities responsible for setting pricing and/or tariff policies

Parliament	Central government	Local government	Regulatory agencies	Others
Primary and secondary education Higher education Vocational training Compulsory social protection	Social housing Childcare services Cultural services (partially)		Telecommunications Postal services Production of electricity Electricity networks Marketing of electricity Gas transport-distribution Marketing of gas Railway transport of passengers Freight rail transport Regional and local transport of passengers Air transport Inland water transport Maritime transport Water Wastewater Heating Broadcasting Financial services	

II/ Approaches

A. The model of public administration and national public companies

In the Netherlands, the share of public enterprise (state enterprise and state participation - staatsbedrijf) has traditionally been small compared with other countries, where central governments owned substantial stakes in industrial and commercial enterprises and banks. As a result of the economic policy conducted after the war in the country there were fewer state enterprises than elsewhere in Europe¹³³. This fact is explained by

(133) By the 1980s the Dutch state participated directly in 41 companies and indirectly (for example through the National Investment Bank, Industrial Guarantee Fund) in many others.

the openness and small size of the Dutch domestic market¹³⁴ that makes it difficult to use public enterprise as an instrument to accomplish national economic objectives such as innovation and growth. Also, there was a moderate political attitude towards nationalisation so that after the Second World War an indicative planning and functional decentralisation was preferred. Public enterprise has largely been restricted to the traditional public utilities: post (PTT)¹³⁵ and telecommunications, energy¹³⁶, railways¹³⁷ (NS Dutch Rail, a semi-public company between 1938-1994), airlines, airports, etc. and banks. In the 1980s, public policy manifested a retreat of the state in favour of market forces through reconsideration of public expenditure, reorganisation and decentralisation, deregulation, de-bureaucratisation and privatisation. Concerning privatisation, budgetary reasons were prevalent so the shares in state enterprises were sold “whenever it seemed to make economic and administrative sense and when it was profitable to do so”¹³⁸ – a pragmatic and opportunistic rather than ideologically privatisation. As mentioned earlier, the Netherlands is grouped under Western countries that are less carried away with privatisation. However critics might argue that the Dutch government has a tendency to be too eager to follow European guidelines and pressures towards privatisation and so walk ahead of the troops (in the Dutch saying, “Being more Catholic than the Pope”).

On the other hand, although the Dutch economy has few state enterprises, it has a large not-for-profit sector, in which private associations, performing public tasks such as public health-care, education, social welfare and social security, are subsidised by the state.

Between 1981 and 1994 some smaller state-owned services were privatised, minor shares being sold (Royal Dutch Airlines KLM, Hoogovens, NMB- Postbank Groep - renamed ING Bank etc.) and only two large companies (Koninklijke PTT Nederlands, the biggest corporate employer – 100000 employees) and Postbank (former PTT subsidiary with about 10000 staff). The first phase of privatisation included the corporatisation of enterprises belonging to various governments departments.¹³⁹

In Broadcasting, the rise of radio broadcasting was regulated through a **public** system of permits (on airtime) and subsidies through public associations organised according to different Dutch social groups (socialist, protestant, catholic, liberal). In the 1950s television was organised the same way. At first the broadcasting associations were fixed. From 1969 anyone could start an association and finance and airtime were dependant on the number of members. Commercial broadcasting was not permitted. In the early 1980s **commercial** broadcasters started operating from abroad, sending Dutch programmes by satellites or cable to Holland, so evading the legal restrictions. Since then several changes in media law have tried to modernise

(134) Considering the size of the country its economy is relatively large and in the world ranking comes in 16th place. The size of the economy is export dependant.

(135) In telecommunication, the liberalisation market started in the 1980's. EU guidelines were the main driving force. For the postal market liberalisation The Netherlands follows the EU guidelines of 1997, 2002 and 2008. The liberalisation has been implemented in phases.

(136) Liberalisation of the energy markets has been set in motion. First energy companies were privatised (some already were private, although mostly owned by provincial or municipal authorities). Then users were given freedom to choose of their supplier. Subsequently separation of production and distribution were separated in separate companies. At the moment most public-held shares are sold to private shareholders (often foreign energy companies).

(137) In rail transport, following European pressure, in 1995 the railroad company was privatised and a process was started to split the company up into passenger transport, freight and infrastructure. Freight was sold to a German company. Infrastructure (ProRail) remained state owned. Passenger transport (NS) went to the stock exchange in 2002. The new legislation (latest version 2003) gives the present situation a legal base and opens passenger transport to other suppliers. Some local lines are now run by other suppliers. In a way it is a return to the situation before 1937 (when several (private) local railroads were merged into one national (state owned) railroad company). Rail infrastructure remains state-owned under the private law regime.

(138) In David Parker, p. 15

(139) Willem Hulsink, Hans Schenk, “Privatisation and deregulation in the Netherlands”, in David Parker, Privatisation in the European Union : theory and policy perspectives, Routledge, 1998, pp. 242-257

the organisation of the media. In 1989 commercial broadcasting was legally made possible. The organisation of the public networks remains controversial and changes in law and policy follow through the years.

Political discussion in the 1980s and 1990s led in 1994 to privatisation of the national museums, that up till then were subject to the ministry of culture (most cultural institutions were always private).

Sectors such as air transport, inland water transport, maritime transport, have always been part of the **private** domain. Regulation is mostly on safety and international alignment.

B. Local autonomy

The Dutch Constitution of 1815 (amended several times), guarantees self-government¹⁴⁰ but gives no indication on competences. It gives the legislator competence to create territorial communities (municipalities and provinces), professional corporations (beroepslichamen), representative enterprises (bedrijfslichamen) or other public bodies (andere openbare lichamen).

Provinces have competences in the fields of culture and recreation, social welfare (e.g; welfare homes, youth care, housing finance), transport (infrastructure), police, public order and safety, etc.¹⁴¹

The municipalities have their own “sovereign” authority in certain matters but also have delegated national tasks/laws to perform (“medebewind”), where they have some room for local interpretation and implementation, but within a compulsory national framework. The municipalities have responsibilities in the housing sector, local public transport and transport infrastructure, public health, management and financing of primary public schools, social services (youth care, employment, etc.), culture, public order, etc.¹⁴²

The management of regional water resources and the treatment of waste water are subject to the water committees (27 Waterschappen), public decentralised bodies similar to the municipalities’ structure and having their own management (Constitution). Water authorities are a public authority with democratically chosen delegates and the power to pass laws and impose taxes. These are the earliest structures in the country (there were 2500 in 1945) and a particular model in Europe. Their current concerns are protection against floods, regulating bodies of water, purifying waste water and so on. They do not produce drinking water.

For the accomplishment of their tasks, local authorities can choose between in-house management through the administrative services, the creation of a municipal enterprise (gemeentelijke diensten) without legal personality but having autonomy of management, or to delegate the management of the service to private operators according to the commercial legal regime.

The local authorities can manage their public services through local public companies which usually are organised as limited companies. They can be 100% owned by local authorities or associated with the State

(140) Article 124§1. “The powers of provinces and municipalities to regulate and administer their own internal affairs shall be delegated to their administrative organs.” Article 132§1. “Both the organisation of provinces and municipalities and the composition and powers of their administrative organs shall be regulated by Act of Parliament.”

http://www.minbzk.nl/english/@4800/the_constitution_of

(141) Wet van 10 september 1992, houdende nieuwe bepalingen met betrekking tot provincies (provinciewet)/Law on provinces

(142) Wet van 14 februari 1992, houdende nieuwe bepalingen met betrekking tot gemeenten (gemeentewet)/Law on municipalities

or private companies.¹⁴³

Dutch law does not permit total privatisation of the water market. Drinking water may only be supplied by qualified companies. These may be private in form (most are), but the shares have to be in the hands of public authorities (mostly provinces, water authorities or municipalities).

The Waste water sector is mostly regulated through environmental law and is traditionally and legally mainly a municipal responsibility, although the water authorities also have an important role.

In the sector of regional and local transport of passengers, following the 1991 EU guidelines, in 2000 the national government decided that all regional transport had to be subject to tendering. Up to then this was a choice at provincial level and only a small percentage of lines was tendered. Most lines were exploited by public owned (municipalities and provinces) companies.

Hospital health services were a traditional function of local authorities, provinces or private benefactors (not-for-profit foundations)¹⁴⁴. The recent law *Wet toelating zorginstellingen (WTZi)* (2006) gives more room for healthcare facilities to be free from state interference. In 2006 also the *de Wet marktordening gezondheidszorg (WMG)* was implemented to give more room for more market competition in health care.

C. “New Public Management”

Many PPP projects were initiated at national level and a centre of expertise on PPP (*Kenniscentrum publiek-private samenwerking*) was founded in 1999. However, locally, PPPs are rare.

There is no uniform framework for evaluation of SGIs. Only parts that are in some way regulated, like postal services and telecom, are regulated through the independent supervising OPTA there is a compulsory component. But this does not apply for all forms of SGIs and the aim and depth of evaluation may vary. For those more regulated by law (postal services, telecommunication, energy, water) accessibility, continuity and price are the most important criteria.

D. Regulatory Agencies

In the Netherlands, the process of introducing competition in SGI sectors, whether it implements European liberalisation directives (e.g. in energy and telecommunications) or not (e.g. healthcare¹⁴⁵), has been characterised as a process of “regulated competition”.

In the telecommunications sector, at the moment of privatisation of KPN/PTT Telecom, the setting up of an independent regulatory structure was not a priority. The *Onafhankelijke Post en Telecommunicatie Autoriteit* (OPTA) was created on 1 August 1997¹⁴⁶ as an independent regulatory authority with powers to impose fines, set maximum rates etc. It supervises compliance with legislation and regulations in the areas of post

(143) Dominique Hoorens, *Les collectivités territoriales dans l'Union européenne. Organisation, compétences et finances*, Dexia, 2008, p. 514

(144) There are recent examples of insurance companies buying hospitals. Since 1990, the ambulatory health services have been left to private providers.

(145) It is noted that the Dutch legislator was inspired by the European electronic communications directives when designing the specific regulatory powers of the national health regulatory authority NZA. W. Sauter, in Saskia Lavrijssen, Sybe de Vries, *op.cit.*, 2009, p. 392

(146) <http://www2.opta.nl/asp/en/aboutopta/history.asp>

and electronic communications. In particular, this involves the Postal Act, the Telecommunications Act, the lower regulations based on these Acts and European regulations.

For Energy (electricity and gas) and Transport sectors (Railway transport, Regional and local transport of passengers, Air transport, Inland water transport, Maritime transport), the Dutch Competition Authority (NMa) (energy chamber - Office of Energy Regulation (EK), transport chamber - Office of Transport Regulation (VK)) monitors effective competition and contributes to markets functioning properly. NMa enforcement powers are laid down in the Competition Act, the Electricity Act 1998, the Gas Act, the Passenger Transport Act 2000, the Railway Act and the Aviation Act. In addition, the Market Monitoring Registered Pilotage Services Act (*Wet markttoezicht registerloodsen*) has come into force on 1 January 2008. Moreover, the NMa will apply Articles 81 and 82 EC Treaty within the Netherlands.

For broadcasting regulation, the competent authority is the Commissariaat voor de Media Media commission¹⁴⁷. The sector of public broadcasting in Netherlands is a particular one in Europe, consisting of different private associations and foundations entrusted with public service obligations.¹⁴⁸

Financial services are regulated by the AFM – the authority of financial markets.

The Dutch health care sector is characterised by a distinction between cure (medical services) and care (long term aid to mentally and physically disabled persons and elderly people). If the cure medical services have undergone far-reaching system changes in recent years to introduce more competition, the long term care services are still deeply regulated with limited scope for competition. The Law on the Regulation of Healthcare (*Wet Marktordening Gezondheidszorg, WMG*) set in motion the gradual liberalisation of the healthcare sector. It created the Dutch Healthcare Authority (*Nederlandse Zorgautoriteit, NZA*), a special independent regulator founded to supervise and regulate the process of introducing competition and to safeguard the public interests of affordability, accessibility and good quality of health care. Under the supervision of the Minister of Health (*Inspectie Gezondheidszorg IGZ*), the NZA has the power to regulate the provision of health care in services markets that have not been opened up for competition (long term care - care of the disabled and elderly care).¹⁴⁹

Waste, water, social housing¹⁵⁰, childcare services (0-6 years)¹⁵¹, and cultural services are under the state supervision (see also the special case of water mentioned before). Also, the *Onderwijsinspectie/Inspection of education* regulates the sectors of education (primary, secondary, higher education and vocational training).

(147) <http://www.cvdm.nl/index.jsp>

(148) These associations and foundations find their origin in the typically Dutch so-called "pillar society", where each religious or political movement has its own political party, newspaper, broadcaster, sports club, etc. W. Sauter, in Saskia Lavrijssen, Sybe de Vries, op.cit., 2009, p. 410

(149) Saskia Lavrijssen, Sybe de Vries, in Markus Krajevski, Ulla Neegaard, Johan van de Gronden (eds.), *The changing legal framework for services of general interest in Europe. Between competition and solidarity*, T.M.C. Asser Press, 2009, pp. 389-391

(150) Dutch housing associations and corporations find their origin in the phenomenon of corporatist society, where at the initiative of churches, entrepreneurs, labour movements and municipalities housing conditions were improved. Many housing corporations were founded after the introduction of the Housing Act of 1901. Whereas in a period before the 1990s the municipalities owned most housing corporations, after 1990s they were privatised and became private housing corporations but they have an idealistic origin and no profit aim. Throughout the years their tasks became more varied and multiple and today their objectives are broader and are not restricted to specific low-income groups or households. They are being treated more and more like normal undertakings; the financial support of the state is minimal. Often the board members are derived from public functions. Their hybrid form can pose complications. Some cooperatives tend to position themselves more and more as regular enterprises, sometimes taking high investment risks and overpaying their management, which leads to much public debate. Recent scandals lead to a call for more public supervision. See also Saskia Lavrijssen, Sybe de Vries, op.cit., 2009, p. 401, 408, 410.

Often the board members are derived from public functions. Their hybrid form can pose complications. Some cooperatives tend to position themselves more and more as regular enterprises, sometimes taking high investment risks and overpaying their management, which leads to much public debate. Recent scandals led to a call for more public supervision.

(151) Most organised childcare services are relatively new (1980s) and they were always private.

III/ Social dialogue

In the Netherlands¹⁵², trade unions and employers have a strong presence at national level. The dominant level of collective bargaining is the sector. Trade union presence at company level is, with some exceptions (including sectors of SGI), rather weak. The sectoral level is the primary level where the employers' organisations and trade unions meet for negotiations. Sectoral agreements can be framework agreements, with the detailed provisions being negotiated at company level. In many sectors, the agreement is, at the request of the respective social partners, extended to all employees by the Ministry of Social Affairs and Employment. Although collective bargaining is increasingly organised on a decentralised level at sectoral and company level, the national level plays an important coordinating role by means of central agreements that are concluded within the Labour Foundation (Stichting van de Arbeid, STAR). The bipartite STAR has an equal number of members from the social partner federations. A national agreement is reached in the form of a recommendation. In several cases the legislator has taken agreements concluded within STAR as the basis for legislation.

The most important tripartite body is the Social and Economic Council (Sociaal Economische Raad, SER). Its membership is equally divided among employee representatives (the three main trade union confederations), employer representatives (the three main employer confederations) and independent members, appointed by the government.

There is no comprehensive dialogue with SGI providers. The way the dialogue, if any, is organised varies from field to field. The municipal authorities organise their input for discussions with the Ministry of Economic affairs mainly through their Union of Dutch Municipalities (VNG). For municipalities the services supplied by social service organisations are an important focus. The provincial authorities do this through the Interprovincial Platform (IPO). The providers themselves often have some form of branch organisation, which varies from SGI to SGI. For example: EnergieNed – the Association of Energy Producers, Traders and Retailers in the Netherlands, VEWIN, Association of Dutch Water Companies.

In the Netherlands, certain **public sector** employees enjoy special, civil servant, status and their employment relationship is first and foremost regulated by the Law on Civil Servants (Ambtenarenwet)¹⁵³. There are on the whole no differences with the private sector with regard to the right of association, the right to collective bargaining and the right to strike¹⁵⁴ (except parts of defence¹⁵⁵). The government sector has been divided into eleven sectors (of which central government is one). Each sector has its own collective agreement. From a legal perspective, the agreements are not really collective agreements (the Law on collective agreements does not apply). From a material perspective however, these agreements are very much like the 'normal' collective agreements in the private sector.¹⁵⁶ Part of the negotiations for the **central government** are

(152) References: studies on representativeness of the European social partner organisations in Netherlands (<http://www.eurofound.europa.eu/eiro/>)

(153) Labour law for the private and the public sector are gradually growing more like each other.

(154) The court can forbid a strike if the means and consequences are disproportionate to the goal.

(155) There are also some limitations for essential services, like fire fighting.

(156) Since 1993, the employer in the (central) government sector cannot unilaterally change the employment conditions of the civil servants, unless agreement has been reached with a majority of the unions involved. Since 1984, an Advisory and Arbitration Board (Arbitrage- en Adviescommissie, AAC) has been established for the central government sector, for resolving conflicts in cases where the majority of the unions do not agree while the employer sticks to his decision.

centralised, part takes place at lower levels (ministries, or even parts of ministries¹⁵⁷). The central part takes place in the Sectoral Consultative Committee for Government Employees (Sectorcommissie Overleg Rijkspersoneel, SOR), between the Minister of Interior Affairs and four unions. For **municipal employees** there is a **national agreement**, signed by the unions and the Netherlands local authorities associations (VNG).

In the **postal services sector**, TNT Post, the main operator on the Dutch market¹⁵⁸, concludes **company agreements**. No employers' organisation exists in the postal sector. The road transport including courier services and new postal companies concluded **a sectoral agreement**, which does not apply to TNT Post and DHL (part of the German Deutsche Post).

Since 2007, one **sectoral agreement** is concluded for **the energy sector**. The gas distribution and trade sector in the Netherlands is highly integrated with the electricity and hot water production, distribution and trade sector. However, as far as the transport of gas through the national transport net and the wholesale of gas are concerned the majority of employees are covered by a **company level collective agreement**. The rest of the energy sector, as far as distribution and trade are concerned, is covered by the sectoral Collective Agreement for the Distribution Sector, and as far as production is concerned (only electricity and heat, not gas) by the Sectoral Collective Agreement for the Production Sector.

In **the railway transport sector** the degree of representativeness is above average on both sides. Collective agreements are mainly concluded as **single-employer agreements**. The Rail Infrastructure (RIS) **multi-employer agreement** covers builders, which is usually extended to other companies that build for other industries besides the railways.

A part of **the civil aviation sector** is characterised by a dense organisation on the employees' side. On the employers' side, it is notable that the companies are not organised into a representative organisation at sectoral level; instead, they are members of the national association. **Collective company agreements** are dominant in the sector (of the four airline companies, one company has refused to negotiate and conclude a collective agreement). More specifically, in every airline company, there are three agreements: one for cockpit staff, one for cabin personnel and one for ground employees.

The hospital sector is also highly organised. Three **multi-employer collective agreements** for the three areas of general hospitals, university hospitals and mental health hospitals cover the sector.

Sources of national law on SGIs

Sector	Legal references	Web sites
Telecommunications	Wet van 19 oktober 1998, houdende regels inzake de telecommunicatie (Telecommunicatiewet) Telecommunications law Wet van 5 juli 1997, houdende regels inzake instelling van een college voor de post- en telecommunicatiemarkt (Wet Onafhankelijke post- en telecommunicatie autoriteit) Law on independent authority on postal services and telecommunication	http://www.opta.nl/nl/ http://www.ez.nl/Onderwerpen/Betrouwbare_telecom

(157) There is not so much room for specific arrangements at ministerial or sub ministerial level.

Within the central government there is a strong move towards standardisation and even centralisation of conditions, staffing, supporting functions etc.

(158) This is now a private company like any other. There are other large private companies that have their own sectoral agreement, for instance Philips.

Postal services	<p>Wet van 25 maart 2009, houdende regels inzake de volledige liberalisering van de postmarkt en de garantie van de universele postdienstverlening (Postwet 2009) Law on liberalisation of postal services</p> <p>Wet van 5 juli 1997, houdende regels inzake instelling van een college voor de post- en telecommunicatiemarkt (Wet Onafhankelijke post- en telecommunicatie autoriteit) Law on independent authority on postal services and telecommunication</p>	<p>http://www.opta.nl/ http://www.ez.nl/Onderwerpen/Huidige_economie/Postmarkt</p>
Production of electricity	<p>Wet van 2 juni 1998, houdende regels met betrekking tot de productie, het transport en de levering van elektriciteit (Elektriciteitswet 1998) Electricity law</p> <p>Wet van 20 november 2003 tot wijziging van de Elektriciteitswet 1998 ten behoeve van de bevordering van de opwekking van duurzame elektriciteit Law on sustainable production of electricity</p>	<p>http://www.nmanet.nl/engels/home/Index.asp http://www.ecn.nl/en/ http://www.ez.nl/Onderwerpen/Voldoende_energie http://www.energieaad.nl/home.asp?pageid=264</p>
Electricity networks (transport-distribution)	<p>Wet van 3 juni 1999 tot wijziging van de Elektriciteitswet 1998 ten behoeve van het stellen van nadere regels ten aanzien van het netbeheer en de levering van elektriciteit aan beschermde afnemers Law on net ownership and electricity supply for protected users</p> <p>Wet van 1 juli 2004 tot wijziging van de Elektriciteitswet 1998 en de Gaswet ter uitvoering van richtlijn nr. 2003/54/EG, (PbEG L 176), verordening nr. 1228/2003 (PbEG L 176) en richtlijn nr. 2003/55/EG (PbEG L 176), alsmede in verband met de aanscherping van het toezicht op het netbeheer (Wijziging Elektriciteitswet 1998 en Gaswet in verband met implementatie en aanscherping toezicht netbeheer) beheer Adaptation of Electricity and gas laws to implement EU guidelines</p> <p>Wet van 23 november 2006 tot wijziging van de Elektriciteitswet 1998 en van de Gaswet in verband met nadere regels omtrent een onafhankelijk netbeheer Adaptation of Electricity and gas laws concerning independent exploitation of the net</p>	<p>http://www.nmanet.nl/engels/home/Index.asp http://www.ecn.nl/en/ http://www.ez.nl/Onderwerpen/Voldoende_energie http://www.energieaad.nl/home.asp?pageid=264</p>
Marketing of electricity	No specific legislation	<p>http://www.nmanet.nl/engels/home/Index.asp http://www.ez.nl/Onderwerpen/Voldoende_energie http://www.energieaad.nl/home.asp?pageid=264</p>
Gas transport-distribution	<p>Wet van 22 juni 2000, houdende regels omtrent het transport en de levering van gas (Gaswet) Gas law</p> <p>Wet van 1 juli 2004 tot wijziging van de Elektriciteitswet 1998 en de Gaswet ter uitvoering van richtlijn nr. 2003/54/EG, (PbEG L 176), verordening nr. 1228/2003 (PbEG L 176) en richtlijn nr. 2003/55/EG (PbEG L 176), alsmede in verband met de aanscherping van het toezicht op het netbeheer (Wijziging Elektriciteitswet 1998 en Gaswet in verband met implementatie en aanscherping toezicht netbeheer) Adaptation of Electricity and gas laws to implement EU guidelines</p> <p>Wet van 23 november 2006 tot wijziging van de Elektriciteitswet 1998 en van de Gaswet in verband met nadere regels omtrent een onafhankelijk netbeheer Adaptation of Electricity and gas laws concerning independent exploitation of the net</p>	<p>http://www.nmanet.nl/engels/home/Index.asp http://www.ez.nl/engish/Subjects/Mineral_Extraction/Gas_policy http://www.ez.nl/Onderwerpen/Voldoende_energie http://www.energieaad.nl/home.asp?pageid=264 http://www.ecn.nl/en/</p>
Marketing of gas	No specific legislation	<p>http://www.nmanet.nl/engels/home/Index.asp http://www.ez.nl/Onderwerpen/Voldoende_energie http://www.energieaad.nl/home.asp?pageid=264</p>
Railway transport of passengers	<p>Wet van 6 juli 2000, houdende nieuwe regels omtrent het openbaar vervoer, besloten busvervoer en taxivervoer (Wet personenvervoer 2000) Law on (all) public transport of people</p> <p>Wet van 9 april 1875, tot regeling van de dienst en het gebruik der spoorwegen, en zulks met intrekking der wet van 21 augustus 1859 (Staatsblad n°. 98) Law on use of railroads</p> <p>Wet van 23 april 2003, houdende nieuwe algemene regels over de aanleg, het beheer, de toegankelijkheid en het gebruik van spoorwegen alsmede over het verkeer over spoorwegen (Spoonwegwet) Railroads law</p>	<p>http://www.nmanet.nl/engels/home/Index.asp http://www.verkeerenwaterstaat.nl/onderwerpen/openbaar_vervoer/ http://www.verkeerenwaterstaat.nl/english/topics/public_transport/</p>
Freight rail transport	See above (railway transport) except the First that is specific on passenger transport)	<p>http://www.nmanet.nl/engels/home/Index.asp http://www.verkeerenwaterstaat.nl/onderwerpen/goederenvervoer/goederenvervoerspoor/</p>
Regional and local transport of passengers	<p>Wet van 6 juli 2000, houdende nieuwe regels omtrent het openbaar vervoer, besloten busvervoer en taxivervoer (Wet personenvervoer 2000) Law on (all) public transport of people</p> <p>Wet van 23 december 2004, houdende regels met betrekking tot het verstrekken van een brede doeluitkering aan provincies en regionaal openbare lichamen ten behoeve van de uitvoering van een integraal verkeer- en vervoerbeleid (Wet BDU verkeer en vervoer) Law on subsidising provincial and regional transport policy</p>	<p>http://www.nmanet.nl/engels/home/Index.asp http://www.verkeerenwaterstaat.nl/onderwerpen/openbaar_vervoer/ http://www.verkeerenwaterstaat.nl/english/topics/public_transport/urban_and_regional_transport/index.aspx</p>
Air transport	<p>Wet van 15 januari 1958, houdende nieuwe regelen omtrent de luchtvaart Law on air traffic</p> <p>Wet van 18 juni 1992, houdende algemene regeling met betrekking tot het luchtverkeer Additional law on air traffic</p>	<p>http://www.nmanet.nl/engels/home/Index.asp http://www.verkeerenwaterstaat.nl/onderwerpen/luchtvaart/ http://www.verkeerenwaterstaat.nl/english/topics/aviation/</p>
Inland water transport	<p>Wet van 1 november 2001, houdende uitvoering van de Verordening (EG), nr. 718/1999, van de Raad van de Europese Unie van 29 maart 1999 betreffende het beleid ten aanzien van de capaciteit van de communautaire binnenvaartvloot met het oog op de bevordering van het vervoer over de binnenwateren (PbEG L 90) (Wet capaciteitsbeheersing binnenvaartvloot) Law implementing EU regulations concerning inland water transport.</p> <p>Wet van 16 februari 2006 tot goedkeuring en uitvoering van het op 22 juni 2001 te Boedapest tot stand gekomen Verdrag van Boedapest inzake de overeenkomst voor het vervoer van goederen over de binnenwateren (CMNI) (Trb. 2001, 124) (Wet internationaal goederenvervoer over de binnenwateren) Law on implementing Boedapest treaty on inland shipping</p>	<p>http://www.verkeerenwaterstaat.nl/onderwerpen/goederenvervoer/binnenvaart/</p>
Maritime transport	<p>Wet van 27 oktober 1982, houdende regelen inzake de zeevervoermarkt Law on maritime transport</p>	<p>http://www.verkeerenwaterstaat.nl/onderwerpen/goederenvervoer/zeescheepvaart/ http://www.verkeerenwaterstaat.nl/english/topics/freight_transportation/ocean_shipping/index.aspx</p>
Water	<p>Wet van 29 januari 2009, houdende regels met betrekking tot het beheer en gebruik van watersystemen (Waterwet) Water law</p> <p>Wet van 22 mei 1981, houdende regelen inzake het onttrekken van grondwater en het kunstmatig infiltreren van water in de bodem Law on extraction of groundwater</p> <p>Wet van 6 april 1957, houdende regelen met betrekking tot het toezicht op waterleidingbedrijven en tot de organisatie van de openbare drinkwatervoorziening Law on public water supply</p> <p>Wet van 9 september 2004 tot wijziging van de Waterleidingwet (eigendom waterleidingbedrijven) Law on ownership of water companies</p>	<p>http://www.uvw.nl/ http://www.verkeerenwaterstaat.nl/onderwerpen/water/ http://www.uvw.nl/ http://www.uvw.nl/engels/index.html http://www.vewin.nl/Pages/Default.aspx http://www.vewin.nl/english/Pages/default.aspx http://www.vrom.nl/pagina.html?id=7766</p>

Waste water	<p>Wet van 13 juni 1979, houdende regelen met betrekking tot een aantal algemene onderwerpen op het gebied van de milieuhygiëne Environmental law (general)</p> <p>Wet van 13 november 1969, houdende regelen omtrent de verontreiniging van oppervlaktewateren Law on pollution of surface water</p> <p>Wet van 29 januari 2009, houdende regels met betrekking tot het beheer en gebruik van watersystemen (Waterwet) Water law</p> <p>Wet van 28 juni 2007 tot wijziging van de Gemeentewet, de Wet op de waterhuishouding en de Wet milieubeheer in verband met de introductie van zorgplichten van gemeenten voor het afvloeiend hermelwater en het grondwater, alsmede verduidelijking van de zorgplicht voor het afvalwater, en aanpassing van het bijbehorende bekostigingsinstrument (verankering en bekostiging van gemeentelijke watertaken) Law on municipal duties concerning wastewater</p> <p>Wet van 2 november 1994, houdende wijziging van de Wet milieubeheer en de Wet verontreiniging oppervlaktewateren (afvalwater) Additional law on pollution of surface water</p>	<p>http://www.verkeerenwaterstaat.nl/onderwerpen/water/ http://www.verkeerenwaterstaat.nl/english/topics/water/ http://www.uvw.nl/ http://www.uvw.nl/engels/index.html http://www.wemin.nl/Pages/Default.aspx http://www.vrom.nl/pagina.html?id=7759</p>
Heating	None specific	<p>http://www.milieucentraal.nl/pagina.aspx?onderwerp=Stadsverwarming http://www.ecn.nl/en/</p>
Broadcasting	Wet van 29 december 2008 tot vaststelling van een nieuwe Mediawet (Mediawet 2008) Law on media	<p>http://www.minocw.nl/media/index.html http://www.minocw.nl/omroepen/index.html http://www.minocw.nl/ontvangst/index.html</p>
National public administration	Basically our system of public administration consists of many laws, which too extensive to list here. Some main laws however; Grondwet voor het Koninkrijk der Nederlanden van 24 augustus 1815 Constitution Wet van 4 juni 1992, houdende algemene regels van bestuursrecht (Algemene wet bestuursrecht) General rules of public law	<p>http://www.overheid.nl/ http://www.overheid.nl/english/ http://www.overheid.nl/home/zoverkdeoverheid/wievormendeoverheid/centraleoverheid/</p>
Regional or local public administration	Basically our system of public administration consists of many laws, which are too extensive to list here. In addition to those already mentioned above (national), some main laws; Wet van 14 februari 1992, houdende nieuwe bepalingen met betrekking tot gemeenten (gemeentewet) Law on municipalities Wet van 10 september 1992, houdende nieuwe bepalingen met betrekking tot provincies (provinciewet) Law on provinces Wet van 6 juni 1991, houdende regels met betrekking tot de waterschappen (waterschapswet) Law on water authorities	<p>http://www.overheid.nl/ http://www.overheid.nl/english/ http://www.vng.nl/ http://www.vng.nl/smartsite.dws?ch=DEF/&id=41361 http://www.uvw.nl/ http://www.uvw.nl/engels/index.html http://www3.provincies.nl/ http://www3.provincies.nl/english/</p>
Hospital health services	Wet van 9 oktober 2008, houdende bepalingen over de zorg voor de publieke gezondheid (Wet publieke gezondheid) Public health law Wet van 7 juli 2006, houdende regels inzake marktordening, doelmatigheid en beheerste kostenontwikkeling op het gebied van de gezondheidszorg (Wet marktordening gezondheidszorg) Law on health market regulation Wet van 20 oktober 2005 tot vereenvoudiging van het stelsel van overheidsbemoedienis met het aanbod van zorginstellingen (Wet toelating zorginstellingen) Wet van 18 januari 1956, houdende nieuwe wettelijke voorschriften met betrekking tot de organisatie van de zorg voor de volksgezondheid Law on healthcare	<p>http://www.igz.nl/ http://www.igz.nl/uk/ http://www.minwv.nl/ http://www.minwv.nl/en/ http://www.ziekenhuis.nl/ http://www.nvz-ziekenhuizen.nl/ http://www.nvz-ziekenhuizen.nl/content.jsp?objectid=12859</p>
Ambulatory health services	See Hospital health services (no specific)	<p>http://www.igz.nl/ http://www.igz.nl/uk/ http://www.minwv.nl/ http://www.minwv.nl/en/</p>
Primary and secondary education	Main laws (there are many more smaller laws regulating specific details): Wet van 30 juni 2004 tot wijziging van onder meer de Wet op het primair onderwijs, de Wet op de expertisecentra, de Wet op het voortgezet onderwijs, de Wet educatie en beroepsonderwijs en de Wet op het hoger onderwijs en wetenschappelijk onderzoek, ter waarborging van de bekwaamheid tot het uitoefenen van beroepen in het onderwijs (Wet op de beroepen in het onderwijs) Law on educational professions Wet van 15 mei 1997 tot instelling van een vast college van advies van het Rijk op het terrein van het onderwijs (Wet op de Onderwijsraad) Law on educational counsel Wet van 2 juli 1981, houdende Wet op het basisonderwijs Law on primary education Wet van 14 februari 1963, tot regeling van het voortgezet onderwijs Law on secondary education	<p>http://www.minocw.nl/onderwerpen/thema-onderwijs/index.html http://www.minocw.nl/english/education/index.html http://www.poraad.nl/ http://www.vo-raad.nl/ http://www.vosabb.nl/ http://www.besturenraad.nl/</p>
Higher education	Main laws (there are many more smaller laws regulating specific details): Wet van 30 juni 2004 tot wijziging van onder meer de Wet op het primair onderwijs, de Wet op de expertisecentra, de Wet op het voortgezet onderwijs, de Wet educatie en beroepsonderwijs en de Wet op het hoger onderwijs en wetenschappelijk onderzoek, ter waarborging van de bekwaamheid tot het uitoefenen van beroepen in het onderwijs (Wet op de beroepen in het onderwijs) Law on educational professions Wet van 15 mei 1997 tot instelling van een vast college van advies van het Rijk op het terrein van het onderwijs (Wet op de Onderwijsraad) Law on educational counsel Wet van 8 oktober 1992, houdende bepalingen met betrekking tot het hoger onderwijs en wetenschappelijk onderzoek Law on higher and academic education	<p>http://www.minocw.nl/onderwerpen/thema-onderwijs/index.html http://www.minocw.nl/english/education/index.html http://www.mboraad.nl/ http://www.hbo-raad.nl/ http://www.hbo-raad.nl/english http://www.vsnv.nl/Home-english.htm</p>
Vocational training	Wet van 4 juli 1985, houdende Wet op de erkende onderwijsinstellingen Law on recognition of educational institutions	http://www.minocw.nl/beroepsonderwijs/index.html
Compulsory social protection	Wet van 9 oktober 2003, houdende vaststelling van een wet inzake ondersteuning bij arbeidsinschakeling en verlening van bijstand door gemeenten (Wet werk en bijstand) Law on work and social support	<p>http://home.szw.nl/index.cfm http://english.szw.nl/ http://www.svb.nl/int/nl/index.jsp http://www.svb.nl/int/en/</p>
Complementary social protection	None specific	
Social housing	Wet van 29 augustus 1991 tot herziening van de Woningwet Law on housing	<p>http://www.vrom.nl/pagina.html?id=38084 http://international.vrom.nl/pagina.html?id=37360 http://www.aedesnet.nl/</p>
Childcare services (0-6 years)	Wet van 9 juli 2004 tot regeling met betrekking tot tegemoetkomingen in de kosten van kinderopvang en waarborging van de kwaliteit van kinderopvang (Wet kinderopvang) Law on compensation of childcare	<p>http://www.kinderopvang.net/ http://www.minocw.nl/kinderopvang/index.html</p>

Care of the disabled	Wet van 29 december 2008 tot regeling van een tegemoetkoming voor chronisch zieken en gehandicapten (Wet tegemoetkoming chronisch zieken en gehandicapten) Law on support of chronically ill and disabled	http://www.vgn.org/vgn/krantedite/raadplegen.asp?display=2&atoom=180&atoomstr=22&actie=2 http://www.minvws.nl/dossiers/gehandicapten/default.asp http://www.minvws.nl/en/themes/disabled_people/default.asp
Elderly care	Wet van 20 oktober 2005 tot vereenvoudiging van het stelsel van overheidsbemoedienis met het aanbod van zorginstellingen (Wet toelating zorginstellingen) Law on elderly care institutions	http://www.minvws.nl/dossiers/ouderen/default.asp http://www.igz.nl/burgersloket1/uitsvragen/vragen_over_ouderenzorg/
Financial services (1)	Wet van 28 september 2006, houdende regels met betrekking tot de financiële markten en het toezicht daarop (Wet op het financieel toezicht) Law on regulation of the financial markets	http://www.minfin.nl/Onderwerpen/Financiële_markten http://www.minfin.nl/english/Subjects/Financial_markets http://www.afm.nl/ http://www.afm.nl/english.htm
Cultural services (1)	Wet van 12 maart 1998, houdende regels inzake de verstrekking van subsidies door de Minister van Onderwijs, Cultuur en Wetenschappen (Wet overige OCenW-subsidies) Law on subsidies of the Ministry of education, culture and sciences Wet van 1 februari 1984, houdende vaststelling van de Wet tot behoud van cultuurbezit Law on conservation of cultural heritage Wet van 24 juni 1993, houdende de verzelfstandiging van de rijksmuseumse diensten Law on privatising national museums Wet van 23 december 1988, tot vervanging van de Monumentenwet Law on (architectural) monuments Wet van 21 december 2006 tot wijziging van de Monumentenwet 1988 en enkele andere wetten ten behoeve van de archeologische monumentenzorg mede in verband met de implementatie van het Verdrag van Valletta (Wet op de archeologische monumentenzorg) Law on monuments and archaeology implementing the Valletta treaty	http://www.minocw.nl/cultuur/index.html http://www.minocw.nl/english/culture/index.html http://www.derijksmuseum.nl/publicaties.php http://www.cultuur.nl/ http://www.racm.nl/

PUBLIC SERVICES IN POLAND

I/ Diversity and unity

A. Traditions and national structures. Europeanisation of services of general interest

Poland is a unitary state with a three-tier structure composed of 16 regions (voivodships - wojewodztwa), 314 counties (powiaty) and 2478 communes (gminy – urban/rural/mixed communes).

The public administration structure in Poland is governed by: the Constitution of the Republic of Poland of April 2, 1997, and appropriate legislative Acts. In light of the above specified legal Acts public administration is carried out:

01. by the governmental administration: the Government presided over by the Prime Minister and central bodies of the administrative government,

02. in the voivodship government administration the tasks are carried out primarily by: the voivods who are the representatives of the government in the field, administrative government bodies: either integrated-that is acting under the supervision of the voivod; or not integrated-that is subordinate to the appropriate Minister or to a central office manager,

03. within the local administration: in the gmina (the Community) - the Gmina Council as well as the voiv, city mayor or major city mayor, the powiat (the County) the Powiat Council and the powiat Board led by the starost (chief powiat official); the voivodship - the voivodship local assembly and the voivodship headed by a voivodship marshal.

The independence of the local administration is subject to court protection guaranteed by the Constitution. Separate levels of the local administration also function independently (gmina, powiat and voivodship).

It has often been said that the public utilities form an essential part of the national economy; however Polish law has never established either what forms the essence of the public utilities or a clear doctrine of public services in Poland.¹⁵⁹ The terms public service, public utility service, and, more recently, services of general economic interest are used without any real distinction being made between them.¹⁶⁰

(159) Ewa Gromnika, in Markus Krajewski, Ulla Neegaard, Johan van de Gronden (eds.), *Changing Legal Framework for Services of General Interest in Europe*, T.M.C. Asser Press, 2009, p. 451

(160) M. Mangenot, *Public Administrations and Services of General Interest: What Kind of Europeanisation?*, EIPA, 2005, p. 88

Terms in TEU and TFEU	Polish terms in TEU and TFEU ^{table14}
Services of general interest – SGIs	usługi świadczone w interesie ogólnym
Services of general economic interest – SGEIs	usługi świadczone w ogólnym interesie gospodarczym
Non-economic services of general interest – NESGIs	usługi niemające charakteru gospodarczego świadczone w interesie ogólnym
Public service	usługa publiczna

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs' organisation?

Central government	Regional government	Counties	Communes
Telecommunications	Specialised health services	Secondary education	Heating
Postal services	Cultural services	Public health services	Local transport of passengers
Railway transports of passengers		Care of disabled	Water
Freight rail transport			Waste water
Air transport			Social housing
Broadcasting			Primary care services
Hospital health services			Childcare services (0-6 years)
Ambulatory health services			Primary education
Compulsory social protection			Cultural services
Complementary social protection			
Financial services			
Cultural services			

B. Sectoral organisation and trends

Status of the operators

National public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
Railway passenger transport (PKP Intercity) Transport of passengers (PKS) Freight rail transport Postal services (Poczta Polska S.A.) Broadcasting (public TV and Radio) Compulsory social protection Air transport (LOT) Air transport (airports – Polskie Porty Lotnicze) Higher education	Electricity production and provision Gas production and provision Air transport	Railway passenger transport (przewozy regionalne, interregio) Water Waste water Heating Public healthcare Primary and secondary education Social housing Childcare services (0-6 years) Care of the disabled Elderly care Regional and local transport Cultural services			Telecommunications (TP.S.A.)	Telecommunications Broadcasting (Private TV and Radio) Postal services Childcare services (0-6 years) Primary and secondary education Higher education Hospital care services Ambulatory services Transport of passengers Freight road transport Freight rail transport Maritime transport Inland water transport Care of the disabled Elderly care Cultural services Financial services Air transport (airports) Air transport

SGL markets

Liberalised market and competition	Liberalised market Public operators dominant	Public monopoly	Liberalised market Private operators dominant	Private monopoly	No market
Telecommunications (dominant position of TP S.A.) Childcare services (0-6 years) Primary and secondary education Higher education Hospital care services Ambulatory services Passenger road transport Passenger maritime transport Care of the disabled Elderly care Cultural services Financial services	Freight rail transport Electricity production and provision (1) Air transport Air transport (airport) Higher education Freight maritime transport	Railway -passengers (2) Gas production and provision Postal services (partly open, competition restricted to certain weight of packages)	Broadcasting (3) Freight road transport	Inland navigation	

(1) Small private shares in 4 main companies with a predominantly state-owned shares, 2 medium independent companies

(2) Competition between state owned and self-government owned companies

(3) With a system of licences provided by a special office (constitutionally based)

Main financing methods of SGIs

Fees/payment by users/clients	Public grants/aids	Taxes/contributions	Insurance funds	Other incomes from the activity	Social tariffs/prices
Telecommunications Postal services Broadcasting Private education and higher education Private vocational training Electricity Gas Rail transport of passengers Rail freight Road transport of passengers Road freight Air transport Maritime transport Inland water navigation Private healthcare Cultural services Financial services Private elderly care Private care of disabled Private childcare services (0-6 years) Complementary social protection Heating Water Waste water	Elderly care Care of disabled Childcare services (0-6 years) Social housing Broadcasting Regional and local transport of passengers	Public healthcare Social protection Broadcasting (national provider)	Private healthcare	Broadcasting	Passenger rail and road transport (discounts for disabled, children, students and elderly passengers) Cultural services (discounts for children, students, elderly, disabled) Electricity (project of law)

National authorities responsible for setting pricing and/or tariff policies

Central government	Local government	Regulatory agencies	Providers
Transport – passengers road and rail	Water and waste management	Air transport (airports) (1)	Telecommunication (regulatory agency control) Broadcasting Postal services (regulatory agency control) Heating (on the basis of the Ministry of Economy regulation) Oil market Gas, electricity market (regulatory agency control) Private education and higher education Private vocational training Rail and road freight transport Air transport Maritime transport (except for harbour tariffs adopt by Seaport authorities) Inland water navigation Private healthcare Financial services Private elderly care Private care of disabled Private childcare services (0-6) Complementary social protection

(1) With regard to airport tariff approved by Civil Aviation Office

II/ Approaches

A. The model of public administration and national public companies

Commercialisation and privatisation from the beginning of market transformation in Poland had to adapt state-owned enterprises to the rules of the modern market economy. According to the Commercialisation and Privatisation Act of 30 August 1996 (Official Journal 1996 No 118/561 with further amendments) commercialisation is to transform the state enterprise into a sole company with share capital of the State Treasury. New company joins with all legal relations, which were the subject of a state enterprise. Privatisation involves selling shares owned by the Treasury in one of several ways.

The companies listed below are in one of the stages of the above-mentioned process:

01. PGNiG S.A. - is the gas market leader in Poland. Company's core business includes the exploration and exploitation of natural gas and crude oil and imports, storage, marketing and distribution of gas and liquid fuels. In Poland, PGNiG SA is one of the largest and oldest companies (the Treasury – 73,50% share in capital).
02. PGE S.A. - is the largest manufacturer and supplier of electricity in Poland and one of the biggest companies in the electricity sector in Central and Eastern Europe. The main shareholder is the Treasury which holds 85% shares.
03. PKP S.A. - was established as a result of commercialisation of the state enterprise Polish State Railways. Its sole shareholder is the Treasury. The purpose of these changes was - in accordance with EU directives - the delimitation of the management of rail transport railway lines and the creation of separate commercial entities, which may provide services not only in the railway market. The group of companies includes passenger transport, freight operators as well as companies associated with railway infrastructure.
04. Poczta Polska S.A. - Polish state institution dealing with the provision of postal services (mail delivery, postal orders etc.), cash services (deposit accounts, savings-and-cheque operations, etc.), banking (for the Post Bank SA), insurance services, services courier (Pocztex). The sole shareholder of the Company is the Treasury.

B. “All Public”

In the post-war period, the nationalisation of all property and monopolisation of public power in the hands of the central and regional public authorities embodied the general objectives of the socialist economy demoting past experience and any use of private actors. Public authorities were guaranteeing the organisation and provision of public services.

C. Local autonomy

Before the Communist regime multiple and diversified forms of carrying out public utility activities were in use¹⁶¹. Local authorities were also endowed with legal personality and financial assets to provide the mentioned public utility activities. In the post-war period, municipalities lost their legal personality and financial assets; centralised management and financing reduced the ability of local authorities to respond efficiently to local needs. Significant changes were introduced with the territorial administrative reforms at the beginning of the 1990s with a culmination in the adoption of the new Constitution in 1997.

(161) Bodies without legal personality constituting part of the administrative structure and using communal property, public utility undertakings with private capital involved (usually in the form of limited liability company or stock market company), private undertakings and mixed undertakings which have been granted concessions to operate in a given territory, or leasing undertakings. L. Zacharko, in Ewa Gromnika, op. cit., p. 452

Article 15(1) of the 1997 Constitution provides that the territorial system of the Republic of Poland shall ensure the decentralisation of public power and Article 16 defines that the inhabitants of the units of basic territory – the commune – shall form a self-governing community, which is to participate in the exercise of public power. Communes shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities and all tasks of local self-government not reserved to other units of local self-government (article 164 of the Constitution). “Public duties aimed at satisfying the needs of a self-governing community shall be performed by units of local self-government as their direct responsibility.” “If the fundamental needs of the State shall so require, a statute may instruct units of local self-government to perform other public duties” (Article 166 of the Constitution).

The primary tasks of local authorities in Poland are the provision of public services. The fulfilment of the common needs of the local society is done through provision of universal service, accessible to all (Article 9 of the Act on Local Self-Government).

One must distinguish between tasks which the commune carries out in the field of its own competences and the tasks of the governmental administration that have been entrusted to it. According to Article 7 of the Local Self-Government Act the commune is competent to satisfy collective needs of the Community in the field of its own tasks, in particular public roads and local transport, water supply, sewage, waste treatment, provision of heating, gas and electricity, health protection and social welfare, public education, libraries and cultural activities, tourism and physical activities, market places, cemeteries and parks, public order, security and fire services, upkeep of the common public infrastructure as well as social, medical and legal care for pregnant women. This list is not considered to be exhaustive.

The commune may decide on the legal form through which it is going to provide the services as well as the price or the mode of setting the price for the public utilities activities. The preferred way for the provision of the communes’ statutory tasks is the budgetary agency/entity. Also, according to the Act on Communal Economic Activity of 1996, a commune could provide services by establishing a limited liability company or a stock market company. Such bodies cannot carry out in that form any activity that falls outside the sphere of public utility provision. Apart from that, there are many social public services organised in particular forms (especially in the field of cultural activities, health protection, social services, etc.).¹⁶²

Regional self-government is responsible primarily for designing and implementing regional policies and secondarily for the provision of certain highly specialised public services at regional level. The counties’ activities concern mainly the organisational units, particularly economic structures, and only secondarily certain groups of the voivodships’ inhabitants.¹⁶³

(162) Ewa Gromnika, *op. cit.*, p. 464-466. For details see, Dominique Hoorens (ed.), *Les collectivités territoriales dans l’Union européenne. Organisation, compétences et finances*, Dexia, 2008, pp. 530-531

(163) Jennifer A. Yoder, “Leading the Way to Regionalisation in Post-Communist Europe: An Examination of the Process and Outcomes of Regional Reform in Poland”, in *East European Politics & Societies*, 2007/21, p. 439

D. Delegated management and externalisation

For the provision of some public services, the public authorities can entrust the activity to private providers by using the legal instrument of public procurement or tender where a civil law contract (any contract of mandate or a PPP¹⁶⁴) is concluded with a private provider¹⁶⁵. There is also a large group of providers outside the public sector, acting in the name of the community – non-public providers of services – including both private undertakings as well as non-profit organisations.

E. “New Public Management”

Public-Private Partnership (PPP), namely the provision of services of general interest by private operators is sanctioned by Polish law in the form of the cooperation of private enterprise supported by private capital with the public sector at all levels. This instrument is the developed form of economic investment in most countries of the world. In Poland it has only just begun to play a role.

PPP is allowed in Poland, among other things, but not limited to, the Act on public-private partnership of 19 December 2008 (Official Journal 2009 No 19/100 with further amendments). Other legal forms and particularly multiannual civil agreements have the effect of cooperation of public and private partners especially in water and sanitation, waste disposal, and most recently in municipal building for the communities. Project management adapted to the implementation of the PPP mode and the preparation of the most important element, namely the Agreement on public-private partnership, is an important part of the process. These phases are preceded by economic financial and legal analyses, to ensure the optimal financing of investment later, and the implementation of savings, which any PPP project must prove during its life cycle.

D. Regulatory Agencies

The Office of Electronic Communications (UKE - Urząd Komunikacji Elektronicznej) is the national regulatory authority for the market of **telecommunications** and **postal services**. The President of the UKE is also the specialised authority in the area of equipment conformity assessment, including telecommunications terminal equipment and radio equipment. The specific duties of the President of the UKE include, inter alia:

01. the performance of tasks related to the regulation and supervision of telecommunications services' markets, spectrum management, orbital and numbering resources, as well as the enforcement of compliance with electromagnetic compatibility requirements;
02. intervening in matters related to the functioning of the market for telecommunications and postal services, the equipment market and the settlement of disputes between telecommunications undertakings;

(164) PPP Act of 28 July 2005

(165) Act on Communal Economic Activity of 1996. *Idem*, p. 466, 467

03. co-operation with domestic and international telecommunications and postal organizations, other competent national authorities, the European Commission and Community institutions, as well as other NRAs;

04. co-operation with the President of the Office for Competition and Consumers Protection in matters related to the enforcement of the rights of parties using postal and telecommunications services, and with the National Broadcasting Council.

The Energy Regulatory Office (URE – Urząd Regulacji Energetyki) is the central body of state administration nominated on the basis of an act of 10 April 1997 Energy Law, for the realisation of tasks in the scope of **fuel** and **energy management control** as well as promotion of competition. The duties and competence of the URE President are strictly connected with the state policy in terms of energy, i.e. economic conditions of energy enterprises operations, ideas of market operations, as well as requirements coming from the obligation of adjusting Polish law to the European Union law. The activities undertaken by the independent regulatory body are addressed at fulfilling the aim given by the legislator, and heading towards the balanced economic growth of the country, ensuring energy security, economical and rational use of fuels and energy, development of competition, fighting negative effects of natural monopolies, taking into consideration environmental protection, obligations resulting from international agreements as well as balancing the interests of energy enterprises and consumers of fuels and energy.

01. General Directorate for National Roads and Highways (GDDKiA - Generalna Dyrekcja Dróg Krajowych i Autostrad) – is the central government body established in the Polish Ministry of Infrastructure, responsible for national roads; it also performs the duties of road manager and implements the national budget with respect to national roads. The GDDKiA should also:

02. participate in the implementation of transport policy (in terms of roads)

03. collect data and information about the network of public roads

04. supervise the preparation of road infrastructure for the defence of the nation

05. issue permits for a single journey within a specified time and for a fixed route of a non-standard vehicle

06. cooperate with other road administrations and international organisations

07. cooperate with local governments, for the development and maintenance of road infrastructure

08. manage traffic on the national roads,

09. protect road monuments,

10. perform the tasks associated with preparing and coordinating the construction and operation or the service of toll motorways

11. manage payment for transit in accordance with the provisions of paid highways and the National Fund for traffic

The Office of Competition and Consumer Protection (UOKiK – Urząd Ochrony Konkurencji i Konsumentów) is a central authority of the state administration responsible for **shaping antitrust policy and consumer**

protection policy. The primary antitrust instruments used by the President of the Office are proceedings concerning competition restricting practices, i.e. abuses of a dominant position and prohibited agreements (cartels). Since 2004 the UOKiK has been providing its opinion on state aid schemes and individual state aid decisions before their notification to the European Commission, which is the only body with the power to determine state aid's compliance with the Single Market. The President of the Office has the power to carry out proceedings concerning practices infringing collective consumer interests.

The UOKiK carries out proceedings concerning general product safety. The President of the Office monitors the market surveillance system. The UOKiK is also responsible for managing the fuel quality monitoring and scrutinising system.

Tasks of the Polish Financial Supervision Authority (KNF – Komisja Nadzoru Finansowego) cover **banking supervision, capital market supervision, insurance supervision, pension scheme supervision and supervision of electronic money institutions.** Moreover, the tasks of the KNF shall include the following:

01. undertaking measures aimed at ensuring regular operation of the financial market;
02. undertaking measures aimed at development of financial market and its competitiveness;
03. undertaking educational and information measures related to the financial market operation;
04. participation in the drafting of legal acts related to financial market supervision;
05. creating the opportunities for amicable and conciliatory settlement of disputes which may arise between financial market actors, in particular disputes resulting from contractual relations between entities covered by KNF supervision and recipients of services provided by those entities;
06. carrying out other activities provided for by acts of law.

The aim of financial market supervision is to ensure regular operation of this market, its stability, security and transparency, confidence in the financial market, as well as to ensure that the interests of market actors are protected.

The National Broadcasting Council (KRRiT – Krajowa Rada Radiofonii i Telewizji) is a supreme state body charged with **broadcasting** matters. The main task of the Council is to protect:

01. freedom of speech and broadcaster independence,
02. interests of viewers and listeners,
03. open and pluralistic character of radio and television.
04. The authority grants radio and television broadcasting licences.

III/ Social dialogue

In Poland¹⁶⁶ there are many legal bases concerning different aspects of social dialogue:

01. Section XI of Labour Code of 26 June 1974 - collective agreements (O.J. 1998 Nr 21/94 consolidated version),
02. Employers organisations Act of 23 May 1991 (O.J. 1991 Nr 55/235 with further amendments),
03. Law on Trade Unions of 23 May 1991 (O.J. 2001 Nr 79/954 consolidated version),
04. Act on the Tripartite Commission for Social and Economic Affairs of 6 July 2001 (O.J. 2001 Nr 100/1080 with further amendments),
05. Law on informing employees and conducting consultations of 7 April 2006 (O.J. 2006 Nr 79/550 with further amendments),
06. Act on the resolution of collective disputes of 23 May 1991 (O.J. 1991 Nr 55/236 with further amendments).

The legal regulations provide for concluding collective agreements at two levels: company agreements – between an employer and the trade union organisation(s) at company level; multi-employer agreements – between the sectoral or regional trade union organisation and the employer organisation representing a group of employers. The company level remains the predominant level of negotiations¹⁶⁷. According to the law, if there is a collective agreement at company level, it covers all of the employees.

Employers' organisations and trade unions are the main social partners in Poland.

There are four main organisations:

01. Confederation of Polish Employers (KPP) - is an organisation of politically independent and not-for-profit groups and associations of employers' federations, as well as companies that are employers of national importance. KPP has about 40 regional and branch associations of employers, as well as companies with nationwide significance. The purpose of the KPP is to represent the interests of employers to the government and to public authorities at all levels, and to act as social partners - at both a national and regional levels,
02. Polish Confederation of Private Employers "Leviathan" (Lewiatan) - is a voluntary organisation, self-governing, independent, an economic and a social grouping of employers, employers' federations, unions and employers with a specific economic position and role in labour relations. The main task of PKPP "Leviathan" is the representation of private employers from across the various branches of the Polish economy.

(166) References: studies on representativeness of the European social partner organisations in Poland (<http://www.eurofound.europa.eu/eiro/>); Torsten Brandt, Thorsten Schulten, Liberalisation and privatisation of public services and the impact on labour relations: a comparative view from six countries in the postal, hospital, local public transport and electricity sectors, 2007, http://www.pique.at/reports/pubs/PIQUE_028478_Del8.pdf

(167) As just 10 workers can establish a trade union at company level, in Poland there can be a large number of trade union organisations within a single company. Trade unions in Poland are organised from the bottom up: company-level unions are the most important.

03. Polish Craft Association (ZRP) - is a nationwide professional and socio-economic organization of local craft representing 490 guilds, 271 craft cooperatives, 27 chambers of crafts and entrepreneurship. The main task of ZRP is to support the affiliated organisations, assisting in the implementation of statutory tasks, the development of economic activities and socio-cultural crafts and small enterprises, to provide comprehensive support and legal protection, and to represent the interests of crafts and small enterprises in the country and abroad.

04. Business Centre Club - Association of Employers (BCC-ZP) - is an association of employers, whose activities are coordinated by the Institute of Lobbying BCC. BCC's fundamental tasks are: to represent the interests of the business community, lobby businesses and create links with environment and society.

In Poland there are three main trade unions:

01. Independent Self-Governing Trade Union "Solidarnosc" (Solidarity), which was created in September 1980 following an agreement between the Inter-Factory Strike Committee and the communist authorities. Outlawed in 1982, during martial law, Solidarity was re-registered in April 1989 following the Round Table talks. "Solidarity" estimates the number of its members to be 900 thousand people organised in close to 12 thousand workplace committees.

02. All-Poland Trade Union Alliance (OPZZ) was created in 1984 by the Assembly of Stakeholders of Trade Unions. The highest authority, the Congress, meets every four years. The main body of the union is the Council, whose members are elected in 12 branches nationwide that bring together 99 trade union organisations and 16 Provincial Councils.

03. Trade Unions Forum (FZZ) were registered on 31 January 2002. The first Congress of the Forum was held in Warsaw in 2002. FZZ represents 27 trade unions, inter alia, transport workers, police officers, nurses and midwives. Overall FZZ has about 400 thousand members.

The main institutions of social dialogue are the Tripartite Commission for Social and Economic Affairs (Trójstronna Komisja ds. Społeczno Gospodarczych (TK), the Voivodship Committees of Social Dialogue¹⁶⁸ and Tripartite Branch Teams. The TK members are government representatives, appointed by the Prime Minister, and representatives of the national-level trade union and employers' organisations). There are many trade union organisations that operate within the public sector in the majority of education and healthcare institutions, as well as in administration. Trade unions are also strong in transport and telecommunications. In case of public service employees there is only one union organisation, which is the Independent and Self-Governing Trade Union Solidarity (Niezależny Samorządny Związek Zawodowy 'Solidarność', NSZZ Solidarność) of the central and local government administration employees (mostly employees of local government administration). No employers' organisations operate in the state administration. The employers are chiefs of government administration units. Their role is limited to performing functions determined by legislation. They do not have the authority to introduce any flexibility with regard to the employment relations of their subordinates. In the regional and local administration collective bargaining is largely local but central government sets the overall financial framework; no employees have special status.

(168) A total of 10 thematic teams function within the TK in the areas of: state economic policy and the labour market; labour law and collective bargaining agreements; social dialogue development; social insurance; public services; the budget, wages and social benefits; cooperation with the International Labour Organization (ILO); European Structural Funds; the revised European Social Charter; EU affairs.

According to data from March 2009 169 collective bargaining agreements are registered in Poland (among them, 44 are terminated or resolved). Registered agreements cover approximately 500 thousand employees and among them: local government employees who are not school teachers, employees of state budgetary units employed in National Board of the National Parks, prison units, sanitary-epidemiological stations, energy industry and facilities, lignite mines, defence industry, telecommunication, and state forest farms.

The right of concluding collective agreements was re-introduced into the Polish legal system in 1994. Despite the fact that the number of collective agreements in Poland remains at the level of 150-160, their real impact on relations between employers and employees is relatively low. Only a few of agreements were concluded by the organisations of the employers, leaving the rest to be concluded by local authorities. It is underlined that one of the reasons for that might be relatively low level of unionisation in Poland (one of the lowest in the European Union). This phenomenon is fuelled by the common practice of rivalry between the trade unions inside the same company. It is also said that the trade unions generally concentrate on their own survival, as most of the state-owned companies, where collective agreements are most frequently in force usually have certain financial difficulties. The employers complain about the lack of legal incentives to conclude agreements, which are so easy to break (especially after the verdict of the Polish Constitutional Court in 2002). In fact they are acting more as a lobby putting pressure on politicians in their interest, not as partners in difficult negotiations with social partners.

The **hospital health services sector** shows a high level of mobilisation and industrial action. Collective agreements are concluded at **single-employer level** (in about 20% of entities, in 2008). Ownership fragmentation is considerable in this sector, and health services are paid for by the NFZ. After 2008, state administration entities were no longer entitled to be party to collective agreements.

The **postal sector** in Poland is still dominated by the public company Polish Post (Poczta Polska). No collective bargaining takes place in the postal and courier activities sector in Poland, therefore **no collective agreements** are in operation. Dialogue between the social partners generally takes the form of conflictual communication during strike action. As regards private operators, they lack employer organisations that could negotiate multi-employer agreements and have relatively weak trade unions.

In **the gas sector** dominated by public operators, no employer representation is present to make possible the execution of any multi-employer collective agreement. There are, however, **single-employer collective agreements** which have been implemented in strategic companies.

In exchange, in the electricity sector there are **sectoral and company agreements**.

The **railways transport sector** ranks among the most unionised in Poland. In contrast with other branches of the economy, collective bargaining coverage is high. The **multi-employer agreement** covers all employees of the PKP Group of companies (Polish National Railways - Polskie Koleje Państwowe - PKP), controlled by the public authorities. The remaining licensed railway operators currently comprise only relatively small local companies.

In the Polish **civil aviation industry**, the PLL LOT, the state-controlled company dominates the market and is an exception from the general rule whereby collective agreements are most prevalent in state-owned enterprises. The **single-employer collective agreement** has been in force at PLL LOT (the operator of the national airline) since 1993 – and remains the only collective agreement in the Polish air transport

industry. No employers' organisation exists in the civil aviation sector which could be party to a collective agreement.

Sources of national law on SGLs

Sector	Legal references	Web sites
Telecommunications	Telecommunications law of 16 July 2004 (Official Journal 2004 No 171/1800 with further amendments)	http://www.en.uke.gov.pl/_gALLERY/86/860/Telecommunication_Law_consolidated_version.pdf
Postal services	Postal law of 12 June 2003 (Official Journal No 130/1188 with further amendments)	http://www.en.uke.gov.pl/ukeen/index.jsp?place=Lead09&news_cat_id=17&news_id=291&layout=23;page=text
Production of electricity	Energy law of 10 April 1997 (Official Journal 1997 No 54/348 with further amendments)	http://www.ure.gov.pl/portal/pl/25/17/Ustawa_z_dnia_10_kwietnia_1997_r__Prawo_energetyczne.html
Electric networks (transport-distribution)	Energy law of 10 April 1997 (Official Journal 1997 No 54/348 with further amendments)	http://www.ure.gov.pl/portal/pl/25/17/Ustawa_z_dnia_10_kwietnia_1997_r__Prawo_energetyczne.html
Marketing of electricity	Energy law of 10 April 1997 (Official Journal 1997 No 54/348 with further amendments)	http://www.ure.gov.pl/portal/pl/25/17/Ustawa_z_dnia_10_kwietnia_1997_r__Prawo_energetyczne.html
Gas transport-distribution	Energy law of 10 April 1997 (Official Journal 1997 No 54/348 with further amendments)	http://www.ure.gov.pl/portal/pl/25/17/Ustawa_z_dnia_10_kwietnia_1997_r__Prawo_energetyczne.html
Marketing of gas	Energy law of 10 April 1997 (Official Journal 1997 No 54/348 with further amendments)	http://www.ure.gov.pl/portal/pl/25/17/Ustawa_z_dnia_10_kwietnia_1997_r__Prawo_energetyczne.html
Railway transport of passengers	Railway transport Act of 28 March 2003 (Official Journal No 86/789 with further amendments)	http://www.en.mi.gov.pl/2/files/0/32253/ustawa_kolej.pdf
Freight rail transport	Railway transport Act of 28 March 2003 (Official Journal 2003 No 86/789 with further amendments)	http://www.en.mi.gov.pl/2/files/0/32253/ustawa_kolej.pdf
Regional and local transport of passengers	Road transport Act of 6 September 2001 (Official Journal 2001 No 125/1371 with further amendments)	http://www.mii.gov.pl/files/0/1791069/Ustawaotransporcieciadrogowym.pdf
Air transport	Aviation Act of 3 July 2002 (Official Journal 2006 No 100/696 with further amendments)	http://www.ulc.gov.pl/_download/prawo/prawo_krajowe/prawo_lotnicze_09.pdf
Inland water transport	Inland navigation Act of 21 December 2000 (Official Journal 2001 No 5/43 with further amendments)	http://www.mii.gov.pl/files/0/1787754/UegJuga.pdf
Maritime transport	Maritime Code of 18 September 2001 (Official Journal 2001 No 138/1545 with further amendments)	http://www.mii.gov.pl/files/0/1787749/zmukodeksmorskid20011545j.pdf
Water	Water Supply and Wastewater Management Act of 7 July 2001 (Official Journal 2001 72/747 with further amendments)	http://www.mii.gov.pl/files/0/1117/ust_07_06_01.pdf
Waste water	Water Supply and Wastewater Management Act of 7 July 2001 (Official Journal 2001 72/747 with further amendments)	http://www.mii.gov.pl/files/0/1117/ust_07_06_01.pdf
Heating	Energy law of 10 April 1997 (Official Journal 1997 No 54/348 with further amendments) Communal Economy Act of 20 December 1996 (Official Journal 1997 No 9/43)	http://www.ure.gov.pl/portal/pl/25/17/Ustawa_z_dnia_10_kwietnia_1997_r__Prawo_energetyczne.html http://isap.sejm.gov.pl/Download?id=WDU19970090043&type=3
Broadcasting	Broadcasting Act of 29 December 1992 (Official Journal 2004 No 253/2531 consolidated version)	http://www.krit.gov.pl/bip/Portals/1/Documents/Broadcasting_Act.pdf
National public administration	Constitution of the Republic of Poland of 2 April 1997 (Official Journal 1997 No 78/483) Governmental Administration's Sectors Act of 4 September 1997 (Official Journal 1999 No 82/928 consolidated version) Governmental Administration in the Voivodship Act of 5 June 1998 (Official Journal 2001 No 80/872 consolidated version)	http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm http://www.mswia.gov.pl/portal/pl/53/1656/Ustawa_o_dzialach_administracji_rzadowej.html http://www.mswia.gov.pl/portal/pl/53/1657/Ustawa_o_administracji_rzadowej_w_wojewodztwie.html
Regional or local public administration	The Law on Self-Government in the Voivodship, 5 June 1998 (Official Journal 2001 No 142/1590 consolidated version) The Law on Self-Government in the County, 5 June 1998 (Official Journal 2001 No 142/1592 consolidated version) The Law on Self-Government in the Commune, 5 June 1998 (Official Journal 2001 No 142/1591 consolidated version)	http://www.mswia.gov.pl/portal/pl/53/1658/Ustawa_o_samorządzie_wojewodztwa.html http://www.mswia.gov.pl/portal/pl/53/1659/Ustawa_o_samorządzie_powiatowym.html http://www.mswia.gov.pl/portal/pl/53/1660/Ustawa_o_samorządzie_gminnym.html
Hospital health services	The law on Healthcare Institutions, 30 August 1991 (Official Journal 2007 No 14/89 consolidated version)	http://www.mz.gov.pl/wwwmz/index?mr=b2&ms=332&mi=pl&mi=332&mx=0&mt=&my=376&ma=07863
Ambulatory health services	The law on Healthcare Institutions, 30 August 1991 (Official Journal 2007 No 14/89 consolidated version)	http://www.mz.gov.pl/wwwmz/index?mr=b2&ms=332&mi=pl&mi=332&mx=0&mt=&my=376&ma=07863
Primary and secondary education	Education System Act on 7 September 1991 (Official Journal 2004 No 173/1808 consolidated version)	http://www.menis.pl/prawo_owsiatowe.html
Higher education	The Law on Higher Education, 27 July 2005 (Official Journal 2005 164/1365 with further amendments)	http://www.bip.nauka.gov.pl/_gALLERY/15/36/1536/20050727_prawo_o_szkolnictwie_wyzszym.pdf
Vocational training	Education System Act on 7 September 1991 (Official Journal 2004 No 173/1808 consolidated version)	http://www.menis.pl/prawo_owsiatowe.html
Compulsory social protection	Social Aid Act on 12 March 2004 (Official Journal 2008 No 115/728 consolidated version)	http://www.mpips.gov.pl/_download.php?file=files%2FFile%2F
Complementary social protection	Social Aid Act on 12 March 2004 (Official Journal 2008 No 115/728 consolidated version)	http://www.mpips.gov.pl/_download.php?file=files%2FFile%2F
Social housing	The Law on Financial Support for Social Housing, Doss-houses and Houses for Homeless, 12 February 2009 (Official Journal 2009 No 39/309)	http://www.mii.gov.pl/files/0/1354/ust_080906.pdf
Childcare services (0-6 years)	The law on Healthcare Institutions, 30 August 1991 (Official Journal 2007 No 14/89 consolidated version) Education System Act on 7 September 1991 (Official Journal 2004 No 173/1808 consolidated version)	http://www.mz.gov.pl/wwwmz/index?mr=b2&ms=332&mi=pl&mi=332&mx=0&mt=&my=376&ma=07863 http://www.menis.pl/prawo_owsiatowe.html
Care of the disabled	The Law on Professional and Social Inclusion and Employment of Disabled, 27 August 1997 (Official Journal 2008 No 14/92 consolidated version)	http://www.niepelnosprawni.gov.pl/ustawa-o-rehabilitacji/
Elderly care	Social Aid Act on 12 March 2004 (Official Journal 2008 No 115/728 consolidated version)	http://www.mpips.gov.pl/_download.php?file=files%2FFile%2F
Financial services (1)	The Law on Financial Support for Families Purchasing Flats, 8 September 2006 (Official Journal 2006 No 183/1354)	http://www.mii.gov.pl/files/0/1357/ust_080906.pdf
Cultural services (1)	The Law on protection and patronage of national monuments 23 July 2003 (Official Journal 2003 162/1568 with further amendments)	http://isap.sejm.gov.pl/Download;jsessionid=77AEF63389F4A779C4E26904E77A3663?id=WDU20031621568&type=2

PUBLIC SERVICES IN PORTUGAL

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Portugal is a unitary state (it also includes two autonomous regions¹⁶⁹: Azores and Madeira, that have large legislative and administrative competences). At continental level, Portugal comprises 18 districts (distrito/distritos, pl.), a deconcentrated administrative level of the state originally created in 1835. In the autonomous regions, the State is represented by a Representante da República. The 308 municípios constitute the municipal level and 4261 parishes (freguesias) the sub-municipal echelon.

Initially limited to defence and security, the Portuguese public administration evolved, growing and enriching its content, expanded first to the area of justice and, later, to economic and social life, and then to culture, environment, and quality of life issues.¹⁷⁰

The concept of « public service » is very noticeable in the Portuguese legal order¹⁷¹ and it is consecrated by the Constitution of 2 April 1976¹⁷², which also prescribes the priority tasks of the state in economic and social development (Article 81). The Constitution guarantees the autonomy of local authorities whose powers are established by law.

The EU concept of “services of general interest” is not common in Portuguese law. The traditional concept is serviços públicos (literal translation “public services”), generally used to designate the group of activities that provide services intended to satisfy collective needs, pursued by the State, regional or local authorities, or by private entities under concession or delegation by the public authorities. The EU terms “non-economic services of general interest” and “social services of general interest (serviços de interesse social geral) are equally unfamiliar and there is no really distinct equivalent notion in the Portuguese vocabulary.

By contrast, the EU term “services of general economic interest” is used in the national law and has become common in the legal literature.

There is no general (horizontal) law framing SGIs in Portugal, with the exception of the Law nº 23 of 26 July 1996. However, this law only relates to the issues of consumer protection in the “basic public services”, namely water, electricity, telecommunications, gas, etc. Also there is a chapter in the Law nº 558 of 17

(169) The Portuguese Constitution of 1976 provides for the creation of a decentralised regional level which has not yet been created (art. 235-243).

(170) Rui Afonso Rucas, Joao Francisco de Magalhães Ilharco, “The Role of Public Administration in the consolidation of Democracy in Portugal”, in R. Baker, *Transitions from authoritarianism: the role of the bureaucracy*, 2002, p. 152

(171) For instance, public service delivery implies the observation of the legal regime of public procurement. Also, public service relations determine a special jurisdiction (administrative courts).

(172) See in particular Articles 18§5, 40§2, §3 et §4 4.

December 1999, on the public companies that provide “services of general economic interest”.

Terms in TEU and TFEU	Portuguese terms in TEU and TFEU ^{table 15}
Services of general interest – SGIs	serviços de interesse geral – SIG
Services of general economic interest – SGEIs	serviços de interesse económico geral - SIEG
Non-economic services of general interest – NESGIs	serviços de interesse geral não económicos
Public service	serviço público

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs’ organisation?

Central government	Regional government (1)	Local government
Telecommunications		Regional and local transport of passengers
Postal services		Water
Production of electricity		Waste water and solid waste
Electricity networks (transport-distribution)		Social housing
Marketing of electricity		Cultural services (libraries, theatres, etc.)
Gas transport-distribution		Local roads network
Marketing of gas		Primary school buildings and school transport
Railway transport of passengers		Sport services (swimming pools, other sport facilities)
Freight rail transport		
National roads		
Air transport		
Maritime transport		
Broadcasting		
Hospital health services		
Ambulatory health services		
Primary and secondary education		
Higher education		
Vocational training		
Compulsory social protection		
Complementary social protection		
Childcare services (0-6 years)		
Care of the disabled		
Elderly care		
Cultural services		

(1) In the islands of Azores and Madeira (which are constitutionally autonomous regions) many of the SGEIs that are provided by the central government in Continental Portugal are provided in those regions by the regional government and administration (education, healthcare, social security, etc.).

Note: Financial services do not fall in the remit of the concept of SGIs in Portugal. They are in the market.

B. Sectoral organisation and trends

Status of the operators

National public provider	National mixed providers (majority of public shares)	Sub-national (local) public providers	Sub-national (local) mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
Postal services Hospital health services Ambulatory health services Primary and secondary education Railway transports of passengers Air transport Broadcasting Higher education Compulsory social protection Cultural services	Gas transport Electricity networks (transport)	Regional and local transport of passengers (1) Water Vocational training Complementary social protection Social housing Childcare services (0-6 years) Care of the disabled Elderly care Cultural services	Water Waste water Social housing	Water Waste water Hospital health services Highways		Telecommunications Postal services Production of electricity Marketing of electricity Gas distribution (2) Marketing of gas Freight rail transport Regional and local transport of passengers (2) Air transport Maritime transport Water (2) Waste water (2) Broadcasting Ambulatory health services Hospital health services Primary and secondary education Higher education Complementary social protection Social housing Childcare services (0-6 years) Care of the disabled Elderly care Cultural services

(1) In Lisbon and Oporto metropolitan areas they are provided by state public enterprises.

(2) Under concession by the national, regional or local authorities.

SGI markets

Liberalised market and competition	Liberalised market / Public operators dominant	Liberalised market Private operators dominant	Public monopoly	Private monopoly	No market
Telecommunications Regional and local transport of passengers (road transport) Air transport Maritime transport	Postal services Broadcasting Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Complementary social protection Social housing Childcare services (0-6 years) Care of the disabled Elderly care Cultural services	Production of electricity Marketing of electricity Marketing of gas Freight rail transport	Electricity networks (transport and distribution) Gas transport-distribution network Railway transport of passengers Regional and local transport of passengers (metropolitan areas) Water Waste water Compulsory social protection Railway network		

Main financing methods of SGIs

Fees/payment by users	Public subsidies	Insurance funds	Social tariffs
Telecommunications	Regional and local transport of passengers (metropolitan transports)	Complementary social protection	Water
Postal services	Air transport (on flights to the furthest parts of Portugal)	Private health insurance schemes	Electricity
Production of electricity	Water (some cases)		Local transport
Electricity networks (transport-distribution)	Waste water (some cases)		Railway passengers transport
Marketing of electricity	Broadcasting (public operator)		
Gas transport-distribution	Hospital health services (generally free)		
Marketing of gas	Ambulatory health services (generally free)		
Railway transport of passengers	Primary and secondary education (generally free)		
Freight rail transport	Higher education		
Regional and local transport of passengers	Vocational training		
Air transport	Compulsory social protection		
Water	Complementary social protection		
Waste water	Social housing		
Broadcasting (public service)	Childcare services (0-6 years)		
Hospital health services (to a certain extent)	Care of the disabled		
Ambulatory health services (to a certain extent)	Elderly care		
Higher education	Cultural services		
Compulsory social protection			
Complementary social protection			
Social housing			
Childcare services (0-6 years) (partial payment)			
Care of the disabled (partial payment)			
Elderly care (partial payment)			
Cultural services (partial payment)			
Highways			

Authorities responsible for setting pricing and/or tariff policies

Parliament	Central government	Local government	Regulatory agencies	Other
	Railway transport of passengers	Social housing	Telecommunications (2)	
	Local transport of passengers (metropolitan areas)	Childcare services (0-6 years)	Postal services(2)	
	Hospital health services	Care of the disabled	Electricity networks (transport-distribution)	
	Ambulatory health services	Elderly care	Gas transport-distribution	
	Higher education	Water (1)	Water (3)	
	Vocational training	Waste water (1)	Waste water	
	Compulsory social protection	Solid waste (1)	Solid waste (3)	
	Complementary social protection			
	Childcare services (0-6 years)			
	Care of the disabled			
	Elderly care			
	Hospital health services			
	Ambulatory health services			

- (1) Within the framework established by the national regulatory agency
- (2) Except in the liberalised sector
- (3) Framework of the tariffs

II/ Approaches

A. The model of public administration and national public companies

With the adoption of the Portuguese Constitution of 1976, which stated that the nationalisations made after the Revolution were irreversible, in the mid 1970s, the public enterprise sector underwent a massive expansion in Portugal, one of the largest in Europe. The nationalised sector covered important infrastructure networks (transports, telecommunications, energy¹⁷³) and the major industrial companies (steel, metallurgy, chemistry), and also all financial institutions. In the 1980s as a consequence of the complex change in the political consensus and the country's accession to the EU, privatisation appeared on the government agenda. Consequently, from 1989 Portugal constituted one of the most important instances of denationalisation programmes in Europe¹⁷⁴. The privatisation programme included the financial sector (banks, insurance companies), telecommunication, energy and other sectors (shipyards, cement, paper, etc.).¹⁷⁵

However, in Portugal, the public companies continue to play an important role for the provision of many SGI sectors:

01. As in the majority of other EU Member States, in Portugal the postal services market has traditionally been led by the public postal operator. The current national operator, CTT-Correios de Portugal S.A., was initially established as a State public service body (Administração-Geral dos Correios Telégrafos&Telefones). By Decree-Law n°49368 of 10 November 1969 the entity was transformed into a public company (Correios e Telecomunicações de Portugal - CTT), transformed into a limited company in 1992 and the telecommunications were separated (Telecom Portugal, privatised from 1995). CTT is the provider of the universal postal service in Portugal and the leading operator on the Portuguese liberalised market of postal services.

02. The state-owned transport operator Caminhos de Ferro Portugueses (CP) is the main company providing railway services in Portugal. After the nationalisation of the Companhia dos Caminhos de Ferro Portugueses, provided in the Decree Law n° 205-B/1975, the company remained public until now. After 1997, CP only handles transport of passengers and freight, since the management of the railroad network itself was attributed to REFER Rede Ferroviária Nacional, EPE, another public owned company.

(173) In the energy sector, for example, many small and medium sized companies which supplied electricity were nationalised and integrated within the national agency EDP.

(174) Portugal was « the third largest privatiser in the OECD, after the United Kingdom and New Zealand ». OECD, Economic survey: Portugal, 1994, p. 64.

(175) Judith Clifton, Francisco Comín, Daniel Díaz Fuentes, Privatisation in the EU : public enterprises and integration, 2003, pp. 70, 71

03. REN - Redes Energéticas Nacionais, SGPS, is the publicly controlled company that provides and manages the transport networks of electricity and gas. The State controls the company through three other companies that hold 51,1% of REN. Private investors hold the remaining shares which gives them an important role in the defining company activity and strategy. REN was originally created in 1994 as a subsidiary of EDP (electricity), and became a separate company with the restructure of the Portuguese electrical and gas market in 2007, with the separation between production, network and distribution.

04. TAP - Transportes Aéreos de Portugal, SA is the state-owned air transport company. Created in 1945 and nationalised in 1975, it remains public. The public service obligations of TAP are reduced to the transport of passengers to the autonomous region of Madeira. There is also SATA, an air carrier owned by the regional government of Azores, which is in charge of public service obligations with the region, participating as well in the open market of air transport to the continent and overseas.

05. RTP - Rádio e Televisão de **Portugal** is the national TV and radio broadcaster. It was originally created in 1935 under the designation Emissora Nacional de Radiodifusão and gained its present structure in 1994, when the services of TV and Radio were combined in one company. RTP, whether in TV or in Radio (it has several channels under the designation Antena 1, 2 and 3), broadcasts in open signal, in view of its obligations of public service - universal service - as stated in the concession agreement for TV and for Radio, and in the Law n.º 8/2007, of 14 Feb.

B. Local autonomy

The Portuguese Constitution of 1976 adopted by the democratic regime established in 1974 guarantees autonomy for municipalities. Decentralisation was regulated in 1977, by specifying the tasks assigned to local governments¹⁷⁶. The current regulatory system relies on the principles of decentralisation. A process that can lead to greater decentralisation, particularly in the areas of health and education has been ongoing since 2007.¹⁷⁷

The significant increase of functional responsibilities decentralised to local government generated an expansion in the organisational configurations at their disposal: municipal services; autonomous municipal services; municipal enterprises; inter-municipal enterprises; municipal commercial corporations; public commercial corporations; mixed commercial corporations; contracting-out to private agents; partnerships with non-profit actors; local government associations; and metropolitan associations.¹⁷⁸ In most cases (in the field of sports facilities, social housing, culture and tourism), the local government provides the services through local public enterprises (there are three types of structures depending on the composition of capital: *empresas municipais* – local public companies owned by local government; *empresas intermunicipais* – local public companies held by local government jointly with other local governments, or by an association

(176) See, nowadays, Law n° 169 of 18 September 1999

(177) ***, *Les collectivités territoriales...*, op.cit., Dexia, 2007, p.548

(178) Miguel Ângelo Vilela Rodrigues, Joaquim Filipe Ferraz Esteves de Araújo, António Fernando Tavares, "Municipal service delivery : the role of transition costs in the choice between alternative governance mechanisms", Paper presented at EGPA Annual Conference 2009, IV Study Group: Local Governance and Democracy

that joins local governments, and empresas metropolitanas— companies publicly, formed by the metropolitan areas of Lisbon or Oporto. In all of these types of public enterprise, private partners can own part of the capital, but the local public government, association or metropolitan area must have control of the company, either by owning the majority of shares, or by the power to nominate the majority of board members.

C. Delegated management and externalisation

As their competences are growing, local governments in Portugal no longer assume the provision of all public services through in-house services. By the end of the 1990s, some local governments began contracting with external actors to provide public services, including water and solid waste, electricity and local transport.

PPP projects and concession agreements were developed in the mid-1990s. Today, the concession agreements are regulated by the Public Contracts Code¹⁷⁹ and the public-private partnerships are regulated by Decree-law n°86 of 2 April 2003¹⁸⁰ and are well developed in the transport sectors (highways, metro, tram, rail transport infrastructure, and telecommunications), and advances in health care (hospital building)¹⁸¹, management of water and waste.

D. “New Public Management”

Portuguese public administration was also subject to NPM reforms meant to revitalise service delivery and to introduce innovative organisation to deliver public services.

The major dimensions of NPM initiatives were:

01. autonomisation and “corporatisation” of public services although remaining in the public sector (water, health care and cultural services);
02. introduction of market mechanisms in the public services sector through tariffs and free choice of the service provider (health, education, etc.);
03. “Contractualisation” of public service obligations with the public providers (TV and radio public service, postal services, etc.)

Evaluation of the SGIs is more usual in quality and security, as well as continuity of the service issues, related to satisfaction of established standards (notably set by EU or national law). Evaluation is most commonly pursued by the regulatory agencies, most of the time in a voluntary manner. But there are many examples of compulsory evaluations. Examples are the quality of water, the continuity of power supply, etc.

(179) See Decree Law n° 18 of 29 January 2008

(180) See for the health sector Decree Law n° 185 of 20 August 2002

(181) <http://www.parpublica.pt/pppsanalise.html>

E. Regulatory Agencies

The foreign ideas and experiences of post liberalisation and post privatisation market economies influenced the Portuguese administrative reforms from the late 1980s. Among the reform initiatives it was the creation of public agencies, as instruments of regulation of the SGI and other regulated sectors. Their creation does not follow a specific reform programme or model, but, rather, is the result of individual ministerial initiatives.¹⁸²

The opening to competition of the electricity market has been gradually carried out between 1995 and 2006 and in the gas sector between 2006 and 1 January 2010. ERSE (Endidade Reguladora dos Serviços Energéticos – www.erse.pt), created in 1995, is an independent regulatory agency responsible for the regulation of electricity and gas markets, the protection of the rights and interests of consumers (price issues), services and the quality of services, monitoring compliance with public service obligations and other legal obligations, implementation of the liberalisation of energy sectors.

The operation of the Portuguese regulator of telecommunications and postal services began in 1989, first with the structural reform of the postal sector, and then with the separation of regulatory and operational functions. The creation of this authority followed the guidelines of the European Community and international influence. As an independent regulatory agency, ANACOM's (Autoridade Nacional de Comunicações - <http://www.anacom.pt>) main key functions and powers are: monitoring the provision of universal service, including quality of service standards and price control, issue of licences and ensuring compliance with their requirements.

The creation of the Health Regulatory Agency (Entidade Reguladora da Saúde, ERS - <http://www.ers.pt/>) was approved in November 2003 to respond to the new public, private and non-profit mix of health care providers to the national health system (for hospitals, health care centres and continuous care, pharmacies) and the need to separate the state's tasks of provider and financing from its regulatory role. ERS is a public body with financial and administrative autonomy. Its competences cover areas such as access to medical health care, supervision of the levels of quality and safety guarantee, checking that the rules of competition between the operators are applied, and support for the rights of healthcare users.

ERC (Endidade Reguladora para a Comunicacao Social – www.erc.pt), the special broadcasting independent regulatory agency, was established by the Law n°53 of 8 November 2005 and has operated since February 2006 as a legal person of public law, endowed with administrative autonomy and financial resources and competences to regulate the media sectors.

ERSAR (Entidade Reguladora dos Serviços de Águas e Resíduos - www.ersar.pt) is the national regulatory body in charge of the regulation of the services of water supply (including quality evaluation), water waste and residues.

AdC (Autoridade da Concorrência - www.concorrenca.pt) is the independent and financially autonomous competition authority with powers on competition over all sectors of the economy, including the regulated sectors, the latter in coordination with the relevant sector regulators. its mission is to ensure compliance in Portugal with national and EU competition laws, efficient working of the markets for all products and

(182) J.A. Oliveira Rocha, J.F.F.E. de Araujo, Administrative reform in Portugal : prospects and dilemmas, 2006

services, a high level of technical progress and pursuit of the greatest benefit for consumers.

There are other national sectoral regulatory agencies in the areas of air transport, railway transport, roads, construction, etc.

III/ Social dialogue

In Portugal¹⁸³, branch agreements set pay and working time for about 94% of the labour force in the **private sector**. The rest of the workers are covered by multi-employer and single employer agreements. There are no central agreements at national level. The extension of collective agreements by ministerial decree is a common practice which guarantees under the existing labour law that employers cannot opt out of agreements. Collective agreements are published in an official bulletin and are legally binding.

Tripartite concertation takes place in the Standing Committee for Social Concertation (Comissão Permanente de Concertação Social, CPCS), created in 1984. The CPCS is formally part of the Economic and Social Council (Conselho Económico e Social, CES), which was set up several years after the CPCS as a consultative body between the government and civil society in a broader sense.

In the Portuguese **general public sector**, employees enjoy a special status compared with private sector employees. Their status is defined by the Legal Regime of the Employment Contract in Public Functions (Law 59/2008), while the status of private employees is defined by the Labour Code. The more contrasting status is observed between public servants (permanent staff), and employees in the private sector. The legal relationship of public employment is statutory in nature, and is governed by special rules of conduct. Trade union freedom and the right to strike have the same legal presence in the public service as in the private sector, with restrictions in regard to certain careers and groups (e.g. the armed and militarised forces). Although under current law the public administration is subject to a duty to bargain in certain cases, it is not bound by the outcome of collective bargaining. Once an agreement is reached the government is obliged to adopt the legal or administrative measures defined by the agreement, with the exception of those that demand discussion in Parliament. Thus, in practical terms, the agreement does not have normative value as is the case for collective agreements in the private sector. The practical application is conditioned by the legal and administrative intervention of the government. There are no collective agreements in the public sector but negotiations in relation with trade-union demands. The general round on public sector yearly wage increase (which is transversal to all sectors) is carried out under the responsibility of the Minister of finances; but the specific **negotiations** or particular statutes are carried out under the responsibility of the minister of the respective sector.

The vast majority of **hospital** employees in Portugal work in the **public sector** – that is, in the National Health Service (Serviço Nacional de Saúde, SNS) – although the private part of the market is also growing fast. Working conditions in the public services are negotiated at central level, although they are finally determined by government decree. **In the private sector**, two parallel **sectoral agreements** are in place with the involvement of only one employer association; they exclude physicians and nurses (about half of

(183) References: studies on representativeness of the European social partner organisations in Portugal (<http://www.eurofound.europa.eu/eiro/>)

employees in private hospitals). Due to the high proportion of public employment, collective bargaining coverage is thus very low.

Also in the **teaching sector**, the vast majority of teachers work for the public sector. Working conditions in public schools are negotiated at central level, although they are finally determined by government decree. Trade unions are very influential in the negotiation of agreements with the central administration.

In the **postal services sector** trade union density is traditionally high in the public segment of the sector. No multi-employer agreements exist in the sector but only one **company agreement within CTT** (CTT Correios de Portugal, formerly monopolist and still publicly owned). CTT is the most important employer in the sector and it signs a company agreement every year. Other companies in the sector do not sign collective agreements in this sector. Some of CTT's competitors in the liberalised part of the postal services market are covered by collective agreements in the transport sector.

The **gas sector** in Portugal has a very small share in employment. Most important companies in the sector do not belong to an employers' association. Trade union pluralism results in a division of the union camp in collective bargaining. There are **two parallel multi-employer agreements** with the same group of companies.

There is no employers' association in Portugal's **railway sector**. The few existing agreements are **company agreements**.

The **civil aviation sector** has a small share in overall employment, but the company agreement of the largest national operator (TAP) is relevant in the context of collective bargaining at national level. All employers conclude only **single-employer agreements**. The domain of the most representative trade unions in the sector is usually limited to specific occupational groups in the sector (such as ground personnel, cabin crew, maintenance personnel) but they negotiate common company agreements.

Sources of national law on SGIs

Sector	Legal references	Web sites
Telecommunications	Decreto-Lei n.º 309/2001, de 7 de Dezembro (Legal framework of ANACOM); Lei n.º 5/2004, de 10 de Fevereiro (Electronic communications); Decreto-Lei n.º 129/2009, de 21 de Maio (Infrastructures); Decreto-Lei n.º 192/2000, de 18 de Agosto (Equipments); Decreto-Lei n.º 151-A/2000, de 20 de Julho (radio communications); Decreto-Lei n.º 7/2004, de 7 de Janeiro and Decreto-Lei n.º 82/2008, de 20 de Maio (e-commerce)	www.anacom.pt www.moptc.pt
Postal services	Lei n.º 102/99, de 26 de Julho, Decreto-Lei n.º 116/2003, de 12 de Junho; Lei 448/99, de 4 de Novembro; Decreto-Lei n.º 150/2001, de 7 de Maio	www.ctt.pt www.moptc.pt www.anacom.pt
Production of electricity	Decreto-lei nº 97/2002, de 12 de Abril (regulatory agency ERSE) Decreto-Lei n.º 172/2006, de 23 de Agosto (Legal Basis)	www.erse.pt www.edp.pt
Electricity networks (transport-distribution)	Decreto-Lei n.º 185/2003, de 20 de Agosto (transport) Decreto-Lei n.º 172/2006, de 23 de Agosto (Legal Basis) Decreto-Lei n.º 228/2006, de 11 de Novembro (privatization of REN)	www.erse.pt www.edp.pt www.ren.pt
Marketing of electricity	Decreto-Lei n.º 184/2003 de 20 de Agosto (marketing) Decreto-Lei n.º 172/2006, de 23 de Agosto (Legal Basis) Decreto-Lei n.º 185/2003, de 20 de Agosto (open market) Decreto-Lei n.º 19-B/2006, de 20 de Abril (Iberian Market)	www.erse.pt www.edp.pt
Gas transport-distribution	Decreto-Lei n.º 30/2006, de 15 de Fevereiro (National System) Decreto-Lei n.º 140/2006, de 26 de Julho (National System) Decreto-lei 274-C/93, de 4 de Agosto (transport)	www.erse.pt
Marketing of gas	Decreto-Lei n.º 30/2006, de 15 de Fevereiro (National System) Decreto-Lei n.º 140/2006, de 26 de Julho (National System)	www.erse.pt
Railway transport of passengers Freight rail transport	Decreto-Lei n.º 75/2003, de 28 de Outubro (legal framework) Regulamento n.º 21/2005, de 11 de Março (prices) Decreto-Lei n.º 137-A/2009, de 12 de Junho (public provider) Decreto-Lei n.º 141/2008, de 22 de Julho (infrastructure)	www.imtt.pt www.moptc.pt

Regional and local transport of passengers	Lei n.º 1/2009, de 5 de Janeiro (local transport authorities)	www.aml.pt www.amp.pt www.imtt.pt
Air transport	Decreto-Lei n.º 138/99, de 23 de Abril (public service obligations)	www.inac.pt
Maritime transport	Decreto-Lei n.º 146/2007, de 27 de Abril	www.ipm.pt
Water	Lei n.º 58/2005, de 29 de dezembro (legal basis) Decreto-Lei n.º 194/2009, de 20 Agosto (local systems of distribution)	www.ersar.pt
Waste water and solid waste	Decreto-Lei n.º 178/2006, de 5 de Dezembro	www.ersar.pt
Heating	---	
Broadcasting	Lei n.º 5/2004, de 10 de Fevereiro (Electronic communications); Lei n.º 27/2007, de 30 de Julho (television); Lei n.º 53/2005, de 8 de Novembro (regulator ERC); Lei n.º 8/2007, de 14 de Fevereiro (public service, tv and radio); Decreto-Lei n.º 309/2001, de 7 de Dezembro (Legal framework of ANACOM); Lei n.º 7/2006, de 3 de Março (Radio);	www.anacom.pt www.erc.pt www.rtp.pt www.moptc.pt
National public administration	Lei n.º 4/2004, de 15 de Janeiro (central administration) Lei n.º 3/2004, de 15 de Janeiro (indirect administration) Decreto-Lei n.º 442/91, de 15 de Novembro (general legal basis of action) Decreto-Lei n.º 135/99, de 22 de Abril (rules of conduct)	www.min-financas.pt
Regional or local public administration	Lei n.º 169/99, de 18 de Setembro (local administration legal basis) Lei n.º 2/2007, de 15 de Janeiro (local administration financing) Lei n.º 13/91, de 5 de Junho (regional administration) Lei n.º 39/80, de 5 de Agosto (regional administration)	www.min-financas.pt
Hospital health services Ambulatory health services	Lei n.º 48/90, de 24 de Agosto (Legal basis) Lei n.º 11/93, de 15 de Janeiro (National Health Service) Decreto-Lei n.º 13/2009, de 12 de Janeiro (private sector) Decreto-Lei n.º 279/2009, de 6 de Outubro (private sector) Lei n.º 41/2007, de 24 de Agosto (Health Consumer's rights) Decreto-Lei n.º 127/2009, de 27 de Maio (regulatory agency)	www.min-saude.pt www.dgs.pt www.igas.pt www.ers.pt www.portaldasaude.pt www.acss.pt
Primary and secondary education	Lei n.º 46/86, de 14 de Outubro (legal basis) Lei n.º 85/2009, de 27 de Agosto (minimum compulsory education)	www.min-edu.pt
Higher education	Lei n.º 62/2007, de 19 de Setembro (legal basis) Lei n.º 37/2003, de 22 de Agosto (financing)	www.mctes.pt
Vocational training	Decreto-Lei n.º 132/99, de 21 de Abril (employment) Decreto-Lei n.º 396/2007, de 31 de Dezembro (vocational training)	www.iefp.pt
Compulsory social protection	Lei n.º 4/2007, de 16 de janeiro (legal basis) Decreto-lei n.º 367/2007, de 2 de Novembro (financing) Decreto-lei n.º 220/2006, de 3 de Novembro (unemployment protection) Decreto-Lei n.º 28/2004, de 4 de Fevereiro (illness protection)	www.seg-social.pt
Complementary social protection	Decreto-Lei n.º 232/2005, de 29 de Dezembro (elderly complementary protection)	www.seg-social.pt
Social housing	Decreto-Regulamentar n.º 50/77, de 1 de Agosto	www.inr.pt
Childcare services (0-6 years)	Despacho 9620/2009 (childcare service programme)	www.min-edu.pt
Care of the disabled	Decreto-Lei n.º 101/2001, de 6 de Junho	www.seg-social.pt
Elderly care	----	www.seg-social.pt
Financial services (1)	Financial services do not fall in the remit of the concept of SGI in Portugal	
Cultural services (1)	Lei n.º 107/2001, de 8 de Setembro (legal basis) Lei n.º 47/2004, de 19 de Agosto (museums) Lei n.º 42/2004, de 18 de Agosto (cinema) Decreto-Lei n.º 196/2008, de 6 de Outubro (arts) Decreto-Lei n.º 215/2006, de 27 de Outubro (Ministry of Culture)	www.portadacultura.gov.pt

PUBLIC SERVICES IN ROMANIA

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Romania is a unitary State, relatively large in terms of area (the 9th place at EU level) and population (the 7th place at EU level). The State is organised into two levels of “administrative-territorial units”: 42 counties (judete) and 3173 municipalities (319 cities/orase – of which 108 towns/municipii and 2854 rural municipalities/comune). The 8 development regions do not have the status of local government. The deconcentrated administration of the State is organised at each county level¹⁸⁴.

Since the modern organisation of the Romanian State, public services have always been considered an important component of public administration and the legal doctrine of “public service” (the national concept is *serviciu public*) has been developed under the influence of French law.

The concept of public service/*serviciu public* is addressed by the Romanian administrative doctrine from both the organic and functional perspective (public activity in order to satisfy general interest). Depending on their nature, public services are classified in three broad categories: administrative, industrial and commercial and socio-cultural.

The Romanian Constitution of 1991 (revised in 2003) enshrines the concept of public service, viewed either as an activity or as a means (public bodies).¹⁸⁵

The Community concepts of SGI/SGEI/NESGI/SSGI are not common in Romanian legislation. However, the concept of “service of general economic interest” was for the first time used by the Law n° 143/1999 on state aid and in the Competition Council regulations. It was also used in the Governmental Decision on the organisation and operation of water and waste water public services, as a category of services of public utility and of general economic interest.

In the “horizontal” law, the concept of “public services of general interest” was introduced by the new Public utilities law (Article 43 of the Law n° 51/2006), which defines these services as a category of services of general interest for which the law enshrines the principle of equal treatment of local budgets allocations.

The regulation of public services in Romania has a sectoral nature, except for the Law 51/2006¹⁸⁶ mentioned above.

(184) The first modern foundations of Romanian local administrative organisation were set up by the Municipal Law of 1 April 1864 and the Law of 2 April 1864 establishing the county councils. The Constitution of 1866 recognises the county council and municipal powers to meet the exclusive interest of their local communities, according to the principle of complete administrative decentralisation and municipal independence. Meanwhile, until 1918, in the province of Transylvania the Hungarian administrative organisation was in force, in Bukovina the Austrian one and in Bessarabia the Russian organisation model.

(185) See Antonie Iorgovan, *Tratat de drept administrativ*, vol. II, ed. a III-a, Ed. All Beck, Bucure ti, 2001, p. 182-184

(186) http://www.cdep.ro/pls/legis/legis_pck.http_act?ida=63260

Terms in TEU and TFEU	Romanian terms in TEU and TFEU ^{table16}
Services of general interest – SGIs	Servicii de interes general
Services of general economic interest – SGEIs	Servicii de interes economic general
Non-economic services of general interest – NESGIs	Servicii de natură non-economică de interes general
Public service	Serviciu public

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs' organisation?

Central government	Counties	Communes
Telecommunications	Regional and local public administration	Regional or local public administration
Postal services	County transport (roads)	Local transport of passengers
Production of electricity	Hospital health services	Water
Electricity networks (transport-distribution)	Ambulatory health services	Waste water
Marketing of electricity	Care of disabled	Social housing
Gas transport-distribution	Childcare services (child protection)	Heating
Marketing of gas	Cultural services	Childcare services (0-6 years)
Railway transport of passengers	Elderly care	Primary and secondary education
Freight rail transport		Health care (basic services)
Air transport		Social services
Inland water transport		Elderly care
Maritime transport		Complementary social protection
Broadcasting		Cultural services
National public administration		
Regional or local public administration		
Hospital health services		
Ambulatory health services		
Primary and secondary education		
Higher education		
Vocational training		
Compulsory social protection		
Complementary social protection		
Childcare services (0-6 years)		
Care of the disabled		
Financial services		
Cultural services		

B. Sectoral organisation and trends

Status of the operators

National public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
Postal services Electricity Railway transport of passengers Freight rail transport Air transport Inland water transport Maritime transport Broadcasting Hospital health services Higher education Compulsory social protection Financial services Cultural services		Regional and local transport of passengers Water Waste water Hospital health services Ambulatory health services Primary and secondary education Vocational training Compulsory social protection Social housing Childcare services (0-6 years) Care of the disabled Elderly care Cultural services				Telecommunications (1) Postal services Electricity Gas transport-distribution-marketing Regional and local transport of passengers Air transport Inland water transport Maritime transport Water Waste water Broadcasting Hospital health services Ambulatory health services Primary and secondary education Vocational training Complementary social protection Childcare services (0-6 years) Care of the disabled Elderly care Financial services Cultural services

SGI markets

Liberalised market and competition	Liberalised market Public operators dominants	Public monopoly	Liberalised market Private operators dominants	Private monopoly	No market
Telecommunications Inter-municipal transport of passengers Air transport Inland water transport Maritime transport Broadcasting Ambulatory health services Higher education Vocational training	Postal services (universal service) Electricity (1) Railway transport of passengers Freight rail transport Local transport of passengers Water (4) Waste water Heating (3) Hospital health services Primary and secondary education Childcare services (0-6 years) Care of the disabled Elderly care Cultural services	Compulsory social protection Social housing	Gas transport-distribution-marketing Complementary social protection		

(1) At the end of 2007, the Romanian energy market was open but the competition was limited to some parts of the market system. The electricity market included 35 producers of electricity, 7 service providers, 96 providers of electricity, 244 eligible consumers, 1 transport operator that is also the system operator¹⁸⁷ (the National Company for Transport of Electricity “Transelectrica”) and 8 distribution operators.

(2) The competition in the natural gas delivery market is limited. In 2006, in the regulated market of natural gas distribution there were 34 companies, 46,68% of the market being held by Distrigaz Sud and 47,53% by Distrigaz Nord.

(3) In 2004-2005, the centralised system of production and supply of thermal energy provided heating and hot water for 29% of the population (at national level) and 55% of urban population.

(4) On 27 February 2008, according to data published by the Ministry of the Environment, 52% of the population had access to both water and waste water public services, 16% of the population had access only to water public service and 32% had no access to a water or waste water public service.

(187) These two components of the market are considered by law as natural monopolies. They are developed on the basis of a licence granted by the National Regulation Authority and regulated tariffs.

Main financing methods of SGIs

Fees/payment by users/clients	Public grants/aids	Insurance funds	Social tariffs/prices
Telecommunications	Production of electricity	Hospital health services	Regional and local transport of passengers (students, elderly)
Postal services	Electricity networks (transport-distribution)	Ambulatory health services	
Marketing of electricity	Gas transport-distribution	Complementary social protection	
Marketing of gas	Railway transports of passengers		
Railway transport of passengers Freight rail transport	Inland water transport		
Regional and local transport of passengers	Maritime transport		
Air transport	Heating		
Inland water transport	Broadcasting (public operator)		
Maritime transport	Hospital health services		
Water	Ambulatory health services		
Waste water	Primary and secondary education		
Heating	Higher education		
Broadcasting	Vocational training		
Primary and secondary education (private schools)	Compulsory social protection		
Higher education	Social housing		
Vocational training	Childcare services (0-6 years)		
Social housing	Care of the disabled		
Childcare services (0-6 years)	Elderly care		
Elderly care (private operators)	Cultural services		
Cultural services			

II/ Approaches

A. The model of public administration and national public companies

Since 1990 the public services sector has undergone major transformations in terms of administrative, organisational and technological development. At first, these changes were mostly random in nature.¹⁸⁸ Financial constraints, political focus on economic reform, and lack of experience regarding alternative administrative structures, public-private partnership, practices of democratic participation of citizens, the tools of local democracy and decentralisation, all delayed administrative and public services reforms.

The integration of Romania in the EU imposes new revisions in the field of public services according to the *acquis communautaire*. The market logic is becoming more evident in sectors previously managed exclusively by national public enterprises.

(188) Ion Plumb, *Managementul serviciilor publice*, 2001, p. 32

B. “All Public”

The Constitution of the Romanian People's Republic of 1948 has transferred to the ownership of the State, to constitute “the common property of the people”, all the resources in mines and quarries, forests, water, natural energy sources, ways of communication (railways, roads, air routes), postal services, telegraph, telephone and radio (Article 6§1). The Law n° 119 of 11 June 1948 provides for the nationalisation of industrial enterprises, banks, insurance companies, mining and transport companies (railways, private companies of transport by tramway) and telecommunications, with the exception of industrial units that produce, transport and distribute electricity, belonging to the local administration bodies. The shares and social shares of these enterprises or associations became State property. In areas of nationalisation, only the State had the right to establish new enterprises, and, exceptionally, individuals or legal persons. The Constitution of 1952 extends the sphere of State property in order to add factories, communication and transport networks, cinemas, theatres, municipal enterprises, etc. The economy was based on State enterprises and cooperatives.

The legislation adopted after 1990 encouraged gradual privatisation.¹⁸⁹

C. Local autonomy

The Constitution of 8 December 1991¹⁹⁰ established the rule of private property¹⁹¹ and the principles of deconcentration of the ministries' services in the administrative-territorial units, decentralisation and local autonomy. The Law on local public administration n° 215 of 2001 provides that “rural municipalities, municipalities, cities and counties are autonomous administrative-territorial units in which the local government is performed”.

The counties are responsible for the coordination of the activities of local authorities in order to provide the public services of county interest (infrastructure of the county public transport, special education, hospital health services, child protection) (2001 Law on local public administration).

The municipalities provide basic local public services (water, waste water and waste), local public transport, social housing, primary and secondary education (infrastructure and teachers salaries), public health (basic and preventive services), social action (e.g., grants and financial aid, guaranteed minimum income), cultural institutions of local interest, public order, fire, rescue. Rural municipalities whose resources are limited ensure mainly maintenance of communal roads, street cleaning, and street lighting.

The division of competences between the counties and municipalities is not clear in all sectors. The Framework-Law on Decentralisation (n° 195/2006) provides for three categories of local government competences (shared, delegated and exclusive) and introduces new concepts for the implementation of the transfer of competences from central to local level: standards of cost and quality, geographic area of

(189) 63,58% of privatisations were realised during 1997-2000. F. Georgescu, *Starea economico-sociala a Romaniei in anul 2000*, Ed. Expert, Bucuresti, 2002, p. 73

The year 2002 was the first since 1989 when the share of private capital was greater than that held by the State sector.

(190) <http://www.cdep.ro/pls/dic/site.page?id=371>

(191) However, the Law on public property and its legal regime and the Concessions Law were adopted only in 1998.

beneficiaries, administrative capacity.

The Law n° 51 of 8 March 2006 provides two methods of managing public utilities: direct management, funded by grants from the public administration and delegated management. The majority of local public services are managed by specialised internal services of public authorities. Most services of water supply¹⁹² and waste water are managed by autonomous public regii (commercial enterprises whose capital is owned 100% by the local authority).

For the implementation of local development projects or the common provision of public services, local authorities can establish associations of intercommunal development, public institutions of intercommunal cooperation and associations among the largest municipalities (rank “0” and “1”) and the surrounding communities¹⁹³. However, they are still poorly developed.

D. Delegated management and externalisation

The delegated management of public services developed after 1990 through the concession of economic public services to private operators (private or mixed commercial enterprises, some arising from the transformation of autonomous public regii¹⁹⁴ or the specialised municipal services), most often in areas of heating, waste management, urban public transport, street cleaning and rarely water¹⁹⁵.

Not-for-profit operators are most often involved in the provision of social services.

E. “New Public Management”

Romanian legislation introduced the contracts of public-private partnership in 2002. The Law n° 34/2006 created a general framework for the concession contracts (including PPP – transport infrastructure, tourism, research, etc.).

SGIs are currently regulated by specific authorities. Monitoring/evaluation competences are rather limited and they occur only during (re)licensing procedures. There are no provisions regarding compulsory evaluation of quality of SGIs in Romania.

(192) The National Regulatory Authority for Community Services of Public Utility recorded at the end of 2006 849 drinking water suppliers, of which 86 covered 90% of the market. About 67% of these services were conducted in-house.

At the end of 2008, in the area of community services of public utility there were 1967 operators (492 new operators compared to the year 2007) providing 2293 services: 985 in the area of water distribution and waste water; 138 in heating; 687 in the waste sector; 274 for local transport of passengers; 209 services of public lighting.

(193) It 1872, Romanian law recognised for the first time the association of counties for supply and maintenance of works of interdepartmental interest and, according to the French model, in 1887, the association of rural communes for compulsory works.

(194) The Law on local public administration n° 69/1991 gives local authorities the power and autonomy to perform the services of local interest. In 1991, on the basis of the Law n° 15 of 7 August 1990, the units of local administration were involved in a reorganisation process and became autonomous entities (regii autonome) and companies, and later in a process of privatisation. By Government Decision n° 597/1992, the autonomous entities (regii autonome) and the companies established with the capital from the State for the provision of public services have been transferred to the competence of local councils. The evolution of the public services reorganisation process has revealed the deficiencies of the management by autonomous public entities (regii autonome) and their inefficiency. In 1997, the Government Decision n° 30 started a long process of reorganisation (in some cases, of liquidation) of autonomous entities (regii autonome) into limited companies.

(195) For example, Apa Nova SA Bucharest, the concessionaire of the water and waste water public service in Bucharest capital city – subsidiary of Veolia Environment – Veolia Water. Since March 2000, 83,69% of its capital is owned by Veolia Group, 16,31% by the municipality, 0,0009% others.

F. Regulatory Agencies

In Romania, the emergence of regulatory bodies is related to the process of liberalisation to ensure efficiency, competition, transparency and consumer protection. However, competition and the protection of consumers were already main tasks of the Competition Council, a national autonomous authority created in 1996, and the National Authority for Consumer Protection.

The first regulatory body was created in the field of energy in 1998¹⁹⁶ - the National Regulatory Authority in the field of Energy (ANRE¹⁹⁷). It is a public independent body of national interest whose mission is to create and implement the appropriate regulatory system to ensure the proper functioning of the electricity, heat and gas markets, in terms of efficiency, competition, transparency and consumer protection¹⁹⁸.

According to the Law n° 51/2006 there are several regulatory authorities in areas of local public utilities: the National Regulatory Authority for the Community Services of Public Utility (ANRSC¹⁹⁹), the National Regulatory Authority in the field of Energy (ANRE), the Romanian Road Authority (ARR) and the authorities of local public administration.

The National Regulatory Authority for Communications and Information Technologies (ANRCTI) was created in 2002. In 2009, it became the National Authority of Regulation and Administration of Communications (ANCOM) by the merger of two bodies with experience and expertise in the relevant field of management and regulation in communications (the General Inspectorate for Communications and Information Technology (IGCTI) and the National Regulatory Authority for Communications (ANRC)²⁰⁰, which has currently the greatest degree of territorial development, with 4 territorial divisions and 47 territorial offices.

(196) Government Emergency Ordinance no. 29/1998 on the establishment, organisation and functioning of the National Regulatory Authority in the field of Energy – ANRE

In 1999, the Law no. 216 on the legal regime of concessions provided that public services for which no regulatory authority exists and whose opinions are binding in regard to prices or rates established by concessionaires, cannot be subject to concession.

(197) See <http://www.anre.ro/>

(198) In 2000, for the development of an institutional framework for regulating and monitoring the domestic market of gas, the National Authority of Regulation in the field of Natural Gas (ANRGN) was created – Government Ordinance no. 41/2000

(199) ANRSC was established in 2001, by the Law no. 326 on the public services of communal administration. <http://www.anrsc.ro>

(200) See <http://www.ancom.org.ro/DesktopDefault.aspx?tabid=919>

III/ Social dialogue

In Romania²⁰¹ the institutionalised social dialogue has two main components: the tripartite social dialogue (Government, trade unions, employers' representatives) and bipartite social dialogue (trade unions, employers' representatives). Starting from 2005, a Department for Social Dialogue has been created under the direct coordination of the Prime Minister, which undertakes the roles of the Ministry of Labour, Family and Social Protection in the field of social dialogue. The main functions of this Department are to establish and coordinate the partnership relations between the Government and trade unions/employers' representatives and other entities of the civil society.

The tripartite social dialogue is regulated and developed in the framework of the following structures:

01. The Social and Economic Council is a consultative body of Government and Parliament created in 1997 and the main consultative body of tripartite partnership at national level. It joins representatives of the Government, trade unions confederations and employers' confederations representative at national level.
02. The sectoral tripartite dialogue has been conducted since 2001 by the "social dialogue commissions" created at the level of each central department (minister). They have a consultative role and are composed of the representatives of the relevant central department, trade unions confederations and employers' confederations.
03. The territorial social dialogue is organised at county level through "territorial social dialogue commissions" between representatives of the local administration and of the social partners.

Ad-hoc tripartite structures may also be created to debate on specific issues. The national "social agreements" represent the highest form of social partnership in Romania. They are signed by all trade unions confederations and employers' confederations representatives at national level (first time in 2001). It was in this framework that the sectoral and territorial social dialogue were created.

The bipartite social dialogue mainly represents the process of bargaining on and conclusion of collective labour agreements. In Romania, collective agreements are concluded at national level (the former for the period 2007-2010), sectoral level (branches and groups of entities) and economic entities level (those having more than 21 employees). According to bargaining level, the dialogue is conducted between the trade union and employers' associations that are representative at national, sectoral or company level, on the basis of the Law n° 130/1996 on collective agreements. The application of collective agreements is made in respect of the *erga omnes* principle.

In the **public sector** there are generally three broad categories of employees: senior civil servants (dignitaries), civil servants and contract-based employees. Employees in the defence and public law and order sectors are recruited and paid according to special regulations. There are also employees paid from the state budget but who are not civil servants (in education, healthcare and welfare, scientific research, culture, etc.); they have their own status and trade union organisations, and have the right to association, collective bargaining

(201) References: studies on representativeness of the European social partner organisations in Romania (<http://www.eurofound.europa.eu/eiro/>); Romanian Ministry of Labor, Family and Social Protection <http://www.mmuncii.ro/en/>

and to strike. Pay and conditions of all employees in the public sector are negotiated and then are subject to legislative approval. For the civil servants, the new trade union Act of 2003 recognises their right to organise unions representing their interests. **Collective bargaining is carried out at central level and covers all the areas of public administration. In the regional and local public administration** some employees have a special status. Individual local authorities can agree to make additional payments (to those set at national level).

The **hospital health services sector is majority publicly owned**. The government – through the Ministry of Health (Ministerul Sănătății) and the National Health Insurance Fund (Casa Națională de Asigurări de Sănătate, CNAS) – negotiates **sectoral collective agreements** with the trade unions²⁰². The multi-employer agreement covers all employees in the sector, irrespective of whether their employer signed the agreement.

In the **postal services sector**, the National Romanian Post Office Company (Compania Națională Poșta Română, CN Poșta Română) covers a major part of employees. There is one **single-employer collective agreement** signed in this sector within the public company. No information is available on trade union and employer organisations structures in the private sector.

A **sectoral collective agreement** covers the **electric and thermal power, oil and gas sector**. The more recent was concluded in 2006. In this sector **company-level agreement** are also concluded in some companies (mainly in the public sector).

In the **railway sector**, dominated by the state-owned company, a **single sectoral collective work agreement** applies, as do individual **company-level collective agreements**.

In Romania, a **single unique collective agreement covers the whole of the transport sector**, and applies to all subdivisions of the sector (the last agreement was for the period 2008–2010). Furthermore, for specific fields, lower-level agreements are also negotiated and signed, respectively collective agreements at company level (e.g. for air transport of passengers and goods, and for air traffic control services).

Sources of national law on SGIs

Sector	Legal references	Web sites
Telecommunications	Government Decision no. 12/2009 regarding the organization and functioning of the Ministry of Communications and Information Society	www.mcsi.ro For further references, please see http://www.mcsi.ro/Legislatie/Acte-normative-romanesti-din-domeniul-IT-C .
Postal services	Government Decision no. 371/1998 regarding the National Company Romanian Post Services	http://www.posta-romana.ro/
Production of electricity	Law no. 13/2007 on electricity (re-published)	http://www.anre.ro/
Electricity networks (transport-distribution)	Law no. 13/2007 on electricity	http://www.anre.ro/
Marketing of electricity	Law no. 13/2007 on electricity	http://www.anre.ro/
Gas transport-distribution	Law on gas no. 351/2004	http://www.transgaz.ro/transport.php
Marketing of gas	Law on gas no. 351/2004	http://www.transgaz.ro/transport.php
Railway transport of passengers	Government Decision no. 584/1998, modified by GD no. 274/2001 and GD no. 1199/2002	http://www.ater.ro/ http://www.cfrcalatori.ro/
Freight rail transport	Government Decision no. 582/1998 and Government Emergency Ordinance no. 12/1998	http://www.cfrmarfa.cfr.ro/english.html
Regional and local transport of passengers		http://www.arro.ro/ http://www.arri.ro/disp_section.php?arch=0&secid=20
Air transport	Government Ordinance no. 29/1997 on Air Code, completed with Law no. 399/2005	http://www.caa.ro/

(202) The current Collective agreement of the branch: 2008-2010 - <http://www.federatiasanitas.ro/legislatie.php>

Inland water transport	Government Ordinance no. 74/2006	http://www.ma.ro/
Maritime transport	Government Ordinance no. 74/2006	http://www.ma.ro/
Water	Law no. 107/1996 on water, with further modifications Law no. 241/2009 on water supply service	http://www.rowater.ro/default.aspx www.anrsc.ro
Waste water	Law no. 107/1996 on water, with further modifications Law no. 241/2009 on water supply service	http://www.rowater.ro/default.aspx
Heating	Law no. 325/2006 on heating service	www.anrsc.ro
Broadcasting	Law no. 504/2002 on audio-visual	http://www.cna.ro/
National public administration	Chapter no. 5, section 1 from the Romanian Constitution	
Regional or local public administration	Chapter no. 5, section 2 from the Romanian Constitution Law no. 215/2001 on local public administration with further modifications	
Hospital health services	Law no. 95/2005 regarding reform of health system with further modifications	www.ms.ro
Ambulatory health services	Law no. 95/2005 regarding reform of health system with further modifications	www.ms.ro
Primary and secondary education	Law no. 84/1995 with further modifications	http://www.edu.ro/index.php
Higher education		http://www.edu.ro/index.php/legaldocs/c485/?where=summary%20le%202
Vocational training	Law no. 132/1999	www.cnfpa.ro
Compulsory social protection		http://www.mmuncii.ro/ro/legislatie-protectie-sociala-560-view.html
Complementary social protection	-	
Social housing	Law no. 114/1996 with further modifications	http://www.mie.ro/
Childcare services (0-6 years)		www.anpdc.ro http://www.copii.ro/legislatie.aspx?id=2
Care of the disabled	Law no. 448/2006 for protection and promotion of rights of people with handicap	www.anph.ro
Elderly care	-	
Financial services (1)	Law no. 273/2006 on local public finances with further modifications	www.mfinante.ro
Cultural services (1)		http://www.cultura.ro/LawsArchive.aspx

PUBLIC SERVICES IN SWEDEN

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Sweden is a unitary state²⁰³ with two levels of local self-government – 18 county councils (landsting) and 290 municipalities (kommuner). The county councils of Västra Götaland and Skåne have the status of regions. In Gotland, an island in the Baltic Sea, the municipality also has the responsibilities and tasks normally associated with a county council. The devolved administration of the State is composed of 21 counties (län).

Local government has a long tradition in Sweden. The country's municipalities and county councils (created in 1862), and the regions are responsible for providing a significant proportion of all public services²⁰⁴. There is a highly decentralised public system in most areas²⁰⁵. In matters like, for example, social services, education and health care, overall rules and regulations, including national goals, are decided upon by the Government and/or central authorities. Legislation is usually general in character and details are discussed and interpreted by authorities at regional and/or local level in order to implement rules according to regional/local circumstances. Street-level bureaucrats tend to play a very important role in the implementation of different policies.

Sweden has also, by tradition, had a very strong public sector. However, since the 1980's when New Public Management was introduced, the scene has changed dramatically when it comes to service providers. In almost all areas of SGI there are today both public and private actors.

There isn't a general (horizontal) law framing the SGIs but the Constitution mentions in very general terms that the State is responsible for the wellbeing of its citizens. When it comes to procedures used in the system there is the Administrative Procedure Act, which regulates the procedures within public administration at all levels of government. The rules in the Act are also valid for private providers when they act as an authority towards individual citizens. There are special obligations of service to the public. Authorities should act according to rules and regulations but also handle matters in a simple and rapid way, and use easily comprehensible language. The Act includes the procedure for handling matters, which consists of a number of predetermined stages. The rules are particularly important when someone wants to appeal against a decision made by an authority.

(203) Finland and Sweden was one nation up to 1809 and has a long common history of local self-government going back at least to the Middle Ages.

(204) Overall, municipalities and county councils employ more than one million people, corresponding roughly to 25% of total employment in Sweden. Swedish Association of Local Authorities and Regions - www.skl.se

(205) See the Local Self-government Law (Kommunallagen) of 1991 <http://www.regeringen.se/content/1/c6/03/91/65/16f96742.pdf>

The EU concepts in the field of public service are not usual in Sweden. In legal and common language it is the concept of public services (offentliga tjänster) and social services (socialtjänstlagen) that are generally used²⁰⁶.

Terms in TEU and TFEU	Swedish terms in TEU and TFEU ^{table17}
Services of general interest – SGIs	Tjänster av allmänt intresse
Services of general economic interest – SGEIs	Tjänster av allmänt ekonomiskt intresse
Non-economic services of general interest – NESGIs	Tjänster av allmänt intresse som inte är av ekonomisk art ^{table18}
Public service (public service obligations)	Offentlig service

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs' organisation?

Central government	County councils	Municipalities
Telecommunications	Regional transport of passengers	Local transport of passengers
Postal services	Hospital health services	Water
Production of electricity	Ambulatory health services	Waste water
Electricity networks		Heating
Gas transport-distribution		Primary and secondary education
Railway transport of passengers		Social housing
Freight rail transport		Childcare services (0-6 years)
Primary and secondary education		Care of disabled
Central government		Elderly care
Vocational training		
Compulsory social protection		
Complementary social protection		
Cultural services		

(206) Law on social assistance n°2001:453

B. Sectoral organisation and trends

Status of the operators

National public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
Postal services Electricity networks (transport) Broadcasting Higher education Railway transport of passengers Financial services		Production of electricity Distribution of electricity Regional and local transport of passengers Inland water transport Water Waste water Heating Broadcasting Hospital health services Primary and secondary education Vocational training Compulsory social protection Complementary social protection Social housing Childcare services (0-6 years) Care of disabled Elderly care Cultural services			Telecommunications Distribution of electricity Air transport	Telecommunications Postal services Distribution of electricity Railway transport of passengers Air transport Inland water transport Maritime transport Regional and local transport of passengers Water Heating Broadcasting Ambulatory health services Complementary social protection Childcare services (0-6 years) Care of disabled Elderly care Cultural services Financial services

SGI markets

Liberalised market and competition	Liberalised market / Public operators dominant	Liberalised market Private operators dominant	Public monopoly	Private monopoly
Telecommunications Production of electricity Air transport Regional and local transport of passengers Air transport Broadcasting Ambulatory health services Primary and secondary education Vocational training Care of disabled Elderly care Cultural services Financial services	Water Waste water Postal services Hospital health services Higher education Compulsory social protection Childcare services (0-6 years)		Heating Social housing Water	

Financing methods of SGIs

Fees/payment by users	Central government contributions	Regional government contributions	Local government contributions	Operators	Free of charge
Telecommunications Postal services Distribution of electricity to consumers Gas transport-distribution Railway transport of passengers Freight rail transport Regional and local transport of passengers Air transport Water Waste water Heating Broadcasting Hospital health services Ambulatory health services Childcare services (0-6 years) Care of disabled Elderly care Cultural services Financial services	Postal services Broadcasting Higher education Compulsory social protection Complementary social protection Vocational training	Regional transport of passengers Hospital health services Ambulatory health services	Production of electricity Gas transport-distribution Local transport of passengers Water Waste water Heating Broadcasting Primary and secondary education Compulsory social protection Complementary social protection Social housing Childcare services (0-6 years) Care of disabled Elderly care Cultural services	Telecommunications Production of electricity Gas transport-distribution Marketing of gas	Primary and secondary education Higher education Vocational training

Authorities responsible for setting pricing and/or tariff policies

Parliament	Central government	Regional government	Local government	Regulatory agencies
		Hospital health services	Water	
		Ambulatory health services	Waste water	
		Cultural services	Heating	
			Childcare services (0-6 years)	
			Care of disabled	
			Elderly care	
			Cultural services	

II/ Approaches

A. The model of public administration and national public companies

One of the features of Sweden is the development of a large Welfare State without the proportional expansion of the public enterprise sector. Nevertheless, the Swedish public enterprise sector has been transformed from being smaller than the European average in 1970 and 1980 (6,2% and 8,3% in comparison with 9% between 1975-1985) to representing over the average (7,6%) in comparison with the European average in 1999²⁰⁷.

Regarding providers of SIGs there is a mix, mainly of public authorities and private companies. National public enterprises were the first to be established in the sectors of energy, telecommunications and postal services and in some sectors (postal services, rail transport²⁰⁸) they still have a dominant position.

There are very few genuinely private providers. In most cases a private provider gets state grants, for example in primary education. Thus, the ownership is private, but the funding is public.

There are several national companies in different areas, for example industry, transport, finance, telecom, etc. in the area of energy Vattenfall is a major actor²⁰⁹. In vocational training there is Lernia AB owned by the Government²¹⁰. Posten²¹¹ is responsible for the postal services: the Government is the major shareholder. TeliaSonera (where the Swedish state owns about 30% of the shares and the Finnish state about 13%) is a

(207) J. Clifton, F.C. Comin, D.D. Fuentes, *Privatisation in the European Union: public enterprises and integration*, Kluwer Academic Publishers, 2003, p. 62

(208) The railway sector in Sweden has gone over the past two decades through extensive organisational reform apparently inspired by NPM (increasing economic efficiency by introducing or strengthening the market mechanism appears to be the main objective of the reforms). The Swedish railway sector is distinguished by a greater number of train operators and a longer experience in passenger transport tendering. The SJ (Swedish National Railway) has been divided into an infrastructure holder, Banverket, an inspectorate, the Swedish Rail Agency, and several subsidiary companies. The remains of the SJ, SJ AB, provides rail passenger transport services. Banverket handles infrastructure tender proceedings, while the state agency Rikstrafiken is responsible for tender proceedings of all interregional passenger transport in Sweden, including the railway. The SJ AB is organised as a state-owned limited company, while Banverket and the Swedish Rail Agency are separate administrative bodies. Actually, the national railway company SJ AB handles the major part of the market. Silvia Olsen, *Fragmentation and coordination in the Scandinavian railway sector*, in IRAS, 2007/73(3), SAGE Publications, pp. 349-364

(209) http://www.vattenfall.se/www/vf_se/vf_se/footer/esp/index.jsp

(210) <http://www.lernia.se/Om-Lernia/About-Lernia/>

(211) <http://www.posten.se/m/startpage>

telecommunications company²¹². These are a few examples.

B. Local autonomy

The principle of local self-government is one of the fundamental principles of the Swedish democratic system and forms the basis of activities undertaken by municipalities²¹³.

The main responsibility for providing various types of public services in Sweden rests with local government (the municipalities) and the county councils. The municipalities are responsible for planning, constructing and operating facilities for water and wastewater, waste management, etc. Also, municipalities have many mandatory tasks in the social field²¹⁴, such as childcare, education²¹⁵, elderly care, assistance to persons who are not otherwise able to support themselves, health, adult day-care activities, short-stay care, emergency alarms, etc. The county councils are responsible for providing health and medical care to those living in their areas, forensic mental care, compulsory mental and dental services, etc.

In the early 1990s, the Swedish Parliament decided on a principle that allowed the services provided by municipalities and county councils to be run by entrepreneurs under contract, apart from those activities involving the exercise of public authority. Municipalities and county councils are therefore free to decide the forms in which municipal and county councils services may be organised: by municipalities themselves, by municipal companies or by providers that have been procured under contract procured under the Public Procurement Act by co-operative companies, private individuals and associations.

Health and social services are usually provided in-house or by an entrepreneur chosen according to the public procurement regime. With the exception of compulsory mental care and forensic mental care, health care does not have to be provided by public bodies. Even if the provision of health care itself is provided by an entrepreneur, the regional municipality is responsible for health care and therefore is also responsible for that entrepreneur fulfilling the service in a proper way.²¹⁶

Many municipally owned companies in Sweden operate in a lot of different areas²¹⁷, such as electricity, water supply²¹⁸, waste water, transport, etc.²¹⁹

(212) http://www.teliasonera.com/about_teliasonera

(213) Tom Madell, in, M. Krajewski, U. Neegaard, J. van de Gronden, *The changing legal framework for services of general interest in Europe. Between competition and solidarity*, T.M.C. Asser Press, 2009, p. 424

(214) Over the past 50 years, responsibility for several major public services such as social care and elementary schools has been shifted from the state to municipalities. Changes to the Swedish welfare policy over the past 15 years, with decentralisation and privatisation, have been aimed at decreasing the size of the public service while maintaining the levels and goals of the welfare state.

(215) Local government has a responsibility to provide compulsory public schooling and determine how its schools are to be run (the provision for compulsory schooling was decentralised in 1991). Private schools have always been available but only to a limited extent.

(216) Tom Madell, *op.cit.*, p. 429

(217) "Municipalities and county councils may engage in business activity if it is conducted without a view to profit and is essentially concerned with providing communal amenities or services for the members of the municipality or county council." Section 7 of the Local Self-government Law of 1991

(218) Municipalities own the facilities and are responsible for running them. In 1998, 252 municipalities supplied water and sanitation as a unit within the municipality, whereas 39 were running as a municipally owned company, 8 utilities were organised in inter-municipal companies co-operating across municipal boundaries but still owned by the participating municipalities and 7 municipalities had a management contract with a nongovernmental company.

(219) Tom Madell, *op.cit.*, p. 424

The welfare system of Sweden pronounces the right to decent housing for all citizens²²⁰; the goal has always been social cohesion to stimulate integration and avoid segregation. On this basis the Swedish state and the municipalities created municipally owned, not-for-profit housing companies in almost every municipality of the country. In 2006, some 22% of all households in Sweden live in this kind of housing; about 45% of these flats are owned by municipal housing companies and about 52% are owned by private housing companies²²¹.

C. Delegated management and externalisation

There are also cases where a private institution, often subsidised by the state or the local municipalities, is engaged in social or cultural areas and, consequently, operates services similar or identical to those managed by public bodies.

The main legal regimes that play an important role are the Public Procurement Act²²² which states the rules for public authorities as contracting entities and the Company Law²²³. The Local Government Act (Sw.: kommunallagen (1991)) stipulates in Chapter 3 Section 19 that before a regional municipality hands over management to a private entrepreneur it has to make sure that it will have the capacity to control and to be able to follow up on the activities.

D. “New Public Management”

There are central authorities who carry out evaluations of public services on a regular basis. Riksrevisionen – the Swedish National Audit Office – “is responsible for auditing the activities of the entire Swedish state and, in this way, promoting the optimum use of resources and efficient administration”²²⁴. One important role of the Swedish NAO is to ensure democratic transparency, i.e. provide citizens with the opportunity to see how democratic decisions are made and implemented, how their tax money is used, and whether public administration follows directives, rules and regulations and achieves the objectives set for it. Because the Swedish NAO is one of the bodies exercising the power of scrutiny vested in the Swedish Parliament, the independence of its auditing operations is laid down in the Constitution and its audit mandate is powerful. Financial audits cover more than 250 agencies; it also appoints auditors for about 40 state-owned enterprises and about 20 foundations.

Another example of an auditing authority is Skolinspektionen - The Swedish Schools Inspectorate, which makes sure that those responsible for schools, i.e. primarily local authorities and those in charge of running independent schools, follow the laws and regulations that apply. When conducting quality evaluations, the

(220) There is no upper income level for those wishing to rent an apartment. The municipal housing companies in Sweden have by law a social obligation to provide good housing for all households.

(221) Tom Madell, op.cit., p. 431

(222) http://www.konkurrensverket.se/t/Page_____490.aspx

(223) <http://www.sweden.gov.se/sb/d/9171>

(224) <http://www.riksrevisionen.se>

Swedish Schools Inspectorate takes a closer look at a particular area (a particular school subject such as mathematics or for a more general issue such as access to special assistance for students).

E. Regulatory Agencies

The Swedish Post and Telecom Agency (PTS) is the national regulator of telecommunications and postal services markets.

The national agencies in charge of social services supervise their provision on behalf of the central Government. This supervision, which takes place at both national and regional levels, consists of monitoring and evaluation service provision, considering individual cases and ensuring that the rights of individuals are respected.²²⁵

The National Agency for Education (Skolverket) is required to evaluate, follow up and supervise the public school system in Sweden.

The Swedish Financial Supervisory Authority regulates the Swedish financial market.

III/ Social dialogue

Sweden²²⁶ has been characterised by a well organised trade union movement and powerful employer organisations ever since industrialisation. One central part of **the Swedish labour market model** is that the social partners themselves regulate the labour market through collective agreements. A main agreement between the parties at national level defines the framework of their roles and the regulation between them. This agreement – Saltsjöbadsavtalet – is the foundation for the cooperation between the social partners²²⁷. On the basis of this agreement the social partners have the right and responsibility to regulate pay and employment conditions. At sectoral level, general agreements with guarantee of minimum levels are negotiated for pay and working time. These sectoral agreements are indicative and set the parameters for negotiations at local level, where more detail is provided in local collective agreements. The labour law does not include the principle of statutory extension of collective agreements to cover an entire industry. However, practices with an extended effect are used.

Tripartite negotiations are rare because the social partners do not welcome the government or any other party intervening in collective bargaining. The idea of self-regulation through collective bargaining by the social partners is strong in Sweden.

The Swedish Agency for Government Employers (Arbetsgivarverket) is the state agency responsible since

(225) Tom Madell, *op.cit.*, p. 424

(226) References: studies on representativeness of the European social partner organisations in Sweden (<http://www.eurofound.europa.eu/eiro/>)

(227) The social partners concluded the Saltsjöbadsavtalet in 1938. Its aim was to give the labour market parties the right to regulate the rules, rather than relying on state regulations. The central agreement and collective agreements are a fundamental part of the Swedish labour market model. Although the Saltsjöbadsavtalet is still valid, it has been amended several times, most recently in 1976. Since then, factors such as EU membership, globalisation and the decline in trade union membership have affected labour market conditions.

1994 for the employer policy of agencies in the public sector at national level and negotiates on behalf of about 270 public authorities on pay and employment conditions for employees in the **central administration**.

There are a number of separate centralised collective agreements for **local and regional government** employees, although on the employers' side both counties and municipalities negotiate together.

In the **hospital health services sector** it is mainly **multi-employer agreements** that are reached. The SKL employer organisation (Swedish Association of Local Authorities and Regions) is unique in the public sector. It represents the governmental, professional and employer-related interests of Sweden's 290 municipalities, 18 county councils and two regions. Vårdföretagarna (Almega - Association of Private Care Providers) is almost unique in the private health sector.

Sweden's **post and courier services sector** has experienced substantial growth in terms of the number of companies while the employment in the sector has decreased. Almost all **agreements are multi-employer**.²²⁸

In the **sector of electricity sectoral and company-level agreements** are concluded. The gas sector is rather small and often considered as a part of the energy sector and not a sector in its own right. Only **multi-employer agreements** exist in the gas area and it is the same in **the railway sector**. It is notable that **rail infrastructure** is the only sector in Sweden where a blue-collar trade union has the same collective agreement as the corresponding white-collar union. This is a unique cooperation between the blue-collar and white-collar unions, where they are represented and negotiate together with the same employer organisation in a common agreement.

In the **air transport sector**, it is estimated that about 70% of the employees are covered by **multi-employer agreements** and 30% by **single-employer agreements**. Swedish companies not covered by collective agreements are subject to intense lobbying and offensive actions from the trade unions.

(228) The Central Government sector represents quite a small part of the public sector. For example, slightly more than 5 percent of the Swedish labour market works for the Government, while 25 percent works for municipalities or county councils. Government-owned companies are not included in the government sector, but in the private sector (Swedish Post, Swedish Telecommunications, the electricity enterprise, Vattenfall, Swedish State Railways). These companies are independent legal entities and they comply with the same regulations as privately owned companies. The only link these government companies have with the Government is the actual ownership structure. Government foundations, like government-owned share-holding companies, are independent legal entities and are regulated under civil law. As a result, they are not included in the government sector. See Fact and figures about the Swedish Central Government Sector 2008, <http://www.arbetsgivarverket.se>

National references

Sector	Web sites
Telecommunications	http://www.pts.se/en-gb/
Postal services	http://www.pts.se/en-gb/
Production of electricity	http://www.energimarknadsinspektionen.se/Energy-Markets-Inspectorate/ http://www.energimyndigheten.se/en/
Electricity networks (transport-distribution)	http://www.energimarknadsinspektionen.se/Energy-Markets-Inspectorate/
Gas transport-distribution	http://www.energimarknadsinspektionen.se/Energy-Markets-Inspectorate/
Railway transport of passengers	http://www.rikstrafiken.se/Article.aspx?a=5&c=5 http://www.transportstyrelsen.se/en/
Freight rail transport	http://www.transportstyrelsen.se/en/
Regional and local transport of passengers	http://www.rikstrafiken.se/Article.aspx?a=5&c=5
Air transport	http://www.transportstyrelsen.se/en/
Inland water transport	http://www.transportstyrelsen.se/en/
Maritime transport	http://www.transportstyrelsen.se/en/
Water	http://www.va-namnden.se/summary/default.asp
Waste water	http://www.va-namnden.se/summary/default.asp
Broadcasting	http://www.rtv.se/uk/start/
National public administration	http://www.kammarkollegiet.se/eng/kk_english.html http://www.lst.se/!st/en/ http://www.statskontoret.se/default___309.aspx
Regional or local public administration	http://www.ski.se/startpage_en.asp?C=6390
Hospital health services	http://www.socialstyrelsen.se/english
Primary and secondary education	http://www.skolinspektionen.se/ http://www.skolverket.se/sb/d/190 http://www.spsm.se/Startpage
Higher education	http://www.csn.se/en/2.135 http://www.hsv.se/2.539a949110f3d5914ec800056285.html http://www.programkontoret.se/sv/Languages/English/ http://www.nshu.se/english.html
Vocational training	http://www.yhmyndigheten.se/sv/In-English/
Compulsory social protection	http://www.forsakringskassan.se/sprak/eng
Complementary social protection	http://www.forsakringskassan.se/sprak/eng http://www.stat-inst.se/zino.aspx?articleID=87
Elderly care	http://www.forsakringskassan.se/sprak/eng http://www.socialstyrelsen.se/english

PUBLIC SERVICES IN SLOVENIA

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Today, Slovenia is a unitary state, but from the end of the World War II until the declaration of independence on 25 June 1991, Slovenia, along with five other republics formed the Federal Republic of Yugoslavia.

At territorial level, the organisation of the Slovenian state is based on a deconcentrated state administration (organised in 58 administrative districts – upravna enota) and on a decentralised level of local government. Its organisation was established in 1993 under the provisions of the 1991 Constitution (and special law), which guarantee the autonomy of municipalities.

Currently, there is only one level of local government. It is composed of 210 municipalities - občine²²⁹, 11 of which have the status of urban municipalities – mestna občina²³⁰. Each municipality can be divided into sub-municipal sections (districts, quarters or villages).

The process of establishing the regional level (second level of local government) was started by the constitutional revision of 2006 (article 143 of the Constitution – the region - pokrajine), but the special law establishing the regions has not passed the national assembly yet. Regions shall regulate and perform local matters of wider interest which exceed the capacities of municipalities: “A region shall perform local duties and functions of wider concern related to municipal services, economic, cultural and social development of its territory, to the fulfilment of the common needs of the inhabitants and the economy in that area, to the strengthening of local self-government in municipalities and to the improvement of their development” (Article 73 of the 2005 Act on Local Self-Government).²³¹

In its recent history as an independent state, Slovenia has undergone a complex transition: from a socialist to a market economy, from a regional (as part of the Yugoslavian federation) to a national economy, from a manufacturing toward a service economy, from a part of SFR Yugoslavia to an independent state and, since 2004, a Member State of the European Union.

(229) Municipalities are self-governing local communities. The territory of a municipality comprises a settlement or several settlements bound together by the common needs and interests of the residents. Article 139 of the Constitution of Slovenia of 1991

(230) A town may attain the status of an urban municipality in accordance with such procedure and under such conditions as provided by law. An urban municipality performs, as being within its original competence, particular duties within the state competence relating to urban development as provided by law. (Article 141 of the Constitution of Slovenia of 1991) Celje, Koper, Kranj, Ljubljana, Maribor, Murska Sobota, Nova Gorica, Novo mesto, Ptuj, Slovenj Gradec and Velenje. The capital Ljubljana has a special status following the adoption of the law on the capital city of the Republic of Slovenia.

(231) They primarily provide for the construction and maintenance of municipal services, energy supply, transport and other infrastructure facilities, and for the functioning of appropriate activities of wider concern; –the construction and maintenance of buildings and the functioning of services in the field of social activities (education, culture, health care, social security, etc.), which are important for the development of the region and do not fall under the obligatory duties and functions of the state in these areas; –the disposal of municipal and other waste, the supervision and management of sewage, as well as for other forms of environmental protection by means of installations of regional capacity, etc. (Article 74 of the 2005 Act on Local Self-Government).

Before the period of the totalitarian regime, the influence of Austrian legal doctrine, which essentially based the implementation of general interest activities on the exercise of public power, explains the absence of the concept of “public service” in Slovenia.²³² After the period of totalitarian ideology and Soviet law domination, a concept of activities of general interest developed in the country. According to the functional concept of “public service” (javna služba) from French law it represents an activity performed to satisfy the public interest under the authority of the state and local government. The legal regime of public services is dominated by public law and the general interest prevails over individual interest²³³.

The Community concepts are evidenced in Slovenian law in the fields regulated by the Community law. Even if in many cases the Community and national terms are identical and despite the introduction into the Slovenian legislation of some the Community concepts on SGIs, national terms are normally used.

The translation of the Community term services of general interest is storitve splošne pomena²³⁴ but there is no “special” national term for this Community concept. It partly corresponds to the national term javna služba. The terms javna služba and gospodarska javna služba include all services performed under a legal regime under authority of the state and local governments - they are performed by the special legal persons and outside the state and local government bodies.

As for the Community concept of services of general economic interest, its translation in Slovenian is storitve splošnega gospodarskega pomena. This term is used in Community law and at national level in the Act on transparency of financial relations and separate accounting of different activities (Zakon o preglednosti finančnih odnosov in ločenem evidentiranju različnih dejavnosti). Still, the Slovenian legal system uses the concept of “economic public service” (gospodarska javna služba; hereinafter: GJS). In special Acts, different services of general economic interest are defined as GJS (economic public service, defined in a functional manner as any productive activity and service delivery in the general interest and to meet the needs of users). GJS must be performed by the central government or local government. GJS can also be defined as obligatory or optional. Central or local government must organise the performing of such GJS according to a special system prescribed in Zakon o gospodarskih javnih službah (ZGJS) (Act on economic public services, 1993)²³⁵.

The literal translation of the Community term non-economic services of general interest is neekonomске storitve v splošnem interesu, but there is no special national term for this Community concept. “Tasks of central and local government” matches best with this Community concept.

The literal translation of the term social services of general interest is socialne storitve v splošnem interesu, but the Slovenian legal system uses the concept of javna služba (public service) sometimes in the theory called socialna javna služba. Javna služba must be defined by the special Act (sectoral laws) as central government or local government “javna služba”.

Public service obligations: The literal translation of this term is obveznosti javne službe, but there is no

(232) Michel Mangenot (dir.), Administrations publiques et services d'intérêt général: quelle européanisation?, EIPA, 2005, p. 87

The North of Yugoslavia belonged to the middle European cultural and historical area, the South to the South Eastern European cultural heritage. (Vladimir Grigorov, « Socialism and disintegrations of SFR Yugoslavia », in Slovenia, from Yugoslavia to the European Union, World Bank, 2004, p. 34)

(233) Michel Mangenot (dir.), Administrations publiques et services d'intérêt général: quelle européanisation?, EIPA, 2005, p. 87

(234) The same expression is used in the Slovenian version of the White paper on services of general interest - storitvah splošnega pomena http://eur-lex.europa.eu/LexUriServ/site/sl/com/2004/com2004_0374sl01.pdf

(235) http://www2.gov.si/zak/zak_vel.nsf/zakposop/1993-01-1350?OpenDocument

national term for this Community concept.

The Slovenian legislation usually does not regulate services of general interest, but only services that are necessary for specific purposes (only tasks of CG and LC, performers of “javna služba”, performers of GJS). When it is the intention of the law to regulate all services of general interest, then it defines all relevant types of organisations providing services of general interest.

There is no general (horizontal) law framing all SGLs and all questions and problems of SGLs. For performing javna služba in GJS the following Acts are very important:

Zakon o zavodih - ZZ (Act on institutions) from 1991: this is a general law which also regulates public institutions which perform javno službo (public service) and some common questions on “javna služba” and public institutions (organisation, financing, etc.).

Zakon o gospodarskih javnih službah - ZGJS (Act on public economic services) from 1993: this is a general law for regulating different questions of GJS²³⁶. This Act regulates possible legal forms for performing these services (public economic institutions, public enterprises (translated also as public companies), concessions, etc.), financing, necessary legal framework for each GJS, procedure for delivering concessions for GJS, etc.).

The non-commercial public services are typically organised as not-for-profit organisations in the areas of education, culture, health and social care, social insurance, etc. Pursuant to the ZZ, noncommercial public services may be provided either by public institutions or by way of concession. The forms of providing public services according to the ZGJS (Article 6) are: service units run by the state or by local authorities, public commercial institutions, public companies, concessions, and investment of public capital.²³⁷

Public utilities are governed in more detail in sectoral laws that cover specific areas (energy, water supply, regional and local transport of passengers, etc.).

There is no established list of activities that are part of the category of public services but some services must be provided by the state or local authorities while others are optional. But the Ministry of Finance has an overview of all SGL providers. It prepares the list of all SGLs providers²³⁸ and a Report on Public-Private partnership in the Republic of Slovenia for each year²³⁹.

Terms in TEU and TFEU	Slovenian terms in TEU and TFEU ^{table19}
Services of general interest – SGLs	storitvah splošnega pomena
Services of general economic interest – SGEIs	storitev splošnega gospodarskega pomena
Non-economic services of general interest – NESGLs	negospodarske storitve splošnega pomena
Public services	javne službe

(236) Pursuant to the Slovenian law, public utilities shall be defined by laws in the field of energy business, traffic and connections, municipal and water management, management of other natural resources, and environmental protection, as well as by other laws regulating the field of economic infrastructure. By a Sectoral Act it may be stipulated that a certain service may be performed as an obligatory public utility. <http://www.svlr.gov.si/fileadmin/svlr/srp.gov.si/pageuploads/lok-sam05/angl/munici/munici01.htm>

(237) According to Article 3§1 of the 2005 Act on Local Self-Government, organisational forms of a public utility are: a) an administration office, where the small volume and characteristics of a service make it uneconomical to establish a public company or grant a concession; b) public utility institute, where there are one or more public utilities provided, which due to their nature cannot be provided for profit or if this is not their goal; c) public company, and d) granting of a concession to the persons of private law.

(238) http://www.mf.gov.si/slov/sufpd/gosp_javne_sluzbe.htm.

(239) http://www.mf.gov.si/slov/jav_zas_partnerstvo/Porocilo_jav_zas_part.pdf

Competences of definition and organisation of SGLs

What is the level of government that actually defines the public service obligations and decides the modes of SGLs' organisation?

Central government	Local government
Telecommunications	Gas distribution
Postal services	Local transport of passengers
Production of electricity	Water
Electricity networks	Waste water
Marketing of electricity	Heating
Gas transport	Ambulatory health services
Marketing of gas	Primary education
Railway transport of passengers	Complementary social protection
Freight rail transport	Social housing
Regional and local transport of passengers	Childcare services (0-6 years)
Air transport	Cultural services
Inland water transport	
Maritime transport	
Water	
Waste water	
Heating	
Broadcasting	
Hospital health services	
Ambulatory health services	
Primary and secondary education	
Higher education	
Vocational training	
Compulsory social protection	
Complementary social protection- care	
Social housing	
Childcare services (0-6 years)	
Care of disabled	
Elderly care	
Financial services	
Cultural services	

B. Sectoral organisation and trends

Status of the operators

National public provider(s)	National mixed providers (majority of public shares)	Sub-national (local) public providers	Sub-national (local) mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers ^{table20}
Postal services Production of electricity Transport of electricity Distribution of electricity Marketing of electricity Freight rail transport Broadcasting Hospital health services Secondary education Vocational training Higher education Social housing Complementary social protection Care of disabled Elderly care Cultural services	Telecommunications	Distribution of gas Local transport of passengers Water Waste water Heating Broadcasting Ambulatory health services Primary education Social housing Childcare services (0-6 years) Cultural services				Telecommunications Postal services Production of electricity Distribution of electricity Marketing of electricity Transport of gas Distribution of gas Marketing of gas Freight rail transport Regional and local transport of passengers Air transport Inland water transport Maritime transport Water Waste water Heating Broadcasting Ambulatory health services Primary and secondary education Higher education Vocational training Complementary social protection Social housing Childcare services (0-6 years) Care of disabled Elderly care Financial services Cultural services

SGI markets

Liberalised market and competition	Liberalised market / Public operators dominant	Liberalised market Private operators dominant	Public monopoly	Private monopoly	No market
Telecommunications Air transport ^{table21} Inland water transport ^{table22} Maritime transport ^{table23} Broadcasting Financial services	Postal services Production of electricity ^{table24} Distribution of electricity Marketing of electricity Freight rail transport Local transport of passengers Water Waste water Heating Ambulatory health services Primary and secondary education Higher education Vocational training Social housing Childcare services (0-6 years) Complementary social protection - care Care of disabled Elderly care Cultural services	Gas transport-distribution Marketing of gas Regional transport of passengers	Railway transport of passengers (internal and cross-border) Hospital health services Transport of electricity		Compulsory social protection

Main financing methods of SGLs

Fees/payment by users	Compensations for universal service (possible)	Public contributions	Insurance funds	Charges	Sponsorship funds
Telecommunications Postal services Production of electricity Transport – distribution of electricity Marketing of electricity Gas transport-distribution Marketing of gas Railway transport of passengers Freight rail transport Regional and local transport of passengers Air transport Maritime transport Water Waste water Heating Broadcasting Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Compulsory social protection Complementary social protection Social housing Childcare services (0-6 years) Care of disabled Elderly care Financial services Cultural services	Telecommunications Postal services	Railway transport of passengers Freight rail transport Regional and local transport of passengers Inland water transport Maritime transport Water Waste water Broadcasting Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Compulsory social protection-care Complementary social protection Social housing Childcare services (0-6 years) Care of disabled Elderly care Cultural services	Hospital health services Ambulatory health services	Air transport Inland water transport Maritime transport	Broadcasting Primary and secondary education Higher education Vocational training Cultural services

Authorities responsible for setting pricing and/or tariff policies

Parliament	Central government	Local government	Regulatory agencies	Health insurance institute of Slovenia
Compulsory social protection	Railway transport of passengers Regional transport of passengers Railway transport of passengers (internal) Air transport Inland water transport Maritime transport Heating Primary and secondary education Higher education Vocational training Complementary social protection-care Social housing	Water Waste water Heating Local transport of passengers Complementary social protection Social housing	Telecommunications Postal services Electricity Gas Charges for the use of railway infrastructure	Hospital health services Ambulatory health services

II/ Approaches

A. The model of public administration and national public companies

The transition process in Slovenia was followed, among others consequences by the transformation of ownership, by nationalisation and by privatisation of previously socially-owned enterprises.

Today, state ownership is predominant in industries performing public services, in infrastructure industries such as energy, transport, telecommunication, and in the financial sector.²⁴⁰ The operating results of these companies represent a substantial share of gross domestic product, employment and the market value of enterprises.²⁴¹

National public companies for which no decision on privatisation is envisaged:

01. Posta Slovenije, that was transformed from public enterprise to company, which is 100 % owned by the Slovenian state.
02. In the electricity sector the Holding Slovenske elektrarne d.o.o. was created in 2001 by the Slovenian state and is 100% owned by the state.
03. The Slovenske železnice d.o.o. is the national company for the railway transport of passengers and of goods. It also takes care of the running and general repairs of the Slovenian railway infrastruc-

(240) The "public companies" are owned by the state but doesn't mean that these companies are also providers of SGIs.

(241) The Government of Republic of Slovenia, Policy on corporate governance of state-owned enterprises, 23 July 2009

ture and of railway traffic management.

04. In the air transport sector, Kontrola zračnega prometa – air traffic control provider, was part of a ministry now being organised as a public enterprise.

Restructuring and partial privatisation of public companies:

01. In the telecommunications sector, Telekom Slovenije d.d., a former public enterprise, is today a company partly owned by the Slovenian state which was slowly privatised from 1998; there is an intention to continue the privatisation in the future.

B. “All Public”

In contrast with most other European transition economies, as part of the socialist federation of Yugoslavia, Slovenia had an enterprise ownership structure based on self-management (originally workers' self-management²⁴²), and a strong tradition of a quasi-market system. After gaining its independence in 1991, it favoured a gradualist approach to transition reflected in particular in the privatisation process. The programme of structural reforms elaborated in 1997 in view of the negotiations for Slovenia's accession to the EU envisaged for the public utilities component, the liberalisation of prices, market liberalisation, competition and privatisation, the introduction of regulation and public procurement.²⁴³ The reforms of the public commercial utility companies were initiated soon after the independence but slower than in other sectors of the economy.

The Ownership Transformation Act was adopted in 1992 but the privatisation process started later.

01. The privatisation of banks started in 2000. In 2002, the state reduced its share in the largest Slovenian Bank - Nova Ljubljanska Banka - by selling almost 40% of its shares. Today the biggest holding remains in state ownership 33,1²⁴⁴.

02. In the sector of telecommunications, the monopoly in public fixed line services was abolished on 11 January 2001.

According to the Slovenian Act on public-private partnership, the public enterprise (javno podjetje) must be 100% owned by central or local government; mixed ownership of public enterprise is not allowed any more (this had been possible by the Act on public economic services and was practiced in some local cases).

(242) Vladimir Grigorov, « Socialism and disintegrations of SFR Yugoslavia », in Slovenia, from Yugoslavia to the European Union, World Bank, 2004, p. 17

(243) Idem, p. xxxi

(244) Per Jun 30 2009, <http://www.nlb.si/poletno-porocilo-2009>.

C. Local autonomy

According to Article 9 of the Constitution, “Local self-government in Slovenia is guaranteed”. “A municipality shall, in accordance with the Constitution and laws, independently regulate and perform the matters, duties and functions vested in it by law.” (Article 2§2 of the 2005 Act on Local Self-Government).

The local issues that the municipality may regulate autonomously and which affect only the inhabitants of the municipality are within the competence of the municipality. The State may delegate to local authorities the exercise of certain tasks within its competence if it also provides the necessary means. (Article 140 Scope of activity of local self-administered communities)^{245 246}.

The Act on local self-government lays down the tasks of the town administration in the area of public services, organisational forms of their implementation, and relations to the providers of public services. In accordance with the Act, the town administration carries out control over the legality of work of public companies and the implementation or activity of public services.²⁴⁷

According to the Act on local self-government, a municipality shall be deemed capable of satisfying needs and fulfilling duties and functions in its territory if the following conditions are met: - eight years of education (complete elementary schooling); - primary citizens' health care (health centre); - provision of municipal services (drinking water supply, removal and purification of waste water, electricity supply); - postal services; - library (general education or school); - premises for local community administration (Article 13§2 of the Act on Local Self-Government).

The overview of public utility services and the modes of their performance in two urban municipalities indicates that in Slovenian municipalities, public utility services are performed primarily in two ways: in public enterprises and by awarding a public service concession.

Municipalities shall independently take decisions on joining into wider self-governing local communities and

(245) Article 21 states the primary duties and functions of municipalities: - managing the assets of the municipality; - providing the conditions for the economic development of the municipality and in accordance with the law carrying out tasks in the areas of catering, tourism and agriculture; - planning spatial development, carrying out tasks in the areas affecting the physical space and the construction of facilities in accordance with the law, and ensuring the public service of building land management; - creating the conditions for the construction of housing and providing for an increase in the rent/social welfare housing fund; - regulating, managing and providing for local public services within its competences; - promoting the services of social welfare for pre-school institutions, for the basic welfare of children and the family, and for socially threatened, disabled and elderly people; - providing for the protection of the air, soil and water sources, for protection against noise and for collection and disposal of waste, and performing other activities related to environmental protection; - regulating and maintaining water supply and power supply facilities; - creating conditions for adult education, important for the development of the municipality and for the quality of life of its population; - promoting activities related to upbringing and education, information and documentation, associations and other activities on its territory; - promoting the development of sports and recreation; - promoting cultural/artistic creativity, ensuring accessibility to cultural programmes, ensuring library activity for general education purposes, and being responsible for preserving cultural heritage in its territory in accordance with the law; - constructing, maintaining and regulating local public roads, public ways, recreational and other public areas; regulating traffic in the municipality and performing tasks of municipal public order; - exercising supervision of local events; - organising municipal services and local police and ensuring order in the municipality; - providing for fire safety and organising rescue services; - organising assistance and rescue in elementary and other disasters; - organising the performance of funeral and burial services; - determining offences and fines for offences violating municipal regulations and inspecting and supervising the implementation of municipal regulations and other acts on the basis of which it shall regulate matters falling within its competences unless otherwise determined by law; - adapting the statutes of the municipality and other general Acts; - organising municipal administration; - regulating other local matters of public interest.

(246) According to Article 24§2 of the Act on local self-government, individual tasks which fall under national competences and which may be carried out more economically and more efficiently within municipalities may be transferred to municipal competences, particularly in the areas regulating local public transport, opening hours of catering facilities, implementing tasks in the fields of activities affecting the physical space, constructing facilities and carrying out geodetic services, and ensuring a public network of grammar schools, secondary and vocational schools, as well as secondary-level public health services.

(247) “A municipality shall provide the performance of local public services, which it determines by itself, and the performance of public services determined by law (local public services).” (Article 61§1 paragraph 1, Chapter VII Municipal public services - 2005 Act on Local Self-Government)

into regions. For the purpose of ensuring public services more economically and efficiently, two or more municipalities may jointly set up a public institution or public enterprise.²⁴⁸

D. Delegated management and externalisation

The manner of and conditions for performing local public services shall be defined by the municipality, unless otherwise provided by law.²⁴⁹

Public services in Slovenia are performed by the special legal persons (public institution, public commercial institutions, public enterprise etc.) established by the state or municipality. These organisations have their own legal personality and are not part of the state (ministries) or municipality (administration). Their management (director and other responsible management and supervisory bodies) are responsible for all key decisions, including their strategic plan, annual working programmes, financial plans and annual report. They are not part of the state or municipality and are not part of the national or local budget.

The law on institutions enabled the participation of the private sector in non-commercial public services (e.g. education, culture, health, etc.) by concession. The law on economic public services allows for the delegated management by concession. Both laws gave only the basic legal framework. How certain public services should be “produced” is should by a regulated by each specific law for each type of service.

In practice there are many cases of awarding a public service concession in different public services.²⁵⁰

E. “New Public Management”

The Public-Private Partnership Act (ZJZP²⁵¹) was adopted at the end of 2006 to enable and encourage mutual help and cooperation between entities from the public and the private sectors to ensure economical and efficient provision of public services and other goods or services in the public interest²⁵². This law became fully into effect in the middle of 2007 and PPP are carried out in the areas of financing, design and engineering, construction, supervision, organisation and management, maintenance, and provision of public services and other activities (Article 6 of the ZJZP). The Act introduces no special instrument of public-private partnership, every concession that is not a classic public procurement signifies a public-

(248) Article 61§3, Chapter VII Municipal public services - 2005 Act on Local Self-Government.

Self-governing local communities shall voluntarily co-operate with each other for the purpose of joining forces to regulate and conduct local matters of public importance. For this purpose, they may merge their funds and, in accordance with the law, set up joint bodies and joint municipal administration bodies, establish and manage funds, public institutes, public companies and institutions, and link together to form communities, unions and associations (Article 6 of the same Act).

(249) Article 62, Chapter VII Municipal public services - 2005 Act on Local Self-Government

(250) http://www.mf.gov.si/slov/jav_zas_partnerstvo/Porocilo_jav_zas_part.pdf

(251) www.mf.gov.si/slov/javnar/53646-ZJZP_EN.pdf

(252) Article 2 defines PPP as a relationship involving private investment in public projects and/or public co-financing of private projects that are in the public interest, and such a relationship is formed between public and private partners in connection with the construction, maintenance and operation of public infrastructure or other projects that are in the public interest, and in connection with the associated provision of commercial and other public services or activities provided in a way and under the conditions applicable to commercial public services, or of other activities where their provision is in the public interest, and of other investment of private or private and public funds in the construction of structures and facilities that are in part or entirely in the public interest, or in activities where their provision is in the public interest.

private partnership. There are few PPP investment projects developed in practice (e.g., sport facilities, local transport infrastructure (parking place)), but a lot of concession agreements for delivering different public services or services of general interest are concluded at state level 1520 and at the local level: 382 for health care and 1575 for other services²⁵³.

As concerning SGI evaluation, a mechanism of reporting on results of the organisations²⁵⁴ which perform the SGI in annual reports is prescribed in Slovenia. This is done at the level of central and local government and other public sector organisations which perform SGIs, excepting public enterprises. All these organisations should report on the results of the management and performance (economy, efficiency, effectiveness). Indicators that are used for the reporting and self-evaluation in annual reports depend on the goals of the reporting organisation. Such reporting is compulsory.

Some sectors must perform the evaluation on the quality (e.g., education) according the sector regulations.

There is no other general regulation on obligatory evaluations of SGIs.

Other evaluations of the SGIs are voluntary. They can be done on the requirements of the management of the organisation, its supervisory body, regulatory agency or other institutions.

F. Regulatory Agencies

The Government Strategy for the Economic Development of Slovenia²⁵⁵ included the objective of the reducing of the state's presence in the economy and in public services by becoming a regulator and supervisor in the field of public services rather than a supplier of these services.

In Slovenia, the first regulatory agencies (the Telecommunications Council, the Broadcasting Council and the Telecommunications and Broadcasting Agency) were established in July 2001. In June 2002, the Telecommunications Agency became also the regulator of the postal sector under the name of Telecommunications, Broadcasting and Postal Agency. Today, the Post and Electronic Communications Agency of the Republic of Slovenia (Agencije za postu in elektronske komunikacije Republike Slovenije - <http://www.apek.si/en>) is the independent authority of regulation and competition authority in the telecommunications, postal sectors, and, partly, for broadcasting services.

In the energy sector the independent authority of regulation is the Energy Agency (Javna agencija Republike Slovenije za energijo - <http://www.agen-rs.si/en/>). Its tasks include issuing the licences for energy-related services, setting the network charges for the transmission of electricity and giving approvals to the network charges for the transmission of natural gas, tasks in the area of the supply of other energy gases and district heating and, since 2008, additional responsibilities in the area of environmentally friendlier electricity production, issue of declarations for production facilities, decisions on granting support and guarantees of the origin of electricity produced from renewable energy sources and in the efficient cogeneration of electricity and heat.

(253) Report on Public-Private partnership in Republic of Slovenia for year 2008 http://www.mf.gov.si/slov/jav_zas_partnerstvo/Porocilo_jav_zas_part.pdf, page 29, 34.

(254) Public institutions, public funds, public agencies, public commercial institutions.

(255) Institute of Macroeconomic Analysis and Development

In the railway transport sectors, the Public Agency for the Rail Transports (Javna agencija za železniški promet Republike Slovenije - <http://www.azp.si/www/o-agenciji>)

The Bank of Slovenia, the Securities Market Agency and the Insurance Supervision Agency ensure with the Minister, the regulation of the financial services.

The Council for Higher Education (http://www.svs.gov.si/en/working_fields/) has an independent status regulating some questions in higher education and vocational training but not as a competition regulator.

III/ Social dialogue

Slovenia's central body for **tripartite cooperation** is the Economic and Social Council of Slovenia (Ekonomsko socialni svet Slovenije, ESSS), established by the April 1994 tripartite agreement on pay policy in the private sector. It has a 'quasi-bargaining' function in the sense that 'social agreements' and other tripartite accords are negotiated within its framework. The ESSS has a consultative function. The field of activity of the ESSS is limited and mainly pertains to industrial relations, working conditions, labour legislation, social rights and employment policy, as well as other broader economic and social issues concerning the interests of workers and their families, employers' interests and government policy.

The Slovenian Constitution recognises the right to strike, the freedom of trade unions and the right of workers to participate in work-place decisions.²⁵⁶

In the **private sector** the status of employees is negotiated through collective bargaining. Collective agreements apply at all three levels – national, sectoral and company level; it becomes more and more decentralised. Collective agreements are not legally binding.

A collective agreement for one or more sectoral branches can be extended by the minister responsible for labour at the request of one of the parties to the collective agreement. The Collective Agreements Act stipulates that only the signatories of collective agreements are covered by those agreements, although it also envisages general validity. This means that a collective agreement covers all workers employed by the employer or employers for whom a collective agreement is valid if the agreement has been concluded by one or more representative trade unions.

The status of **public sector** employees that is regulated by the Civil Servants Act is still different from the status of private sector employees. The Civil Servants Act differentiates between civil servants, officials who perform support work, and professional technical public employees. There are specific regulations concerning the status of civil servants. There are also specific regulations concerning employees in the Army and the Police that are defined in sectoral laws. The first 21 articles of the Civil Servants Act are common for all public sector employees and in that part are defined the rights of public sector employees on association, collective bargaining and strikes. The realisation of the right to strike and its limitation is legally defined due to securing the public interest. In the public sector collective bargaining is regulated by the Law and the Collective Agreement (Zakon o kolektivnih pogodbah, ZKP) that represents a basic

(256) References: studies on representativeness of the European social partner organisations in Slovenia (<http://www.eurofound.europa.eu/eiro/>)

framework for sectoral collective agreements, and remains centralised. Smaller bargaining groups in ministries or sectors (e.g. public administration, judiciary, defence, tax authorities) are formed according to need. Central government is represented in the collective bargaining by the governmental bargaining group that consists of representatives of all ministries, some governmental offices, agencies, the parliament and the representatives of associations of municipalities. There is no ex-post validation procedure. The decision of the bargaining unit that represents government is final. The result of social dialogue for SGIs is a special collective agreement for the whole public sector (at central and local governmental level excepting public enterprise and public or private companies owned by central or local government). It relates to the salaries of civil servants. Some relevant questions for civil servants are stipulated with other collective agreements that are concluded for whole nonmarket activities. Beside that, some special questions are regulated in sectoral collective agreements (culture activities, childcare and education and other sectors as presented below):

The **hospital sector** in Slovenia is publicly owned and, as a result, the social partners are trade unions, the government and numerous organisations and associations. Collective agreements are concluded at sectoral level and apply to the whole territory of Slovenia and to all employers in the specified sectors.

The **postal services sector** is dominated by the biggest service provider, the Post of Slovenia (Pošta Slovenije), which is the only operator registered for universal postal services and reserved postal services. **A company-level collective agreement** was concluded at Post of Slovenia which supplements the **sectoral collective agreement**. As, so far, only a small part of the sector has been opened up to competition, these changes have not yet substantially modified the employment and industrial relations conditions in the postal and courier activities sector. The smaller employers are not unionised. No multi-employer agreements exist in the sector.

In the **electricity sector a national intersectoral agreement** is concluded, supplemented by **sectoral and company agreements**. Some companies do not have a company-level agreement.

In the Slovenian **railway sector**, the distinction between multi-employer agreements and single-employer agreements is not relevant because **only one collective agreement** exists – the sectoral CAART signed on the employer side by the government, the only employer. Tripartite bodies dealing only with issues specific to railway transport do not exist because the state is the only owner of the railways and the government also acts in the role of employer.

All activities in the **civil aviation industry** are performed by former monopoly holders. **Company-level collective agreements** predominate in this small, strongly professionalised sector. Currently there are three single-employer collective agreements in the sector; two professional groups hold a particularly powerful negotiating position in the industry: pilots and air traffic controllers. There are also collective agreements for communal activities and transport of passengers.

Sources of national law on SGIs

Sector	Legal references	Web sites
Telecommunications	Zakon o elektronskih komunikacijah (ACT ON ELECTRONIC COMMUNICATIONS)	http://www.apek.si/en http://www.apek.si/datoteka/File/EN/Microsoft%20Word%20-%20Quarterly%20report%20-%20Q2%202009%20-%20202.pdf http://www.apek.si/datoteka/File/2009/EN/Annual_Report_2008_web1_090723.pdf
Postal services	Zakon o poštnih storitvah (ACT ON POSTAL SERVICES)	http://www.apek.si/en http://www.apek.si/datoteka/File/2009/EN/Annual_Report_2008_web1_090723.pdf
Production of electricity	Energetski zakon (ENERGY ACT)	http://www.mg.gov.si/en/areas_of_work/energy/ http://www.agen-rs.si/en/ http://www.apek.si/datoteka/File/2009/EN/Annual_Report_2008_web1_090723.pdf

Electric networks (transport-distribution)	Energetski zakon (ENERGY ACT)	http://www.mg.gov.si/en/areas_of_work/energy/ http://www.agen-rs.si/en/ http://www.apek.si/datoteke/File/2009/EN/Annual_Report_2008_web1_090723.pdf
Marketing of electricity	Energetski zakon (ENERGY ACT)	http://www.mg.gov.si/en/areas_of_work/energy/ http://www.agen-rs.si/en/ http://www.apek.si/datoteke/File/2009/EN/Annual_Report_2008_web1_090723.pdf
Gas transport-distribution	Energetski zakon (ENERGY ACT)	http://www.mg.gov.si/en/areas_of_work/energy/ http://www.agen-rs.si/en/ http://www.apek.si/datoteke/File/2009/EN/Annual_Report_2008_web1_090723.pdf
Marketing of gas	Energetski zakon (ENERGY ACT)	http://www.mg.gov.si/en/areas_of_work/energy/ http://www.agen-rs.si/en/ http://www.apek.si/datoteke/File/2009/EN/Annual_Report_2008_web1_090723.pdf
Railway transport of passengers	Zakon o železniškem prometu (ACT ON RAILWAY TRANSPORT)	http://www.mzp.gov.si/en/areas_of_work/railways_and_cableways/ http://www.mzp.gov.si/en/regulatory_body/ http://www.azp.si/www/o-agenciji
Freight rail transport	Zakon o železniškem prometu (ACT ON RAILWAY TRANSPORT)	http://www.mzp.gov.si/en/areas_of_work/railways_and_cableways/ http://www.mzp.gov.si/en/regulatory_body/ http://www.azp.si/www/o-agenciji
Regional and local transport of passengers	Zakon o prevozih v cestnem prometu (ACT ON PUBLIC REGULAR PASSENGER SERVICES)	http://www.mzp.gov.si/en/areas_of_work/transport/
Air transport	Zakon o letalstvu (ACT ON CIVIL AVIATION)	http://www.mzp.gov.si/en/areas_of_work/civil_aviation/
Inland water transport	Zakon o plovbi po celinskih vodah (ACT ON INLAND WATER TRANSPORT) Pomorski zakonik (act on Maritime transport)	http://www.mzp.gov.si/en/areas_of_work/maritime_transport_and_inland_navigation/ http://www.up.gov.si/en/
Maritime transport	Pomorski zakonik (ACT ON MARITIME TRANSPORT)	http://www.mzp.gov.si/en/areas_of_work/maritime_transport_and_inland_navigation/ http://www.up.gov.si/en/
Water	Zakon o varstvu okolja (THE ENVIRONMENT PROTECTION ACT)	http://www.mop.gov.si/en/legislation/environment/the_environment_protection_act/
Waste water	Zakon o varstvu okolja (THE ENVIRONMENT PROTECTION ACT)	http://www.mop.gov.si/en/legislation/environment/the_environment_protection_act/
Heating	Energetski zakon (ENERGY ACT)	http://www.mg.gov.si/en/areas_of_work/energy/ http://www.agen-rs.si/en/ http://www.apek.si/datoteke/File/2009/EN/Annual_Report_2008_web1_090723.pdf
Broadcasting	Zakon o elektronskih komunikacijah (ACT ON ELECTRONIC COMMUNICATIONS) Zakon o medijih (ACT ON MEDIA) Zakon o radioteleviziji Slovenija (THE RADIO AND TELEVISION CORPORATION OF SLOVENIA ACT)	http://www.apek.si/en http://www.apek.si/datoteke/File/2009/EN/Annual_Report_2008_web1_090723.pdf
National public administration	zakon o vladi (THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA ACT) zakon o državni upravi (PUBLIC ADMINISTRATION ACT)	http://www.gsv.gov.si/en/legislation/legal_acts_in_force/ Note: act is published in original version and was later amended. http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/mju_slike/english/PUBLIC_ADMINISTRATION_ACT.doc Note: act is published in original version and was later amended.
Regional or local public administration	Zakon o lokalni samoupravi (ACT ON LOCAL SELF-GOVERNMENT)	http://www.svlr.gov.si/en/
Hospital health services	Zakon o zdravstveni dejavnosti (LAW ON HEALTH ACTIVITY)	http://www.mz.gov.si/en/areas_of_work/
Ambulatory health services	Zakon o zdravstveni dejavnosti (LAW ON HEALTH ACTIVITY)	http://www.mz.gov.si/en/areas_of_work/
Primary and secondary education	Zakon o organizaciji in financiranju vzgoje in izobraževanja (ACT ON ORGANISATION AND FINANCING OF PREEDUCATION AND EDUCATION) Zakona o osnovni šoli (ACT ON ELEMENTARY SCHOOL) Zakon o gimnazijah (ACT ON GENERAL SECONDARY SCHOOL)	http://www.mss.gov.si/en/areas_of_work/compulsory_basic_education_in_slovenia/ http://www.mss.gov.si/en/areas_of_work/upper_secondary_education_in_slovenia/ http://portal.mss.edu.si/pls/portal/docs/PAGE/PORTAL_SOLSTVO_MSS/MSS_STRAN/MSS_DOKUMENTI_ZA_SPLET/SLOVENE_EDUCATION_SYSTEM.PDF http://www.mss.gov.si/en/areas_of_work/education_in_slovenia/publications/
Higher education	Zakon o visokem šolstvu (ACT ON HIGHER EDUCATION) Zakon o strokovnih in znanstvenih nazivih (ACT ON VOCATIONAL AND SCIENCE TITLES) Zakon o priznavanju in vrednotenju izobraževanja (ACT ON RECOGNITION AND ASSESSMENT OF EDUCATION)	http://www.mvzt.gov.si/en/areas_of_work/higher_education/
Vocational training	Zakon o poklicnem in strokovnem izobraževanju (VOCATIONAL EDUCATION ACT) Zakon o višjem strokovnem izobraževanju (POST-SECONDARY VOCATIONAL EDUCATION ACT)	http://www.mss.gov.si/en/areas_of_work/upper_secondary_education_in_slovenia/vocational_and_technical_upper_secondary_education_in_slovenia/#c16933
Compulsory social protection	Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju (LAW ON HEALTH CARE AND HEALTH INSURANCE) Zakon o starševskem varstvu in družinskih prejemkih (PARENTAL PROTECTION AND FAMILY BENEFITS ACT) Zakon o zaposlovanju in zavarovanju za primer brezposelnosti (EMPLOYMENT AND INSURANCE AGAINST UNEMPLOYMENT ACT) Zakon o pokojninskem in invalidskem zavarovanju (PENSION AND INVALIDITY INSURANCE ACT)	Act is not translated in english; http://www.zzs.si/indexeng.html http://www.mz.gov.si/en/areas_of_work/ http://www.mdds.gov.si/en/legislation http://www.mdds.gov.si/en/legislation/ http://www.ess.gov.si/eng/Introduction/LegislationReg.htm http://www.mdds.gov.si/en/legislation/ http://www.zpis.si/src/giz/publications_en.html
Complementary social protection	Zakon o socialnem varstvu (SOCIAL PROTECTION) Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju (LAW ON HEALTH CARE AND HEALTH INSURANCE) Zakon o pokojninskem in invalidskem zavarovanju (PENSION AND INVALIDITY INSURANCE ACT)	http://www.mdds.gov.si/fileadmin/mdds.gov.si/pageuploads/dokumenti_zsv_upb2_en.pdf http://www.mdds.gov.si/en/areas_of_work/social_affairs/
Social housing	Stanovanjski zakon (ACT ON HOUSING)	http://www.mop.gov.si/en/areas_of_work/spatial_planning_directorate/ http://www.stanovanjskisklad-rs.si/en/
Childcare services (0-6 years)	Zakon o vrtcih (ACT ON PRE-SCHOOL INSTITUTIONS)	http://www.mss.gov.si/en/areas_of_work/pre_school_education_in_slovenia/

Care of the disabled	Zakon o invalidskih organizacijah (ACT ON ORGANISATIONS FOR DISABLED) Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov (ACT ON REHABILITATION FOR EMPLOYMENT AND EMPLOYMENT OF DISABLED) Zakon o družbenem varstvu duševno in telesno prizadetih oseb (ACT ON SOCIAL PROTECTION OF MENTALLY AND PHYSICALLY DISABLED PEOPLE) Zakon o pokojninskem in invalidskem zavarovanju (PENSION AND INVALIDITY INSURANCE ACT)	http://www.mdds.gov.si/en/areas_of_work/directorate_for_disabled/ http://www.mdds.gov.si/en/areas_of_work/social_affairs/compensation_for_a_handicap/
Elderly care	Zakon o socialnem varstvu (SOCIAL PROTECTION ACT)	http://www.mdds.gov.si/en/areas_of_work/social_affairs/social_security_services/institutional_care/
Financial services (1)	Zakon o ban ništvu (BANKING ACT) Zakon o zavarovalništvu (THE INSURANCE ACT) Zakon o investicijskih skladih in družbah za upravljanje (THE INVESTMENT FUNDS AND MANAGEMENT COMPANIES ACT)	http://www.mf.gov.si/ang/zakon/azakon.htm www.bsi.si/en/ http://www.a-tvp.si/Eng www.a-zn.si/eng/client/default.asp?r=-1&n=167&p=content
Cultural services (1)	Zakon o uresni evanju javnega interesa za kulturo (EXERCISING OF THE PUBLIC INTEREST IN CULTURE ACT)	http://www.mk.gov.si/en/legislation/

PUBLIC SERVICES IN SLOVAKIA

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

Slovakia is a unitary state organised in two levels of local government: 8 regions (kraje), which have the status of higher territorial units (Vyssich uzemnych celkov), and 2928 municipalities (obci), of which 138 have a status of towns (mesto).

In SGI areas identified by the survey all legislation has been adopted/amended since 1990 and has evolved in recent years following in particular the Community changes and the decentralisation progress. In Slovakia there is no transversal law on SGIs, only sectoral legislation. The SGEI sectors evolved following the adoption of the *acquis communautaire* and liberalisation politics. The effects of liberalisation are different, positive or negative (particularly in terms of accessibility, choice and price), by sector.

EU terms and their translation are not common at the national level, except for translations of EU documents, where needed (procurement law). Policy and legal documents prefer to use simple national expressions (verejnoprospešne služby=public services/utilities). Some of the European concepts (SIG, SGEI, NESGI, and SSGI) entered into the national legislation through the Community law but generally they play a very minor role. There is also no generally agreed translation available of these terms in Slovakian language [SIG=verejnoprospešné služby=public benefit²⁵⁷ / SIG= služba vo verejnom záujme=service in the public interest / SIG= služby všeobecného záujmu / SGEI²⁵⁸= Služby vo verejnom hospodárskom záujme / SGEI= Služby všeobecného ekonomického záujmu].

There is no common and effective translation of the term “non-economic services of general interest” and no specific national term²⁵⁹. Also, there is no common and effective translation of the expression SSGI; the common national term is Socialne služby=social services (IATE translation).

The lack of the concept of “public service” before the period of the totalitarian regime in Czechoslovakia is explained by the influence of the Austrian school of law.²⁶⁰ During the totalitarian period, as in all Central and East European countries, the Soviet law became the reference law; the political and legal system was

(257) Translated as in English « utilities », « public services » (IATE)

(258) According to IATE služby všeobecného hospodárskeho záujmu

(259) Article 2 of the SGI protocol attached to the Treaty of Lisbon uses an expression synonymous with the Community term SGI « Ustanoveniami zmlúv nie sú žiadnym spôsobom dotknuté právomoci členských štátov poskytovať, obstarávať a organizovať služby všeobecného záujmu nehospodárskeho charakteru. »

(260) From the medieval period to 1918, Slovakia was part of the Austro-Hungarian Empire. In 1918, Slovakia joined the first Czechoslovak Republic, and, subsequently, from 1939 to 1945 became independent. From 1945 to 1968, Slovakia was part of the unitary Czechoslovakia, then of the federal Czechoslovakia until 1992. Slovakia became independent once again in January 1993, as the result of a democratic split of Czechoslovakia into two independent countries, the Czech and Slovak Republics.

supposed to ensure all public services but there is no specific doctrine of SGIs (notably the promotion and recognition of economic sectors of services only became evident in the 1970s).

Since 1990 there has been no national conceptualisation of activities of general interest.²⁶¹ The Slovak legal system does not use the theory of public service and all the concepts that relate to this subject result from Community law.

Terms in TEU and TFEU	Slovak terms in TEU and TFEU ^{table25}
Services of general interest – SGIs	službách všeobecného záujmu
Services of general economic interest – SGEIs	služby všeobecného hospodárskeho záujmu
Non-economic services of general interest – NESGIs	služby všeobecného záujmu neekonomického
Public service	verejnoprospešnou službou

Competences of definition and organisation of SGIs

What is the level of government that actually defines the public service obligations and decides the modes of SGIs' organisation?

Central	Regional	Local
Telecommunications	Regional and local transport of passengers	Water
Postal services	Hospital health services	Wastewater
Electricity	Ambulatory health services	Ambulatory health services
Gas	Cultural services	Primary education (delivery)
Broadcasting	Secondary education (delivery)	Social housing
Financial services	Care of the disabled	Childcare services (0-6 years)
Railway transports	Elderly care	Care of the disabled
Air transport		Elderly care
Inland water transport		Cultural services
Hospital health services		
Primary and secondary education (contents regulation)		
Higher education		
Vocational training		
Social protection		
Cultural services		

(261) This school based the implementation of activities of general interest mainly on the exercise of public authority by the government and only takes into account the concept of general interest to justify the exercise of public authority. The ideological element that dominated the development of Czechoslovakian legal doctrine and the evolution of Austro-Hungarian administrative law before the Great War confined the activities of the State to the legitimate exercise of public authority. – Michel Mangenot, p. 86 ; 94-95

B. Sectoral organisation and trends

Status of operators

National public providers	National mixed providers Public majority	Sub-national public providers	Sub-national mixed providers Public majority	Mixed providers Private majority	Private providers
<ul style="list-style-type: none"> Railway transport of passengers Freight rail transport Broadcasting Regional and local transport of passengers Hospital health services Higher education 	<ul style="list-style-type: none"> Gas transport-distribution (51% owned by the State) Marketing of gas 	<ul style="list-style-type: none"> Heating Primary and secondary education Social housing Childcare services (0-6 years) Care of the disabled Elderly care Cultural services 	<ul style="list-style-type: none"> Marketing of electricity 	<ul style="list-style-type: none"> Production of electricity Electricity networks (transport-distribution) Telecommunications (network) 	<ul style="list-style-type: none"> Production of electricity Telecommunications (services) Regional and local transport of passengers Air transport Inland water transport Water Waste water Heating Broadcasting Hospital health services Ambulatory health services Primary and secondary education Higher education Vocational training Compulsory social protection (second pillar) Complementary social protection Childcare services (0-6 years) Care of the disabled Elderly care Financial services Cultural services

SGI markets

Liberalised market and competition	Liberalised market Public operators dominant	Liberalised market Private operators dominant	Public monopoly	Private monopoly	No market
Telecommunications Air transport Inland water transport Regional and local transport of passengers Heating Broadcasting Vocational training Complementary social protection Social housing Compulsory social protection (second pillar)	Postal services Production of electricity Railway transport of passengers Hospital health services Primary and secondary education Higher education	Broadcasting Ambulatory health services	Distribution of electricity (regional monopolies) Gas transport-distribution Water and wastewater (local monopolies ^{table26}) Freight rail transport Compulsory social protection (first pillar)	Telecommunications (networks) Electricity networks Water (regional and local monopolies) Wastewater (regional and local monopolies)	National public administration Regional and local public administration

Main financing methods of SGIs

Users fees	Public grants	Insurance funds	Business	Social tariffs/prices
Telecommunications Postal services Marketing of electricity Marketing of gas Railway transport of passengers Freight rail transport Regional and local transport of passengers Water Waste water Broadcasting Hospital health services (marginal co-payments) Ambulatory health services (marginal co-payments) Primary and secondary (in private schools) Higher education (in private universities and for some part time students in public universities) Social housing Childcare services (0-6 years) Care of disabled Elderly care Cultural services	Railway transport of passengers Regional and local transport of passengers Primary and secondary education Higher education Care of disabled Cultural services	Hospital health services Ambulatory health services Compulsory social protection	Production of electricity Transport-distribution of electricity Gas transport-distribution Air transport Inland water transport Heating Broadcasting Vocational training Complementary social protection Financial services	Railway transport of passengers Regional and local transports of passengers

Authorities responsible for setting pricing and/or tariff policies

Parliament	Central government	Local government	Regulatory agencies	Health insurance institute of Slovenia
Broadcasting (for public operators) Compulsory social protection	Hospital health services Ambulatory health services Primary and secondary education Higher education (for public universities)	Water Waste water Social housing Childcare services (0-6 years) Care of disabled (for public providers) Elderly care (for public providers)	Telecommunications Postal services Marketing of electricity Marketing of gas	Hospital health services Ambulatory health services

II/ Approaches

A. The model of public administration and national public companies

Czechoslovakia had no private enterprises; in general, there were two kinds of enterprises: state enterprises with 100 % state ownership, and cooperatives (consumer, production and farmer) with common ownership.

Today only Slovak post and railways remain 100% in public hands but the state participates in others with or without controlling interests.

01. In the gas sector – SPP, unbundling in 2006, privatisation in 2002, but the state keeps the majority of the capital (51% Slovak Gas Holding B.V.; 49% consortium E.ON Ruhrgas and Gas de France).
02. The companies that remain in public ownership changed their legal status:
03. Slovak Post - converted in 2004 from state enterprise to state shareholders company (100% owned by the Slovak state);
04. Slovak Railways - State enterprise established on 1 January 1993, first unbundling in 2002 (transport and network companies), second unbundling in 2005 to three state shareholders companies - Slovak Railways Company (passengers), Cargo Slovakia (freight) and Slovak Railways (network).

B. “All Public”

In the first years after the dissolution of the federation, the pace of privatisation in Slovakia slowed; it was accelerated by the process of accessing the EU and adoption of *acquis communautaire*. The concept of private/semiprivate production and state regulation was adopted for some utility sectors.

After 1990 they were largely privatised and, as appropriate, unbundled:

- 01. In telecommunications sector - Slovenske telekomunikacie, state body, privatised in 1999-2000, currently a stakeholder company owned 51% by Deutsche Telecom AG;
- 02. In electricity sector - Slovenske elektrarne, company sold to ENEL in April, 2006, the current state shares represent 34% (ENEL SPA 66%).
- 03. In financial sector – national banks sold to foreign corporations in late 1990.

C. Local autonomy

The decentralisation process in Slovakia was initiated in 1990 with the restoration of self-government - Law no. 294/1990. Since 2002, Slovakia has two tiers of autonomous local government: 8 regions and 2891 small municipalities²⁶² of which 138 have town status.

New powers have been gradually transferred to local authorities, but any jurisdiction that is not expressly granted to the municipalities or regions is the responsibility of central government.

The main areas of competition at **regional level** relate to regional transport, secondary education, health, social action.²⁶³

The powers of municipalities exercising their self-government functions included before decentralisation in 2000 the following main responsibilities - management of movable property and real estate in the ownership of the municipality and of property owned by the State and conveyed to the municipality to be temporarily managed by law; compilation and approval of municipal budgets and final accounts, organisation of public discussions on issues of such budgets and final accounts, administration of local taxes and fees; guidance of economic activities in the municipality, in particular issue of binding positions on investment activities in the municipality, on the uses of local resources, on the commencement of business activities of legal entities and natural persons, and issue of positions on business plans if the latter touch interests of the population of the municipality; creation and protection of healthy conditions and healthy way of life and work of the municipality's population, protection of the environment and creation of conditions for education, culture, artistic hobbies, physical culture and sports; acquisition and approval of territorial planning documentation of settlements and zones; concepts of the development of the individual spheres of life of municipality; establishment, incorporation cancellation and control of its own budgetary organisations and subsidised organisations as well as other legal entities, in compliance with special regulations; providing for public order in the municipality; local public transport in big cities (Bratislava, Kosice, Zilina, Presov, Banska Bystrica); construction, maintenance and management of local roads and parking places; public parks and open spaces, public lighting, market places; cemeteries; local water resources and wells, water supply networks, sewerage and water cleaning establishments in small municipalities; construction, maintenance and management of local cultural establishments; part of the sport, leisure and tourist establishments; infant homes; part of the ambulatory health services establishments; establishments of the basic social services (daily care), the support of following activities - education, nature and heritage protection, culture and artistic

(262) 95% have fewer than 5000 inhabitants, on average 1870 inhabitants per municipality

(263) For territorial and administrative organisation of the Slovak Republic <http://www.civil.gov.sk/archiv/p11/p11-01.shtm>

hobbies, physical culture and sport, humanity activities; the administration of the municipality including municipal police forces and fire services.

The scope for providing of those responsibilities depended on the size of the municipality and mainly on its financial basis. Accordingly a really large number of competencies was transferred in 2001- 2004. Municipalities got new responsibilities in the areas of road communications, water management, social care, environmental protection, education (elementary schools and similar establishments), physical culture, theatres, health care (primary and specialised ambulatory care), regional development and tourism. Regional self -government became responsible for competencies in areas of road communications, railways, road transportation, civil protection, social care, territorial planning, education (secondary education), physical culture, theatres, museums, galleries, local culture, libraries, health care (polyclinics and local and regional hospitals), pharmacies, regional development, and tourism. A large set of these competencies was re-allocated from direct ministerial responsibility (hospitals, education, etc.).

D. Delegated management and externalisation

At regional and municipal level, including smaller municipalities, all types of service delivery methods are used.

We present here the picture for some services, following an empirical analysis of contracting local public services by municipalities in the Slovak Republic and the comparison of data, where possible, with the situation in the Czech Republic.

We decided to define the following categories of local public services delivery arrangements for purposes of our research:

01. Direct production by the municipality and its employees,
02. Municipal net budgetary organisations,
03. Municipal firm (firms with more than 50% municipal share included),
04. External supplier,
05. Combination of four given alternatives,
06. Other forms.

Scale of external forms (contracting-out) of delivery of selected local public services in Slovak and Czech municipalities (% among all used service delivery methods)²⁶⁴

Service	Slovak Republic			Czech Republic	
	2000	2005	2005 TI	2000	2004 TI
Waste	49	64	69	71	80
Cemeteries	27	12	16	42	26
Public green areas	16	18	33	45	24
Communications	21	41	45	31	38
Public lighting	30	35	40	23	60

E. “New Public Management”

Slovakia started to use the economic instrument of “Public Private Partnership“ at the national level in 2009, in the sector of road building, so-called “speedily roads“ one level lower, as than highway/motorway. However, there have been PPP arrangements at local and regional level for a long time.

There is a lack of systemic and effective quality control, accountability and responsibility for high quality service delivery. Where it does exist, it is very limited. Some municipalities check citizen satisfaction and needs, but not in a consistent, “joined-up” way. The “red tape” principle still dominates this sphere. The only positive mechanism is connected with drafting laws – all drafts must be published and any comments collected and evaluated.

The methods of evaluation depend on the system of delivery. We may distinguish the following main ways:

a/ Services regulated by the independent regulator (telecommunications, postal services, production of electricity, electric networks (transport-distribution), marketing of electricity, gas transport-distribution, marketing of gas, broadcasting) – all aspects of evaluation are a matter for the regulator. Evaluation reports are not published or openly discussed. Criteria are not known to general public. On the other hand, providers have to publish yearly reports.

b/ Fully deregulated services – almost no regular and systematic evaluation, left to consumers.

c/ Local/regional public services – in theory municipal and regional councils are responsible for evaluating them. However, according to our specific research the ex-ante and ex-post evaluations are non-systematic and vague. Public providers have to publish yearly reports.

d/ Education – primary and secondary level are directly monitored by the branches of the Ministry. There are external final examinations at secondary schools. There are centralised examinations for those leaving primary schools, and the results are considered during entry examinations to the next level of education.

(264) Original research based on the data obtained from selected municipalities related to the local service delivery in 2001, 2006, 2007, and data gathered from results of research projects of Transparency International Slovakia and Czech Republic realized in 2006 and 2005

Universities – quality of education and staff is supervised by the Accreditation Committee. Providers have to publish yearly reports.

e/ Health care – the most regulated branch. The Office for Quality has comprehensive quality control rights and serves also as the appeal body. However it does not have any systemic quality control system and stopped publishing most of the available data.

Insurance companies started to rank providers; however they do not use uniform criteria. An Accreditation Committee and self-government also are expected to serve as quality controls.

The Medical Chamber has the formal responsibility for control quality, but does not fulfil it – it is a trade union like body.

f/ Regulatory Agencies

The independent regulatory authorities exist for telecommunications, postal services, electricity, gas, broadcasting, air transport and railway transport.

The current (2006-2010) government tried to undermine the principle of the independence of regulators, but the EC interventions (EC letter to Slovakia 2009) blocked attempts by the government to undermine regulatory bodies. In reality, the independence of regulators is still questionable.

III/ Social dialogue

In Slovakia, there is no formal and standard social dialogue concerning SGIs. The highest level of social dialogue is the so called “Tripartite” – government, employees and trade unions. For a long time, the Economic and Social Concertation Council (Rada hospodárskej a sociálnej dohody, RHSD) was the forum for **national tripartite social dialogue**. Since 2007, it operates as the Economic and Social Council (Hospodárska a sociálna rada, HSR). Tripartite social dialogue usually concerns policies and legislation related to the development of the business environment as well as the standard of living and working conditions of employees.

In SGEIs there is the so called **branch social dialogue**, an ongoing permanent social dialogue, which is divided into 7 independent branches (groups) – posts; telecommunications, road infrastructure, road transport, railway transport, air transport, water transport. Every year a tripartite „Agreement on economic and social partnership“ (Collective Labour Agreement on High Level for 3 branches: Transport, Posts, Telecommunications) is signed by the Ministry of transport, posts and telecommunications of the Slovak Republic and the Association of Trade Unions of transport, posts and telecommunications ZADOPOT²⁶⁵. ZADOPOT leads social dialogue on three levels: enterprise level; branch level; national level. This Agreement

(265) ZADOPOT is a member of one of two existing national employers' organisations – Federation of Employers' Associations of the Slovak Republic (AZZZ SR). In AZZZ SR ZADOPOT has a very important position in the social dialogue at national level. The President of ZADOPOT is vice chairman of the Economic and Social Council of the Slovak Republic (HSR SR) and is a permanent member of the highest tripartite body, representing Slovak Employers.

ZADOPOT has 18 full member enterprises with 55 899 employees (31.12.2008) and 8 associated members-partner employers organisations, enterprises - subjects, which provide services in transport and logistic. Associated member don't pay any member subscriptions, but ZADOPOT offers them opportunities to lobby, and to take part in social dialogue on all levels.

is reviewed twice a year by the parties to the social dialogue.

The Labour Code (311/2001) is the general base for the collective bargaining processes. It stipulates that employees have the right to participate in employers decisions concerning their economic and social interests. An employees' council has to be established in all enterprises without any trade union organisation and with more than 20 employees.

Both multi-employer and single-employer collective bargaining play a significant role in forming employment conditions and wages in Slovakia.²⁶⁶ Multi-employer collective agreements are still relevant in several sectors of economic activity and can be extended to other employers according to the rules specified by the Collective Bargaining Act (voluntary extension mechanisms are not used). According to this law, the processes depend on "industry". Multisectoral (branch) agreement is one specific case. In reality, sectoral and/or local agreements are the main practice. The consent of employers is no longer a necessary precondition for the extension of collective agreements.

There are some differences between the status of the **private sector** employees and of the **public employees**. The employment conditions of the public employees are stipulated by law and could be improved by collective bargaining. Not all public employees do have the same status. There are differences between civil servants and public servants (employees performing work in public interest). Collective bargaining in the civil service has been allowed since January 2004. During collective bargaining most of the public employees (except firemen and soldiers, who are the personnel of the ministry of interior and defence²⁶⁷) follow the Act No. 2/1991 Coll. on collective bargaining, which is valid also for the private sector. Despite this there exist certain differences, e. g in the company collective agreements signed at the level of individual offices. It is possible to bargain at the level of offices and at the sectoral level as well, separately for civil servants and public servants. Collective bargaining at sectoral level is of crucial significance and results in **two sectoral collective agreements**. The first one deals with **civil servants** and the second one with the **public servants** who are remunerated according to the Act No. 553/2003 Coll. Bargaining occurs only within one bargaining unit. Collective bargaining at the level of individual offices is only a supplementary form of this bargaining. Additional approval of agreements is not needed as the budgetary possibilities are taken into account when the relevant collective agreements are being concluded. Not only is central government engaged in the bargaining, but the whole public administration as well. In the different offices (ministries, other organisations of the state administration) it is possible, in case of existence of their trade union organisation, to sign a company agreement, which is based upon the sectoral agreement.

Collective bargaining is well developed in all **healthcare sectors** and the power of the trade unions is relatively strong²⁶⁸. **Sectoral** and **company-level collective agreements** are concluded. Still, sectoral multi-employer collective agreements play a more important role because they create the framework for working conditions and wages in the hospital sector. Working conditions can also be improved through individual local/enterprise-level collective agreements. The social partner representatives are also involved

(266) References: studies on representativeness of the European social partner organisations in Slovakia (<http://www.eurofound.europa.eu/eiro/>)

(267) Policemen and firemen working for the ministry bargain separately. Policemen (armed forces) and firemen are not allowed by law to strike. Professional soldiers are not allowed to join trade unions. However, these groups of employees, when compared with other public servants, have a special (more favourable) system of social security.

(268) The power of trade unions is strong in state hospitals (Only large teaching hospitals and organisations providing hospital services are state-owned. Several small hospitals are private not-for-profit organisations).

in **sectoral tripartite concertation**.

Social dialogue is well developed in the **postal services sector**, too. Slovak Post is a dominant provider of post and courier services in the country. Besides this company, branch offices of private multinational companies also operate in the sector. Employees in these branch offices are not unionised nor are they covered by any collective agreement. Two sectoral trade unions jointly conclude **sectoral** as well as **company-level collective agreements** in Slovak Post and are also involved in sector-related policy **tripartite consultations** within the post and telecommunications tripartite body (a sectoral body dealing with issues concerning the entire transport, post offices and telecommunications sector). However, sectoral collective agreements (both for telecommunications, post and courier activities) only have a limited impact on company-level collective bargaining in Slovak Post.

In the **electricity sector**, sectoral agreements are supplemented by company agreements.

The **railway sector** in Slovakia is mainly owned by the state. Compared with other sectors of the Slovak economy, unionisation in railways is high and all unions participate in collective bargaining at enterprise level. Only **single-employer collective agreements** are concluded in the railways sector. Social dialogue in the railways sector is also well developed. Only one employer organisation is present in the sector but no multi-employer/sectoral collective bargaining takes place in the railway sector. The social partners are being consulted by the state authorities on issues concerning sectoral policy through the **branch tripartite body**.

Only **single-employer collective agreements** have been concluded in the **air transport sector**. Multi-employer collective bargaining does not take place in the civil aviation sector due to the lack of social partners at sectoral level. Airline companies are non-unionised.

Sources of national law on SGIs

Sector	Legal references	Web sites
Telecommunications	Act No. 276/2001 Coll. on Regulation in Network Industries and on Amendment and Supplementation of Certain Laws as amended, Act No. 610/2003 Coll. on Electronic Communications	www.telecom.gov.sk
Postal services	Act No. 276/2001 Coll. on Regulation in Network Industries and on Amendment and Supplementation of Certain Laws as amended, Act No. 507/2001 Coll. on Postal Services as amended (Act No. 15/2004 Coll., Act No. 80/2008 Coll.) Act No. 349/2004 Coll. on transformation of Slovak post, state enterprise	www.telecom.gov.sk
Production of electricity	Act No. 276/2001 Coll. on Regulation in Network Industries and on Amendment and Supplementation of Certain Laws as amended Act No. 656/2004 Coll. on Energy and on Amendment of Certain Laws,	www.economy.gov.sk
Electricity networks (transport-distribution)	Governmental Ordinance No. 124/2005 Coll. laying down the rules for the operation of the electricity market	www.economy.gov.sk
Marketing of electricity	Governmental Ordinance No. 124/2005 Coll. laying down the rules for the operation of the electricity market	www.economy.gov.sk
Gas transport-distribution	Governmental Ordinance No. 123/2005 Coll. laying down the rules for the operation of the gas market	www.economy.gov.sk
Marketing of gas	Governmental Ordinance No. 123/2005 Coll. laying down the rules for the operation of the gas market	www.economy.gov.sk
Railway transport of passengers	Act of the National Council of the Slovak Republic no. 258/1993 Coll., dated September 30, 1993, on the Railways of the Slovak Republic (as amended by Act no. 152/1997 Coll. and by Act no. 259/2001 Coll.) Act of the National Council of the Slovak Republic no. 164/1996 Coll., dated May 17, 1996, on infrastructure (and on modification of the Act no. 455/1991 Coll. on trade business; amended by later regulations)	www.telecom.gov.sk
Freight rail transport	Act of the National Council of the Slovak Republic no. 258/1993 Coll., dated September 30, 1993, on the Railways of the Slovak Republic (as amended by Act no. 152/1997 Coll. and by Act no. 259/2001 Coll.) Act of the National Council of the Slovak Republic no. 164/1996 Coll., dated May 17, 1996, on infrastructure (and on modification of the Act no. 455/1991 Coll. on trade business; amended by later regulations)	www.telecom.gov.sk
Regional and local transport of passengers	Act No. 135/1961 Coll. on Land Roads (Road Act) Act No. 416/2001 Coll. on Transfer of some Capacities from the Bodies of State Administration to Lower Territorial Units. Act No. 439/2001 Coll., by which Act No. 135/1961 Coll. on Land Communications (Road Act) as amended by later regulations has been amended.	www.telecom.gov.sk
Air transport	Act No. 143/1998 Coll. on Civil aviation (Aviation Act) and on change and amendment of certain acts as amended thereafter.	www.telecom.gov.sk
Inland water transport	Act on Inland Water Transport 338/2000	www.telecom.gov.sk
Water	Act No. 184/2002 Coll. on Waters and on Amendment and Supplementation of Certain Laws (Waters Act)	www.economy.gov.sk
Waste water	Act No. 184/2002 Coll. on Waters and on Amendment and Supplementation of Certain Laws (Waters Act)	www.economy.gov.sk
Heating	Act No. 657/2004 Coll. on Heat Energy, Governmental Ordinance No. 236/2005 Coll. of 18.05.2005 concerning the performance of heat sources used for heating and preparation of hot service water in non-industrial buildings,	www.economy.gov.sk

Broadcasting	Act No. 255/1991 Coll. of the Slovak National Council on Slovak Radio as amended by later regulations: Act No. 195/2000 on Broadcasting and Retransmission and on Amendments to the Act on Telecommunications Coll. Act No. 166/1993 on Provisions for Radio and Television Broadcasting Coll. as amended	www.culture.gov.sk
National public administration	Constitution Civil Service Law, Public Service Law Act 515/2003 on regional and district state administration offices	www.mvsr.gov.sk
Regional or local public administration	Constitution Act. 369/1990 Zb. on Municipalities Act 302/2001 Z.z. on Regional Self Government	www.mvsr.gov.sk
Hospital health services	Act No. 576/2004 on health care and on services related to health care. Act No 577/2004 Coll. on the scope of healthcare covered by public health insurance and on the reimbursement of healthcare-related services, as amended by later regulations. Act No 578/2004 Coll. on healthcare providers, health workers and professional organisations in the health service, and amending and supplementing certain laws, as amended by later regulations. Act No 579/2004 Coll. on the emergency medical service and amending and supplementing certain acts. Act No 580/2004 on health insurance and amending and supplementing Act No 95/2002 Coll. On the insurance industry and amending and supplementing certain acts as amended. Act No 581/2004 Coll. of 21 October 2004 on health insurance companies and healthcare supervision, and amending and supplementing certain acts as amended.	www.health.gov.sk
Ambulatory health services	Act No. 576/2004 on health care and on services related to health care. Act No 577/2004 Coll. on the scope of healthcare covered by public health insurance and on the reimbursement of healthcare-related services, as amended by later regulations. Act No 578/2004 Coll. on healthcare providers, health workers and professional organisations in the health service, and amending and supplementing certain laws, as amended by later regulations. Act No 579/2004 Coll. on the emergency medical service and amending and supplementing certain acts. Act No 580/2004 on health insurance and amending and supplementing Act No 95/2002 Coll. On the insurance industry and amending and supplementing certain acts as amended. Act No 581/2004 Coll. of 21 October 2004 on health insurance companies and healthcare supervision, and amending and supplementing certain acts as amended.	
Primary and secondary education	Act No. 245/2008 Coll. on upbringing and education (the School Act) and on changes and amendments to some Acts Act No. 29/1984 of Law Code on the system of primary and secondary schools (the Education Act) as amended by Act No. 171/1990 of Law Code, which created space for origination of non-State schools – church and private ones, Act No. 279/1993 of Law Code on school facilities, as amended by subsequent regulations. Act No. 596/2003 of Law Code on State administration and school self-governance, as amended, Act No. 597/2003 of Law Code on financing schools, as amended.	www.education.gov.sk
Higher education	Act No 131/2002 Coll. on the higher education	www.education.gov.sk
Vocational training	Act 386/ 1997 Z. z. on vocational training	www.education.gov.sk
Compulsory social protection	Act No 461/2003 Coll. on social insurance, as amended, Act No 328/2002 Coll. on social security for policemen and soldiers Act No 410/2004 Coll. on the payment of a single contribution to pensioners in 2004 Act No 100/1988 Coll. on social security Act No 462/2003 Coll. on compensation of earnings during an employee's temporary incapacity for work Act No. 601/2003 on life minimum. Act No. 90/1996 on minimum wage adopted by the National Council on 21 March 1996.	www.employment.gov.sk
Complementary social protection	Act 650/2004 on complementary social insurance	www.employment.gov.sk
Social housing	Act No. 601/2003 on life minimum. Act No 462/2003 Coll. on compensation of earnings during an employee's temporary incapacity for work, and amending and supplementing certain acts.	www.employment.gov.sk
Childcare services (0-6 years)	Act No. 36/2005 on family and on amendment of some other acts. Act No 235/1998 Coll. on the child birth allowance and on allowances for parents who have 3 or more children born at the same time or twins more than once in two years, as amended. Act No 236/1998 Coll. on the allowance for children of military personnel, as amended. Act No 265/1998 Coll. on foster care and contributions to foster care, as amended. Act No 280/2002 Coll. on the parental allowance, as amended. Act No 600/2003 Coll. on child benefit and amending and supplementing of Act No 461/2003 Coll. on social insurance, as amended.	www.employment.gov.sk
Care of the disabled	Act No 462/2003 Coll. on compensation of earnings during an employee's temporary incapacity for work, and amending and supplementing certain acts. Act No. 650/2004 on complementary pension schemes and on amendment of some other acts.	www.employment.gov.sk
Elderly care	Act No 43/2004 Coll. on old-age pension savings Act 453/2003 on state administration of social care	www.employment.gov.sk
Financial services (1)	Act No 747/2004 Coll. on Supervision of the Financial Market, status as of January 1, 2009 Act No 659/2007 Coll. on the Introduction of the Euro in the Slovak Republic, status as of November 1, 2008 General Act on the Euro and Implementing Regulations Act No 483/2001 Coll. on Banks, status as of March 1, 2009 Act No 510/2002 Coll. on the Payment System, status as of January 1, 2009 Foreign Exchange Act No 202/1995 Coll., status as of January 1, 2009 Home Savings Act No 310/1992 Coll., status as of January 1, 2009 Act No 8/2008 Coll. on Insurance, status as of January 1, 2009 Act No 381/2001 Coll. on Compulsory Contractual Motor Vehicle Third Party Liability Insurance, status as of April 1, 2007 Act No 43/2004 Coll. on Retirement Pension Saving, status as of January 1, 2009 Act No 530/1990 Coll. on Bonds, status as of January 1, 2009 Stock Exchange Act No 429/2002 Coll., status as of January 1, 2009 Act No 566/2001 Coll. on Securities and Investment Services (The Securities Act), status as of January 1, 2009 Act No 594/2003 Coll. on Collective Investment, status as of January 1, 2009 Deposit Protection Act No 118/1996 Coll., status as of January 1, 2009 Act No 340/2005 Coll. on Insurance Mediation and Reinsurance Mediation, status as of April 1, 2008 Act No 650/2004 Coll. on Supplementary Pension Saving, status as of January 1, 2009	www.nbs.sk
Cultural services (1)	There is no one legal source.	www.culture.gov.sk

PUBLIC SERVICES IN THE UNITED KINGDOM

I/ Diversity and unity

A. National traditions and structures. Europeanisation of services of general interest

The United Kingdom is a unitary state comprising four constituent nations: England, Wales, Scotland and Northern Ireland.²⁶⁹ The component nations of the UK have distinct cultural and legal characteristics (as is seen, for example, in the case of Scotland), and the institutional structure of public administration, particularly in local government, shows significant regional variations.

Currently, the territorial organisation of the United Kingdom is very complex and differs considerably from one constitutive nation to another, due to the asymmetric evolution of the country and because of the unbalanced process of devolution²⁷⁰ that has established elected assemblies with their own government in Wales and Northern Ireland, and a Parliament in Scotland.

In England, the territorial administration of the State was organised at sub-national level (9 Government Offices headed by a regional Minister). In Scotland, Wales and Northern Ireland, the British government is represented by three territorial offices under the direction of a Secretary of State member of the Cabinet.

These former constituent nations are organised into two levels of decentralised local government: a parliament and an executive at regional level, community councils at sub-national level (in Scotland and Wales) and a unique level of authorities at the local level (council areas in Scotland, unitary authorities in Wales and district councils in Northern Ireland).

In England, the territorial organisation is different and unlike other constitutive nations it does not have its own parliament or executive, but is represented and governed by the UK Parliament and the Government of the United Kingdom. In urban areas – 36 metropolitan districts – there is a unique local level. Similarly in some rural areas – 47 English shire unitary authorities. In other parts of the territory there are two levels of local government: 34 county councils and, in the rural area, 238 district councils. There are also parishes in the rural areas. The capital enjoys a special status: the Greater London Authority is the regional assembly of the London metropolis and locally there are 33 London Boroughs. British local authorities are the most populated in the European Union.²⁷¹

In the UK, we can distinguish between “public service”, as equivalent to the term “civil service”, which

(269) The union of England, Scotland, and Wales is known as Great Britain.

(270) There were separate reforms of local government in England, Wales, and Scotland in 1974-5, establishing a two-tier system of local government. Most of these reforms were reversed in the 1980s and 1990s and there has been a gradual move back to single-tier local government. Committee of the Regions, Study on the division of powers between the European Union, the Member States, and regional and local authorities, EUI, 2008, p. 306

(271) Dominique Hoorens, Les collectivités territoriales dans l'Union européenne. Organisation, compétences et finances, Dexia, 2008, p. 601-609

means essentially the administration and the public servants, as well as local public officials and “public services”, which means the services provided to citizens by local authorities, central government, health care, education, policing, etc., and “public utilities”, which corresponds to the major network services (gas, electricity, water and wastewater, post and telecommunications²⁷²).

The United Kingdom has for a long time recognised the activities of general interest whose legal systems are different from purely private activities, but without the law accepting the necessity of a separate legal regime for all “public services” but separate rules for each type of service. In UK law the Queen’s subjects, individuals and legal persons, have the same legal status, the differences resulting from the exceptions to the law. The term corporation refers both to private companies, local authorities and public enterprises. If from a formal point of view there is a clear legal distinction between public bodies and private associations and companies, the reality is blurred and the courts verify whether the function has a public nature, rather than whether the person is a corporation under public law. The licensing of an activity of general interest is given by the Parliament, by specific laws. The need for the legislator to intervene in all new “public service” and the differences between the appropriate structures for different activities have never led in the common law countries, to the necessity for a specific legal regime for all the “public services”.²⁷³

The UK does not use the EU terminology and even though it recognizes public services they are provided for in markets with help given to consumers to find the best choice. The pro-competitive restructuring in the UK, in particular the privatisation of some state monopolies and public services has significantly reduced the number of services for which exclusive rights are held. The UK was well ahead of other Member States in opening up key areas of public services to competition. Opening up to competition in the energy sector in the UK preceded the EU Directives. In the telecommunications sector the liberalisation began in 1984 with the Telecommunications Act. In postal services full liberalisation was introduced in January 2006, well before the EU deadline. In the sectors which have not been subject to EU liberalisation, such as health and social services there has been a considerable degree of liberalisation, too, particularly in the case of health, in order to introduce different forms of competitive market and to augment patient choice (but it is important to note the reluctance outside England to adopt a competitive market model for healthcare in Scotland, Wales and Northern Ireland).²⁷⁴

But even if the traditional UK model of public service delivery by public monopoly has been influenced by market-based supply, a very significant amount of public services continue to be delivered by public authorities, funded mainly by taxation and with various arrangements for political oversight. The impact of various initiatives to encourage outsourcing in these services is marginal. The numbers employed in these services far outweigh those in the physical infrastructure services which were privatised.

The Community term “services of general interest” is used in the Competition Act 1998 in the context of competition law²⁷⁵. However, what is termed SGEI in Europe would not really be defined as a public service

(272) John Bell, Patrick Birkinshaw, “Le service public britannique”, *Le service public et l'Europe*, La Documentation Française, p. 53

(273) John Bell, T.P. Kennedy, “La notion de service public au Royaume-Uni et en Irlande”, in F. Moderne, G. Marcou (eds.), *L'idée de service public dans le droit des Etats de l'Union européenne*, L'Harmattan, 2001, p. 225, 227-228, 257

(274) Nina Boeger, Tony Prosser, in M. Krajewski, U. Neegaard, J. van de Gronden, *The Changing Legal Framework for Services of General Interest in Europe. Between Competition and Solidarity*, TMC Asser Press, 2009, p. 357

(275) The most important guideline but relating to the application of competition law to SGEIs was developed in 2004 by the Office of Fair Trading (OFT) “Although the OFT recognises the need to ensure the provision of certain services which the market would not otherwise provide, it considers that, in the majority of cases, the free operation of the market will be best able to provide services of general economic interest to meet the needs of consumers. . . . To be a service of general economic interest, a service must not be one that is concerned with managing private interests. . . .the service must be widely available and not restricted to a class, or classes, of customers.”

in the UK. In the UK the generic term “public services” is the most usual term to correspond with SGEIs as well as SSGIs and SGIs.

The primary reference to SGEIs is found in the Competition Act of 1998: “Neither the Chapter I prohibition nor the Chapter II prohibition applies to an undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition would obstruct the performance, in law or in fact, of the particular tasks assigned to that undertaking.”²⁷⁶

In the UK “non-economic services of general interest” and “social services of general interest” are called “social services”. However, in the UK, “social services” are limited to care for the elderly, the disabled and vulnerable children. They do not include social housing or education or health, all SSGIs in European terminology.

The term “universal service obligation” (USO) is used where the national measure is based on EU law, for e.g. postal services. The universal service obligation for postal services goes back to the Victorian penny post which established the principle that the same price would get a letter to anywhere in the kingdom, regardless of the cost involved.

Competences of definition and organisation of SGIs

In Scotland, Wales and Northern Ireland, some government policies and public services are different from those in England. The UK central government has given certain powers to devolved governments, so that they can make decisions for their own areas.

Central government	Devolved administrations ^{table27}	Local self-governments
Telecommunications	Health services, Education, Justice, Rural policy (Scotland)	Local transport of passengers
Postal services	Health, education, rural affairs, (Wales)	Social care
Production-transport-distribution-marketing of electricity	Education, health, social services (Northern Ireland)	Ambulatory health services
Gas transport-distribution-marketing		Primary and secondary education
Railway transport of passengers		Vocational training
Freight rail transport		Complementary social protection
Air transport		Social housing
Inland water transport		Childcare services
Maritime transport		Care of disabled
Broadcasting		Elderly care
Health services (England)		Cultural services
Higher education		
Compulsory social protection		
Cultural services		

B. Sectoral organisation and trends

The legal forms used for the provision of public services varied considerably. A form traditionally used for national services was that of a statutory monopoly administered by a public corporation, an institution distinct from central government and with its own legal personality. With the process of privatisation and the opening of markets to competition, new systems have been developed, which involve the authorisation of enterprises to operate in a particular market. Authorisations or licences are issued by ministers of the government or by

(276) http://www.opsi.gov.uk/acts/acts1998/ukpga_19980041_en_1

independent regulators. The conditions contained in the authorisations are then enforced by the regulators. This is the model adopted in the liberalised sectors for the public utilities, but also applies more widely.²⁷⁷

Status of the operators

National public provider	National mixed providers (majority of public shares)	Sub-national public providers	Sub-national mixed providers (majority of public shares)	PPP	Mixed providers (majority of private shares)	Private providers
Postal services		Waste water Primary and secondary education Social housing Care of the disabled Elderly care				Telecommunications Postal services Production of electricity Electricity network (transport-distribution) Marketing of electricity Gas transport-distribution Marketing of gas Railway transport of passengers Freight rail transport Regional and local transport of passengers Air transport Maritime transport Water Waste water Primary and secondary education Social housing Care of the disabled Elderly care

(277) Nina Boeger, Tony Prosser, op.cit., p. 358

SGI markets

Liberalised market and competition	Liberalised market / Public operators dominant	Liberalised market Private operators dominant	Public monopoly	Private monopoly	No market
Telecommunications Electricity networks (transport-distribution) Marketing of electricity Gas transport-distribution Marketing of gas Railway transport of passengers Freight rail transport Maritime transport Regional and local transport of passengers Air transport	Postal services Primary and secondary education Care of the disabled Elderly care Higher education		Waste water Inland water transport	Water	

Financing methods of SGIs

Fees/payment by users	Free of charge	Public contributions	Social security/ government aid to consumers	PFI	Private contracts
Telecommunications Postal services Production of electricity Electricity networks (transport-distribution) Marketing of electricity Railway transport of passengers Freight rail transport Air transport Inland water transport Maritime transport Water (customers charges) Heating Broadcasting Hospital health services (some top up fees) Higher education Compulsory social protection Compulsory social protection Social housing Care of the disabled Elderly care Financial services Cultural services	Hospital health services Ambulatory health services Primary and secondary education	Waste water (local public authority) Broadcasting Primary and secondary education (local authorities) Higher education Social housing Care of the disabled Elderly care Cultural services	Production of electricity Heating	Hospital health services	Hospital health services

An important development is the private finance initiative (PFI). It has taken various forms, but the most common involves a public sector body, often in the healthcare sector, contracting with a private contractor to provide a capital asset. The private provider will provide the asset for a substantial period (up to 35 years) and will be paid for doing so by the public sector body, or, much less frequently, directly by users. PFI has been used extensively over the last ten years or more. It has the advantage of taking the immediate capital costs of a project off the public sector balance sheet, and also attempts to transfer the risk of delays in completion of a project or of cost overruns from the public to the private sector (though the extent to which this has been achieved in practice has been highly controversial).

II/ Approaches

A. The model of public administration and national public companies

The organisational arrangements of the public services are, in the UK, a pragmatic issue, not a question of principle. The idea that the State should ensure the essential services of life (instead of action to combat poverty) is fairly recent. The traditional justifications for public intervention in public services targeted health, public security or public order. The public sector also ensures the existence of a service in case of private sector failure. The current system favours a regulated private market rather than direct provision of services by the public sector. The control of the market by the government aims to ensure competition and consumer protection against the power of monopoly or oligopoly of the providers of essential services.²⁷⁸

After 1945, the Labour regime nationalised the major industries of the country: coal, iron and steel, railroads, utilities and some other major firms. The historic emergence of public ownership of utilities in the UK has been attributed to the difficulty of preventing the abuse of market power under private ownership without also allowing for competition that would result in the inefficient duplication of assets in industries that were characterised by large economies of scale.²⁷⁹ The nationalised sector in Britain was usually described as large, but Britain's share was between Finland's and Sweden's in relative size. The nationalised industries in the UK or the public enterprises in Ireland were state-sponsored enterprises, that is to say they were relatively autonomous but still subject to some authority.

Since 1979 radical reforms were driven partly by a cost-reducing imperative and influenced by neo-liberal market ideology and public choice theory that start with massive privatisations of national enterprises and the majority of the natural monopoly utilities: the national carrier (British Airways) nationalised in 1974 was privatised in 1981 and is now listed on the stock exchange; British Telecom was privatised in 1984, British Gas in 1986, the British Airports Authority in 1987, water supply and sewerage in 1989, electricity supply in 1990 in England and Wales, in 1991 in Scotland, and in 1993 in Northern Ireland; British Rail in 1994, British Energy in 2009. In the decade from 1979 to 1990 the share of the gross domestic product accounted

(278) John Bell, *op. cit.*, p. 239

(279) C. Pollitt, in David S. Saal, "Restructuring, regulation and the liberalisation of privatised utilities in the UK", in David Parker, David S. Saal (eds.), *International handbook on privatisation*, Edward Elgar Publishing, 2005, p; 561

for by the state-owned industries fell from 11% in 1979 to 5,5% (then 2% in 1997) and the total public sector workforce declined by approximately 30% between 1981 and 1997. Between 1997 and now, under a different government, the public sector workforce has risen from 5 to 6 million and the stock of nationalised enterprises has been significantly increased by the government taking full or partial control of several large banks. This has partly reversed the trends between 1979 and 1997 when the Conservatives under Mrs Thatcher and Mr Major were in control.

The remaining major **state-owned enterprise** (SOE) is the Post Office (Royal Mail Group PLC). There are few other **SOE**: BBC - British Broadcasting Corporation²⁸⁰, Channel Four Television Corporation Ltd.s (broadcasting), UK Atomic Energy Authority, British Nuclear Fuels (electricity), Air travel trust, National Air traffic services Ltd. (49% stake) (air transport), Financial services authority (financial services).

2001 Railtrack - although not nationalised as such, the takeover by Network Rail of the railway infrastructure in 2002 following the liquidation of Railtrack, whilst not a state owned company, has no shareholders (company limited by guarantee) and is underwritten by the State. In addition prior to this the government began to make use of a residual shareholding of 0.2% (including voting rights) in Railtrack Group Plc leftover from the original sale. **2008** Northern Rock - announced by Alistair Darling, Chancellor of the Exchequer on 17 February 2008 as 'a temporary measure'. The bank will be run at 'arms length' as a commercial business and sold to a private buyer in the future; 2008 Bradford & Bingley (mortgage book only) - announced by Alistair Darling, Chancellor of the Exchequer on 29 September **2008**. The loans part of the company was nationalised, while the commercial bank was sold off; **2008**. In October, the Royal Bank of Scotland, and the newly merged HBOS-Lloyds TSB were partly nationalised. The Government took over approximately 60% of RBS and 40% of HBOS-Lloyds TSB. In the financial sector, the UK employed a light touch to regulation with no recognition of SGEI that is considered purely commercial²⁸¹.

B. Local autonomy

In the early 19th century, utilities developed very locally or by the will of towns, church, artisans' corporations, or by the State defining public service obligations. Most cities were more active than the national government regarding the development of services.²⁸² They intervened first to ensure health (water and sanitation), education and, subsequently, gas, electricity, telephone, public transport, cultural services and leisure, etc.

Currently local authorities exercise the powers defined by the laws of Parliament. However, this principle has been relaxed for the local communities in England and Wales under the Local Government Act of 2000,

(280) In the United Kingdom, the term « public service broadcasting » (PBS) refers to broadcasting intended for the public benefit rather than for purely commercial concerns. The United Kingdom has a strong tradition of public service broadcasting. In addition to the BBC, established in 1922 (from 1927 a public corporation), there is also Channel 4, a state-owned commercial public service broadcaster, and S4C, a Welsh language broadcaster in Wales (set up by the government in 1981; Channel 4 was restructured under the Broadcasting Act 1990 to be a state-owned corporation that is self-financing). Furthermore, the two commercial analogue broadcasters ITV and Five also have significant public service obligations imposed as part of their licence to broadcast. The communications regulator Ofcom, requires that certain television and radio broadcasters fulfil certain requirements as part of their licence to broadcast.

(281) UK employed a light touch to regulation. No recognition of SGEI – purely commercial. Consumer law to regulate loans, a Financial Services Ombudsman, etc.

(282) June Burnham, « Les services publics en Royaume-Uni », in (dir.) Jean-Claude Boual et al., Les services publics en Europe, Publisud, 2007, p. 42-43

which allows them to pursue any project they deem to be in the interests of their citizens.

Local authorities can provide public services by local public companies (joint stock companies or guarantee companies). Most local government services are still delivered in-house, and although there is an increasing degree of externalisation, this trend is still at the margin for most local authorities.

The UK is unusual in its lack of municipal enterprises, partly because local authorities no longer have responsibilities for key functions such as water and electricity, and partly because of political constraints placed on local authority trading activities²⁸³. In 2004 there were 185 local public companies operating primarily in the field of economic development, health, social services (health and social facilities, retirement homes).

The United Kingdom has a high level of fiscal centralisation; about 85% of all taxation is levied by central government.²⁸⁴

Inter-municipal cooperation is rarely used (except in the field of police and fire services). UK local authorities are the largest by population in the EU and this may explain why there has been relatively little inter-municipal cooperation²⁸⁵.

C. Delegated management and externalisation

In the current UK system, the direct provision of services by the public sector is smaller than in the years 1940-1970. The public sector intervenes usually as an authority to define and regulate the service. SGIs are more provided under a concession or PPP by the private sector, though most hospitals and schools (more than 90%) are in public sector management.

The more profound recent transformation of the public services sector happened after 1987. A series of reforms made much bolder and larger scale use of market-type-mechanisms, intensified organisational and spatial decentralisation of the management and production of services, laid constant rhetorical emphasis on the need to improve service quality, and insisted that services should become more customer focused.²⁸⁶ A law of 1988 required communities to proceed to tender for a list of SGIs (Compulsory Competitive Tendering CCT)²⁸⁷ on an increasing scale every year. This Act was abolished in 1997 and it is no longer in effect.

The Deregulation and Contracting Out Act (1994) defined the framework for the future evolution of the public sector and public services, the “marketing” of some functions of ministerial departments and to

(283) David Hall, *Public enterprise in Europe*, PSIRU Reports, Report n° 9803-U-Eur-Pubent.doc, 1998

The UK is unusual in Europe for its lack of public enterprises, and the limitations of those that exist. This is the result of a number of factors: The PSBR rules restricting commercial investment by state-owned industries; Discouragement of municipal enterprise by legislation from 1970 onwards; Major services such as electricity and water being removed from local authorities at an early date; Sale of publicly-owned enterprises from 1980 onwards. The experience so far of the internationalisation and liberalisation of the electricity industry in Europe is that the privatised UK companies have made relatively little impact, compared with public enterprises such as Edf, IVO and Vattenfall. The UK's generation duopoly, Powergen and National Power, have no presence in Scandinavia at all, for example.

(284) Committee of the Regions, *Study on the division of powers between the European Union, the Member States, and regional and local authorities*, EUI, 2008, p. 316

(285) Dominique Hoorens, *op.cit.*, p. 612

(286) Christopher Pollit, “Changing European states, changing public administration: antistatist reforms and new administrative directions: public administration in the United Kingdom”, in *Public Administration Review*, 56:1, Jan/Feb 1996, pp. 81-87

(287) For a review of the Conservatives' 1998 Local Government Act, see David Parker, “The 1998 Local Government Act and Compulsory Competitive Tendering”, in *Urban Studies*, vol. 27, n° 5/October 1990, pp. 653-667. Its impact was limited to certain blue-collar functions like refuse collection and the results were very mixed as the system was subject to local political bias.

complete this process for local communities.²⁸⁸ The Act removes obstacles to contracting out functions but does not require them to be contracted out. It is for individual ministers and statutory office holders to determine the extent to which functions are contracted out²⁸⁹. Excluded from the process of contracting out of the statutory functions are a number of sensitive constitutional functions: the exercise of the judicial power of the State, the regulatory authority and the activities undermining fundamental freedoms (Section 71 (1)). There are also excluded from the scope of the power of contracting out, in recognition of the 'constitutional separation' of Parliament and the executive, the functions of the Comptroller and Auditor General, the Parliamentary Ombudsman, and the Health Service Ombudsman. In accordance with the law (Local Government Regulations, 1989) there must be a strict separation between Direct Labour Organisation and the authority that decides the award of contract. We must distinguish the temporary concession (e.g. in the area of bus transport²⁹⁰, television) and permanent concession (water).

The 1999 Local Government Act abolished compulsory competitive tendering (CCT) for the provision of services in favour of a new regime of 'best value authorities' (which include, among others, local authorities, National Park authorities, police authorities, fire authorities, metropolitan county fire and civil defence authorities, waste disposal authorities and metropolitan county passenger transport authorities – Section 1 of the 1999 Act). Tendering (no longer compulsory) continues to form one part of the government's quest for value and efficiency in the provision of local authority services. According to Local Government Act 1999 [s. 3(1)], a local authority 'must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.'²⁹¹

The public authority may also act as a surrogate buyer on behalf of service users to purchase the service at a lower price and required quality as provided by the private sector or public sector. Because it is not a concession of the powers in respect of the public, legislative authorisation is not required, the administration merely buying necessary services for its own activity. In 2005 the level of outsourcing of government services (purchase of goods and services vs in-house provision) in United Kingdom was nearly 80%. But, 90% plus of (for instance) doctors, nurses, teachers and so on are public sector employees who work in public sector organisations under public sector management and subject to political control of finance.

As for the distinct concept of public-private partnership, originated in the United Kingdom in 1992, the UK is today the largest country using PPPs among EU Member States. However, the extent of use of PPPs does not prevail over traditional procurement practices. In 2003-2004 only about one-tenth of UK total capital investments in public services were through PPPs.²⁹²

PPPs are governed by Partnership UK, under the supervision of the Treasury. The Private Finance Initiative PFI, are the most common form, launched in 1992. Since their creation more than 700 projects have been

(288) Local Government Planning and Land Act (1980) and the Local Government Acts (1988, 1992) already forced local authorities to bring to market several services to the public and also the services they receive from officials, for example, the collection of garbage and trash, services with professional character, etc.

(289) A contractor may be authorized to carry out functions for a maximum of ten years (Section 69(5) a); the authorisation may be revoke any time (Section 69(5) b).

(290) UK law does not allow the in-house provision of public bus services but local authorities can subsidise routes they deem socially necessary but not commercially viable (today, around 20% of the network). Nina Boeger, Tony Prosser, *op.cit.*, p. 376

(291) Office of the Deputy Prime Minister, National Procurement Strategy for Local Government, at: <http://www.communities.gov.uk/documents/localgovernment/pdf/135268>

(292) OECD, *Modernising government : the way forward*, 2005, p. 141

developed at local level (health²⁹³, education, transport) and more than 200 are expected between 2006-2010.

D. “New Public Management”

In a first phase, the NPM “revolution” involved in the UK, in particular, extensive privatisation, marketisation, and contractualisation of public services. At the same time, new coexists with old; the “new public management” still adheres to many of the values and aspirations of “old public administration”.²⁹⁴

Then the Conservative government created, in 1982, the Audit Commission and the National Audit Office in 1983, state authority to influence the management and finances of communities and advise them on improving their performance. The Commission developed in the 1980s a grid of performance indicators to encourage communities to improve quality.

In England, a policy of seeking the best value (Best Value Policy) was introduced in 1997 (from 1 April 2000 as a statutory duty) to replace the CCT legislation (Compulsory Competitive Tendering). Local governments must meet performance indicators (Best Value Performance Indicators - BVPI), draw up annual plans to optimise performance and comply with internal and external controls. In 2001 a new indicator was added, the overall assessment of performance (Comprehensive Performance Assessment CPA). The Audit Commission assesses the community based on three criteria: quality of services, the solidity of its finances and its internal capacity to improve services. When results are deemed insufficient, the central government can in principle impose on the local authority constraints in management, such as the adoption of an improvement plan until the transfer of the management of its services to another agency.²⁹⁵

In Scotland, the Local Government in Scotland Act of 2003 requires communities to assess their performance through statutory indicators (Statutory Performance Indicators).

In Wales, the Assembly has developed a Performance Measurement Framework and encourages local authorities to pursue national and local targets in exchange for an incentive grant.

The Northern Ireland has no comprehensive framework for assessing the performance of communities.

More recently a key structural reform was the decentralisation of management authority to semi-autonomous service delivery units called Next Steps agencies created since 1988 in order to induce greater efficiency and higher levels of performance by providing line managers with greater discretion over operational matters.²⁹⁶ By 2005 the United Kingdom had created 131 departmental agencies, employing more than three-quarters

(293) “The system [of PFI] nevertheless flourishes because it has the key attraction of reducing the government borrowing requirement. A publicly financed alternative which would be very likely to be cheaper is in practice not available because not constructed by the government. The PFI becomes the dominant way of financing hospitals by default, in the absence of any public sector option.” David Hall (PSIRU), Services of general interest in Europe – an evidence-based approach, Written submission to European Parliament Committee on Economic and Monetary Affairs, 21 February 2001, www.psiru.org

(294) Gavin Drewry, « The United Kingdom System », in K.K. Tummala (ed.), *Comparative Bureaucratic Systems*, Lexington Books, 2005, p. 55

(295) June Burnham, « Les services publics en Royaume-Uni », in (dir.) Jean-Claude Boual et al., *Les services publics en Europe*, Publisud, 2007, p. 48 ; Dominique Hoorens, *op.cit.*, p. 613

(296) Jon Pierre, *Handbook of Public Administration*, p. 87

of the civil service²⁹⁷.

E. Regulatory Agencies

Privatisation of public enterprises has given rise to regulatory schemes that replace much of the usual control of competition²⁹⁸. Quasi-independent industry-specific regulators were given statutory powers to tailor the new regulatory system to the special characteristics of each industry and to limit political influences on regulatory decision making.

The following are the Regulators in UK:

- the Office of Communications (OFCOM - <http://www.ofcom.org.uk/>)²⁹⁹
- the Gas and Electricity Markets Authority (OFGEM – www.ofgem.gov.uk)
- the Northern Ireland Authority for Energy Regulation (OFREG NI)
- the Director General of Water Services (OFWAT – www.ofwat.gov.uk)
- the Office of Rail Regulation (ORR – www.rail-reg.gov.uk), and
- the Civil Aviation Authority (CAA – www.caa.co.uk).

The Competition Commission (that replaced the Monopolies and Mergers Commission on 1 April 1999) ensures competition in all economic sectors, including the privatised utilities.

(297) OECD, *Modernising government: the way forward*, 2005, p. 112.

In UK civil servants are only the employees working in central government, excluding other category - public employees – who work in local government, state schools, health services, social services, etc.

(298) Imposing standards and obligations on individuals engaged in certain activities is frequent and goes back to the common vocations of medieval law. J. Bell, *op. cit.* p. 249

(299) Sections 66 and 67 of the Communications Act 2003 require OFCOM to ensure that consumers are able to benefit from basic narrowband telecommunications at an affordable price, defined as Universal Service Obligations (USO)

III/ Social dialogue

In contrast to most European countries, there has never been a sharp legal distinction between industrial relations in the public and private sectors in Britain. Public service employees have enjoyed few special privileges and faced only selective legal restrictions on the right to join a trade union and strike (e.g. as in the armed forces and the police). For most of the 20th century the 'voluntary' system covered both the private sector and most of the public services. The rapid extension of employment regulation over the last 30 years has applied more or less equally to the public and private sectors³⁰⁰. However, there are some significant distinctions between the public and private sector in relation to collective bargaining and wage setting (in the private sector this is largely done at individual or company level).

There is no cross-sectoral collective bargaining in the UK. Most collective bargaining takes place at company level in the private sector and at sectoral level in the public services. Trade union membership is about average for the EU as a whole, but as in many other countries is relatively stronger in public services than in the private sector.

Increasingly, in the private services sector, pay is determined in negotiation between the manager and the employee, one to one, with working conditions being determined by the employer. This trend started about fifteen years ago.

For **SGIs in Railways, Electricity, Gas, Water, Post and Broadcasting**, collective bargaining with strong unions typically takes place at company level.

For the **public services (central and local government, education, health, armed forces, police and fire services)** there are four main systems of determining pay and working conditions: 1. independent pay review bodies; 2. sectoral collective bargaining on behalf of a number of employing bodies; 3. departmental or agency bargaining under central guidelines; and 4. national bargaining for integrated organisations with nominally separate employers.

Examples of each are as follows: 1. doctors and dentists; 2. local government; 3. civil service; 4. NHS.

Review Bodies

There are separate pay review bodies for:

- The Armed Forces
- Doctors and Dentists
- Nurses and Midwives
- Teachers (England and Wales)
- Prison Officers
- "Senior Salaries" ie senior civil servants, judges, generals and admirals, MPs and Ministers.

(300) Richard Hyman, "The historical evolution of British industrial relations" and Stephen Bach, David Winchester, « Industrial relations in the public sector », in Paul K. Edwards, Industrial relations: theory and practice, 2nd edition, Blackwell Publishing Ltd., 2003, p. 39; 286

The members of pay review bodies are appointed by the relevant Secretary of State or the Prime Minister, following advertisement and interview. Terms of office are normally for three years in the first instance. The job of the review body is to consider evidence on pay structures and pay levels for the groups concerned from relevant stakeholders, including employers and unions, and to make recommendations to the Government. The Government almost always accepts these recommendations although there have been examples where recommended pay increases have been phased in more slowly than intended by the review body. In some cases, e.g. for teachers, the Government has to obtain Parliamentary approval to set aside review body recommendations. In the prison sector this has resulted in official and unofficial industrial action.

The Government sets the terms of reference for the review body for each annual (or other periodic) review.

Review bodies have been set up for the different groups at different times for a variety of usually political reasons, mainly centred on governments wishing to avoid conflict with politically sensitive groups or to deal with public servants without trade union rights or the ability to go on strike (eg armed forces personnel).

Once a review body has made pay recommendations that are accepted by the relevant secretary of state, the employers concerned implement those recommendations without question. In some cases, eg for teachers, the employing authorities are obliged to do so by law as the Secretary of State for Education makes statutory orders for the recommendations to be carried out.

Sectoral collective bargaining

The main groups are:

- Local government (there are separate arrangements for England, Wales and Northern Ireland on the one hand and for Scotland)
- Universities
- Further Education
- Teachers in Scotland
- Fire service
- Police service.

Most of these collective bargaining arrangements are voluntary in the sense that there is no legal requirement for them to exist or for the employing authorities to apply the collective agreements reached on their behalf. About 10% of local authorities in England determine their own pay arrangements, generally after consultation with their trade unions and rarely in negotiation with them. Not surprisingly, local pay determination is most common where the trade unions are weakest, in south east England. Because the introduction of local pay determination involves changing contracts of employment, which is best achieved with the consent of the employees, the local authorities concerned normally gave higher pay increases than the national ones as an incentive to staff to change their contracts. This higher cost was justified in the local employers' eyes by the extra flexibility they gained to be able to award more pay to staff in short supply locally and/or to buy out relatively minor national conditions of service and/or to introduce performance-related pay. Most authorities that have opted out of national arrangements in this way did so in the 1990s and have remained outside the national system ever since.

An important feature of the local government collective agreements is that in many ways they are “framework agreements” which local authorities then adapt to their local circumstances. This is particularly the case with the grading of jobs, which is locally determined. Whereas there are national pay scales for teachers and nurses (both groups that are covered by review bodies), there are no such national grades for groups such as librarians, social workers, town planners or laboratory technicians in secondary schools. Each local authority determines the pay grade for each group of employees.

Whereas central government is closely involved with the review body system through the setting of terms of reference, the appointment of members and the ultimate option of not accepting a review body's recommendation, generally speaking the government does not have equivalent influence over the sectoral collective bargaining arrangements. It does however have indirect influence through funding allocations and through political pressure where it can be brought to bear.

The exception to the above is the Police service. Here central government is directly represented on the employers' side of the negotiating body and moreover the collective agreements reached in the negotiating body take the form of recommendations to the Secretaries of State, which they can in principle reject.

Departmental or agency bargaining

Since the late 80s/early 90s, each civil service department or agency now constitutes a separate bargaining unit that is responsible for negotiations with its unions. There are about 150 of these bargaining units in the civil service.

Whereas in local government, pay grades are determined locally, the departmental/agency agreements in the civil service tend to determine pay grades nationally, leaving local management less free to adapt to local labour markets than their counterparts in local government.

This “decentralised” bargaining is underpinned by national bargaining on core conditions of service, but so defined as to leave holidays and (possibly) hours of work to departmental/agency bargaining.

National bargaining for integrated organisations

Although National Health Service (NHS) employees are appointed locally everybody in the service and outside it looks upon the NHS as a single, integrated organisation. While the NHS arrangements could have been included as an example of sectoral collective bargaining, it seems more appropriate to treat them as being *sui generis*.

The NHS has had to cope with both review bodies (for doctors, dentists and nurses) and national collective bargaining for many years. Under the Conservatives it was also obliged to encourage local bargaining, but this policy was reversed when Labour came to power in 1997, since when national bargaining has taken a central role in driving the service forward through Agenda for Change. This has been a huge exercise, more centrally driven than the local government forerunner, Single Status. The outcome has been a rationalisation of bargaining units, harmonisation of core service conditions and some local flexibility on others, and the introduction of an integrated pay structure and national job evaluation. Just as in local government, there are implementation pains, despite centrally earmarked funding for this purpose.

Other points

- Most public servants are covered by statutory occupational pension schemes. These fall into two categories, funded and PAYG (pay as you go). The local government and universities' schemes are funded. The armed forces, civil service, NHS, teachers, police and fire schemes are PAYG. All are under review as Government attempts to reduce costs while maintaining the principle of final salary schemes.
- Many small organisations that are in the public sector or the voluntary sector with substantial public funding use established collective agreements elsewhere in the public sector and adapt them to their own purposes. The local government Green Book is used by hundreds, if not thousands, of small organisations in this way. At national and sectoral level, "social dialogue" other than collective bargaining is rather limited and the social partner do not play the same role in policy making as, for example, in many of the Nordic countries.

Sources of national law on SGIs

Sector	Legal references	Web sites
Telecommunications	Communications Act 2003	http://ask.ofcom.org.uk/help/telephone/universal_service
Postal services	Postal Services Act 2000 Postal Services Bill 2009	http://www.psc.gov.uk/ http://www.opsi.gov.uk/acts/acts2000/ukpga_20000026_en_1 http://www.berr.gov.uk/whatwedo/sectors/postalservices/postalservicesbill/page51568.html
Production of electricity	Utilities Act 2000	http://www.ofgem.gov.uk/Pages/OfgemHome.aspx
Electric networks (transport-distribution)	Utilities Act 2000	http://www.ofgem.gov.uk/Pages/OfgemHome.aspx
Marketing of electricity	Utilities Act 2000	http://www.ofgem.gov.uk/Pages/OfgemHome.aspx
Gas transport-distribution	Utilities Act 2000	http://www.ofgem.gov.uk/Pages/OfgemHome.aspx
Marketing of gas	Utilities Act 2000	http://www.ofgem.gov.uk/Pages/OfgemHome.aspx
Railway transports of passengers	Railways Act 2005. The White Paper 'Delivering a Sustainable Railway', published on 24 July 2007	http://www.rail-reg.gov.uk/
Freight rail transport		http://www.rail-reg.gov.uk/
Regional and local transport of passengers	Railways Act 2005	http://www.rail-reg.gov.uk/
Air transport		http://www.dft.gov.uk/results?view=Filter&h=m&m=4551&pg=1
Inland water transport		http://www.britishwaterways.co.uk/about-us/public-corporation-status
Maritime transport	Department for Transport	http://www.dft.gov.uk/results?view=Filter&h=m&m=4554&pg=1
Water	Water Industry Act 1991 The Competition Act 1998 the Enterprise Act 2002	http://www.ofwat.gov.uk/
Waste water	Water Industry Act 1991; The Competition Act 1998, the Enterprise Act 2002	http://www.ofwat.gov.uk/
Heating		https://www.og.decc.gov.uk/index.htm
Broadcasting		http://www.ofcom.gov.uk/tv/psb_review/
National public administration		http://www.direct.gov.uk/en/index.htm
Regional or local public administration		http://www.local.gov.uk/gv2/core/page.do?pageld=1
Hospital health services	Constitution Devolved Wales, Scotland and Northern Ireland	http://www.nhs.uk/choiceintheNHS/Rightsandpledges/NHSConstitution/Pages/Overview.aspx
Ambulatory health services		http://www.nhs.uk/NHSEngland/Pages/NHSEngland.aspx http://www.generalpractice.co.uk/gpcont01.htm
Primary and secondary education		http://www.nape.org.uk/ http://www.local.gov.uk/gv2/core/page.do?pageld=1
Higher education		http://www.universitiesuk.ac.uk/UKHESector/Pages/default.aspx
Vocational training		http://www.jobcentreplus.gov.uk/JCP/index.html http://www.britishcouncil.org/learning-vocationalpartnerships-vocational-training-and-lifelong-learning-in-the-uk.htm
Compulsory social protection		http://www.jobcentreplus.gov.uk/JCP/index.html
Complementary social protection		http://www.jobcentreplus.gov.uk/JCP/index.html
Social housing		http://www.direct.gov.uk/en/HomeAndCommunity/SocialHousingAndCareHomes/index.htm http://www.housingnet.co.uk/
Childcare services (0-6 years)		http://www.direct.gov.uk/en/Parents/Childcare/index.htm
Care of the disabled		http://www.ableize.com/
Elderly care		http://www.careaware.co.uk/
Financial services (1)		http://www.fsa.gov.uk/ http://www.abcul.org/page/aboutsite.cfm
Cultural services (1)		http://www.culture.gov.uk/

Footnotes tables

(table01) Pre-school services include pre-schools, play groups, day nurseries, crèches, childminders and other similar services looking after more than 3 preschool children. The Office of the Minister for Children and Youth Affairs (OMCYA) is part of the Department of Health and Children. Among its many roles, the OMCYA, which was set up by the Government in December 2005, must implement the National Childcare Investment Programme (2006 – 2010) and develop policy and legislation on child welfare and child protection. Under the Child Care Act 1991, the HSE is charged with ensuring the health, safety and welfare of preschool children attending services.

(table02) The Disability Equality Unit, established within the Department of Justice, Equality and Law Reform in 1997. The National Disability Authority (NDA) was established in June 2000 under the National Disability Authority Act 1999. Responsibilities of the NDA are, inter alia, to advise and assist with disability equality policy development and support the development of standards in services for people with disabilities

(table03) Government Decision of 23 January 2008 established a new Office for Older People to support the Minister for Older People in exercising her responsibilities within the Departments of Health, Social and Family Affairs and Environment. Among the new Office's responsibilities, one may note the following: Care of the Older Person; Nursing Home Regulations; etc.

(table04) 1993: Establishment of the Department of Arts, Culture and the Gaeltacht. 1995: Arts Council invited to prepare the first plan for the arts; Establishment of the Heritage Council as a statutory body charged with preservation and enhancement of the national heritage. National Cultural Institutions Act 1997: changed the status of the National Museum and National Library from state organisations to autonomous, semi-state organisations. After Arts Act 2003: the Department of Arts, Sport and Tourism holds the brief for the arts, capital development, Irish art abroad, public art, the film industry and the national cultural institutions. Department of Environment is responsible for Government policy on Heritage and Local Government service.

(table05) Third level education is made up of a number of sectors: The university sector (seven autonomous and self-governing universities), the technological sector and the colleges of education are substantially funded by the State (via the HEA). In addition there are a number of independent private colleges.

(table06) Primary schools are generally privately owned by religious communities (or boards of governors) but are State-funded. Secondary schools are privately owned and managed (and generally denominational).

(table07) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – Italian version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:IT:HTML>

(table08) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – Lithuanian version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:LT:HTML>

(table09) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – Latvian version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:DE:HTML>

(table10) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – Maltese version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:MT:HTML>

(table11) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – Dutch version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:NL:HTML>

(table12) In some cases there is a system of 'city heating', but only in a few cities.

(table13) Some cities have some form of central city heating.

(table14) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – Polish version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:DE:HTML>

(table15) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – Portuguese version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:PT:HTML>

(table16) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – Romanian version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:RO:HTML>

(table17) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – Swedish version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:SV:HTML>

(table18) The expression Tjänster på icke-affärsmässiga grunder is also used.

(table19) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – Slovenian version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:SL:HTML>

(table20) Here are included providers with concessions which are according to the Public-Private Partnership Act part of PPP.

(table21) Only air navigation services and building and maintaining the infrastructure are defined as SGIs.

(table22) Only maintaining the port infrastructure is defined as an optional local SGI.

(table23) Only maintaining the port infrastructure and navigation safety infrastructure, and collecting the refuse/waste are defined as SGIs.

(table24) Main producers of electricity 100% are owned by the Holding slovenske elektrarne (HSE). HSE has 58.5% Share of all producers in Slovenia, Report on the Energy Sector in Slovenia for 2008, page 43, http://www.agen-rs.si/dokumenti/36/2/2009/Letno_porocilo_ENERGETIKA_2008_ANG_1390.pdf.

(table25) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol N° 26 on services of general interest and Article 93 TFEU – Slovak version

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:SK:HTML>

(table26) The small municipalities have public systems.

(table27) http://www.direct.gov.uk/en/Governmentcitizensandrights/UKgovernment/Devolvedgovernment/DG_073306

