



# Contracts governing delegation of public water and sanitation services from 1998 to 2010

Over 20 years ago, the “Sapin” law<sup>1</sup> established a legal framework for contracts governing the delegation of public services which, until then, had not been regulated. The law required procedures ensuring transparency in the selection process and equal chances for all candidates, while providing the person representing the local government with some flexibility to negotiate with the candidates and to propose the best solution. From 1998 to 2010, the procedures for public-service delegation contracts were analysed annually by surveying local governments. The main results are that 1) renegotiated tariffs are generally lower, 2) contracts now focus more on performance and have shorter durations, and 3) the service offering, though limited in a highly concentrated sector, has progressed somewhat.

## Surveys carried out by the National observatory on water and sanitation services

Given the vast diversity of public water and sanitation services, the 2006 law on water and aquatic environments<sup>2</sup> assigned to Onema, the National agency for water and aquatic environments, the task of creating an observatory on public water and sanitation services. Onema launched the observatory in 2009 with two objectives, first to enhance the level of service provided by local governments and, secondly, to facilitate access to information on the human water cycle, i.e. the cycle including water abstraction in the natural environment prior to its treatment and distribution as drinking water, and then wastewater treatment prior its release back to the environment. Information are stored in a national database. For several years in conjunction with

AgroParisTech<sup>3</sup>, the observatory has studied the effects of competitive bidding, required by the “Sapin” law, on renegotiated contracts for public-service delegations.

The law limits the duration of delegation contracts and established a procedure to ensure sufficient publicity and competition prior to the signing of the contract. The “Sapin” law observatory<sup>4</sup>, created in 1999, analysed the conditions surrounding water and sanitation service delegation contracts signed from 1998 on. The first step was to list all the calls for tenders published in the *French official bulletin for public procurement* (BOAMP), the *Official journal of the European union* (OJEU), in *Le Moniteur*, a magazine specialised in the building and public-works sectors, and in local newspapers. The observatory then sent a questionnaire to the local governments (or to the consultants advising them) to collect information on the competitive situation, the advice provided to the local governments, contract durations and changes in prices.

<sup>1</sup> Law no. 93-122 (29 April 1993) intended to prevent corruption and ensure transparency in the economy and public procedures.

<sup>2</sup> Law no. 2006-1772 (30 December 2006).

<sup>3</sup> Research and teaching centre in the agricultural and environmental fields.

<sup>4</sup> The surveys were carried out under the responsibility of the Ecology ministry from 1998 to 2010, first by ENGREF Montpellier (1998 to 2004), then TNS Sofres (2005 and 2006) and finally AgroParisTech (2007 to 2010).

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## Frequent delegation of public water and sanitation services in France

In 2010, the management of 8 900 public services had been delegated<sup>5</sup>, including 4 700 contracts for drinking-water services and 4 200 for sanitation. That represented one-quarter of the 35 000 services in France, i.e. one-third of the drinking-water services and one-fifth of the sanitation services. However, because the population supplied

by delegated services is, on average, twice as large as that supplied by water services under direct management, 60% of the

French population is supplied with drinking water by delegated services and 40% with sanitation services.

### Delegation and direct management

Delegation and direct management are the two forms of management for public services in France. Delegation of a public service is a contract by which a public entity (delegator) assigns the management of a public service for which it is responsible to a public or private operator (the delegatee), whose remuneration is largely dependent on the operating results of the service<sup>6</sup>. For example, a local government can delegate the management of its service

to an operator (almost always private) who must assume the risks of the venture.

Under direct management, on the other hand, the local government operates the service itself with its own personnel. It runs and maintains the facilities, bills and manages the clientele, but may call on outside service providers for some or all of its activities. Under both forms of management, but particularly delegation, the local government must continue to act as the responsible authority and oversee the proper and effective operation of the service. Delegation does not imply a transfer of all responsibilities to the operator.

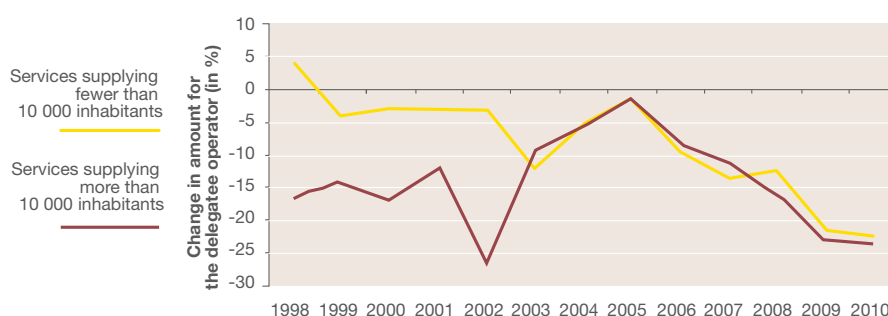
## Competitive bidding for contracts brings prices down

The surveys showed that following competitive bidding for contract renewal, the delegation tariff<sup>7</sup> (the price paid to the operator) dropped 14% on average<sup>8</sup> from 1998 to 2010, compared to the tariff in the previous contract. This result is due in part to the transparency imposed by the "Sapin" law, which encourages greater competition. In addition, the contract procedure induces the local government to engage in negotiations with the candidates. The changes observed were similar for both drinking-water services and collective-sanitation services. For a water and sanitation service, the average drop in price over the 1998 to 2010 period amounted to 0.17 euros per cubic metre of water. However, the drop in price varied over time and depended on the size of the local government. The decrease was particularly notable over the 1998 to 2002 period for services supplying more than 10 000 inhabitants and less significant for smaller services, however, the difference faded over subsequent years. Over the period 2003 to 2008, average decreases in prices slowed to between 0 and 15%, then starting in 2009 they accelerated to over 20% in a context of enhanced competition between the operators.

However, though the average delegation tariff dropped over virtually the entire period,

### Changes in delegation tariffs (for both water and sanitation services) from 1998 to 2010

Source: "Sapin" law observatory (AgroParisTech) - August 2013



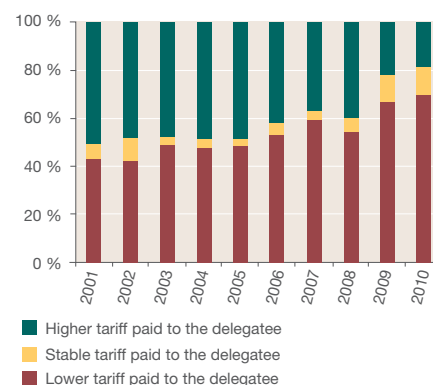
not all services benefitted. This result may be explained by the diversity of situations. The technical requirements contained in new contracts may be increased, resulting in higher operating costs. The responsibilities of the operator may also be modified, e.g. it may take on certain investment costs or the local government may decide to invest in its facilities, notably in its networks. Finally, in a context of greater competition for the larger services, operators may be tempted to reallocate shared costs at the expense of the smaller services, which may explain why a fairly large number of services were faced with higher costs in the new contracts negotiated in the years just after 2000.

That being said, the general trend would appear to be favourable for a larger number of local governments. From 2001 to 2005<sup>9</sup>, the delegation tariff increased for approximately 50% of the new contracts.

In 2009 and 2010, the tariff was generally stable or decreased, it increased for only 20% of the new contracts.

### Percentages of contracts with rising, stable and falling delegation tariffs from 2001 to 2010

Source: "Sapin" law observatory (AgroParisTech) - August 2013



<sup>5</sup> Public water and sanitation services in France. Economic, social and environmental data (in French), BIPE & FP2E, March 2012.

<sup>6</sup> According to law no. 2001-1168 (11 December 2001) instituting urgent economic and financial reforms.

<sup>7</sup> The tariff paid to the delegatee is also called the «average delegation price».

<sup>8</sup> The calculation of this average takes into account the volumes of water involved.

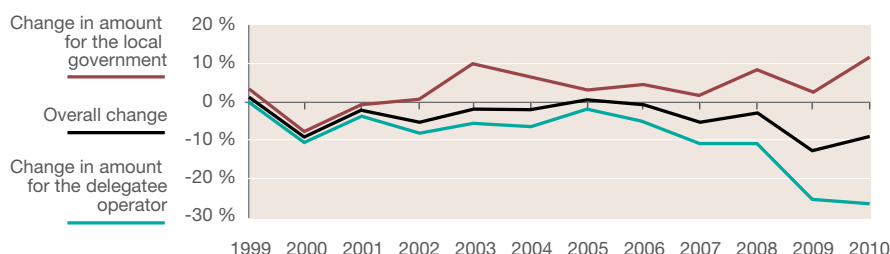
<sup>9</sup> As of this writing, the processed data for the years 1998 to 2000 is not yet available.



The drop in the delegation tariff is not, however, fully visible for consumers. The local government generally increases its share in order to fund or create reserves for the investments under its responsibility, e.g. renovations, upgrading to meet standards, etc. On the whole, competition for renewed delegation contracts enables local governments to reduce tariffs slightly while increasing the funds available for renovations and improved service, thus increasing overall sustainability.

## Changes in the amounts paid to local governments and to delegatee operators for a bill of 120 cubic metres of water (not including fees and taxes) from 1999 to 2010

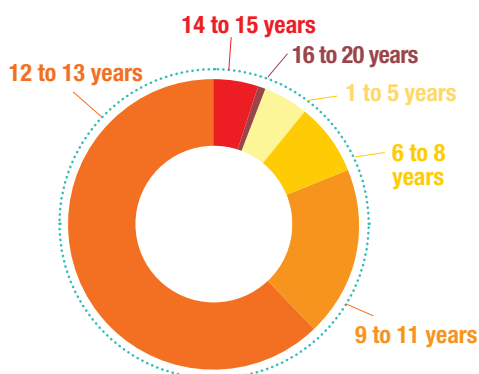
Source: "Sapin" law observatory (AgroParisTech) - August 2013



*Nota bene* : The average price per cubic metre (for a bill totalling 120 cubic metres) supplied by a delegatee operator is 3.76 euros as of 1 January 2010<sup>10</sup>.

## Contracts renewed from 1998 to 2010, under competitive bidding, according to their duration in years

Source: "Sapin" law observatory (AgroParisTech) - August 2013



## More frequent competitive bidding

After the "Sapin" law forbid automatic renewals and severely limited extensions of delegation contracts, the later "Barnier" law<sup>11</sup> limited their maximum duration to 20 years (though exemptions may apply). As a result, new contracts now have an average duration of 11 years, though a majority span 12-year periods corresponding to two terms for town councils. The new contracts thus have

shorter durations, on average, than the older ones. From 1998 to 2010, the average duration of terminating contracts dropped from 17 to 14 years.

The drop in the average duration leads to an increase in the frequency of contract renewals and thus in the number of competitive-bidding procedures initiated each year. Given the total of 8 900 delegation contracts for public water and sanitation services, the average number of procedures launched each year is approximately 810, the level reached in 2009 and 2010.

## Competition has increased, but remains limited for small local governments

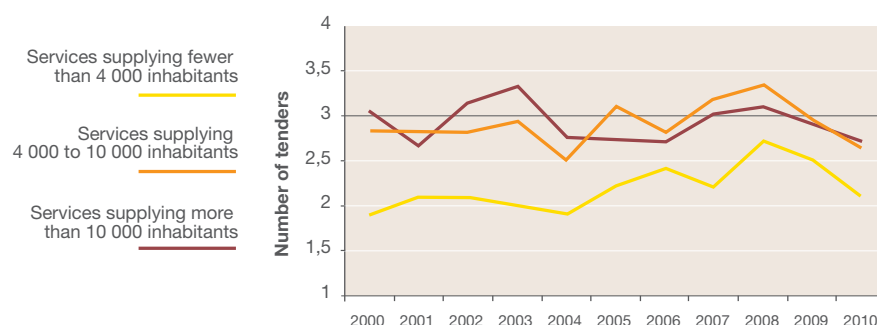
From 2000 to 2010<sup>12</sup>, each competitive-bidding procedure received 2.4 tenders on average. This lack of competition is due to the structure of the water sector in France, where three companies, Véolia Eau, Lyonnaise des Eaux and SAUR, control 97%<sup>13</sup> of the market for delegated services (in terms of the supplied population). However, the average number of tenders masks differences between local governments and over time. Services supplying fewer than 4 000 inhabitants receive far fewer tenders (2.2 on average) than larger services (2.9 on average). One possible

reason is that an operator without any local presence in a given area will have greater difficulty in generating profits from a small service. That being said, over the studied period, the average number of tenders per procedure, for

all sizes of local governments taken together, rose slowly from 2.2 to 2.6. The increase was slightly stronger for services supplying fewer than 4 000 inhabitants.

## Average number of tenders according to the size of the service from 2000 to 2010

Source: "Sapin" law observatory (AgroParisTech) - August 2013



<sup>10</sup> Panorama of public water and sanitation services in France, 2009 data, Onema, February 2012.

<sup>11</sup> Law no. 95-101 (2 February 1995) reinforcing environmental protection.

<sup>12</sup> The initial surveys did not collect sufficient data to analyse the number of tenders per segment of population.

<sup>13</sup> Public water and sanitation services in France, Economic, social and environmental data (in French). BIPE & FP2E, March 2012, 85p.

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From 1998 to 2010, 87% of renewed contracts were awarded to the same operator. This high percentage may be due to the overall satisfaction of local governments with their existing operator (less than 5% of contracts result in conflicts between the delegator and delegatee), in a context of limited offerings. In spite of the increase in competition from 2000 to 2010, no decrease in the percentage of contracts awarded to the same operator

occurred, but the drop in prices continued nonetheless.

In 1998 and 1999, most of the changes in operator were in favour of independent operators not part of the three main water groups. However, the rise of the independent operators slowed significantly in the years following 2000 and, over the last few years, most changes have been in favour of the three main operators.

### Percentage of new contracts awarded to the same operator from 1998 to 2010

Source: "Sapin" law observatory (AgroParisTech) - August 2013

|   | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Percentage awarded to the same operator | 92   | 82   | 88   | 89   | 92   | 87   | 91   | 85   | 89   | 86   | 89   | 79   | 87   |

## Most local governments call on consultants

A large majority of the local governments surveyed brought in a consultant for legal, technical and economic advice prior to launching the competitive-bidding procedure for delegation of their public service, to ensure compliance with the Sapin law and the legality of the overall procedure. The consultants provide expert knowledge required in advance to prepare the negotiations with the operators and to determine the priorities of the local government. They also assist in drafting balanced contracts combining the flexibility required for a long-term relationship, yet sufficiently binding in terms of the local government's objectives. For example, a rising percentage of contracts (approximately 70% between 2007 and 2010) included performance goals for the operator with penalties in the event of failure and, occasionally, awards for success. Most often, the objectives concerned water quality, network quality and compliance of treated wastewater with legal requirements.

The advice is provided by private companies or the DDTMs (departmental territorial and maritime agencies)<sup>14</sup>, the latter being particularly active in rural areas. Given the current policy to eliminate public engineering agencies, local governments now turn increasingly to private companies. Recently, certain types of local government (departmental councils, water boards) have started setting up consulting units to assist in the management of their public water services.

The fact that local governments very frequently bring in consultants may also be due to the moderate cost compared to the average drop in tariffs paid to the operators (approximately five euros per inhabitant and per year). Even though the amounts may vary considerably depending on the needs of each local government, the costs are nonetheless reasonable, ranging on average from two to three euros per inhabitant for services supplying fewer than 10 000 inhabitants to approximately 0.50 euros per inhabitant for services supplying more than 10 000 inhabitants.

<sup>14</sup> The DDTMs were created through the fusion of the DDAFs (Departmental agriculture and forestry agency) and the DDEs (Departmental public-works agency).

<sup>15</sup> National engineering school for rural areas, water and forests.

### Note on methods

The data presented here were collected from local governments (or from their consultants) that launched competitive-bidding procedures for the renewal of their delegation contracts for public water and sanitation services, in compliance with the "Sapin" law. The surveys were carried out under the responsibility of the Ecology ministry from 1998 to 2010, first by ENGREF<sup>15</sup> Montpellier (1998 to 2004), then TNS Sofrès (2005 and 2006) and finally AgroParisTech (2007 to 2010). After listing calls for tenders published in specialised publications, notably *Le Moniteur* and the *French official bulletin for public procurement* (BOAMP), a questionnaire was sent to the local governments (or to the consultants advising them) to collect information on the competitive situation, the advice provided to the local governments, contract durations and changes in prices. Over the study period, the average return rate was 57% and a total of 2 863 procedures were analysed.

The information collected is the product of a long, collaborative effort with the local governments and their consultants who were kind enough to respond to our many questions and who, thanks to their hands-on experience, enhanced our knowledge of the mechanisms governing water-service contracts in France. The authors wish to thank them warmly for their participation.

### For more information

See the documents concerning the surveys on application of the "Sapin" law at: [www.services.eaufrance.fr](http://www.services.eaufrance.fr)

Find this document on the internet at: [www.services.eaufrance.fr/synthese/rapports](http://www.services.eaufrance.fr/synthese/rapports) or [www.documentation.eaufrance.fr](http://www.documentation.eaufrance.fr) or [www.eaufrance.fr/IMG/pdf/sapin\\_19982010\\_201309\\_EN.pdf](http://www.eaufrance.fr/IMG/pdf/sapin_19982010_201309_EN.pdf)

For more information on the "Sapin" law observatory, see: [www.agroparitech.fr/Observatoire-des-delegations-de.html](http://www.agroparitech.fr/Observatoire-des-delegations-de.html)

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The French water-information portal at [www.eaufrance.fr](http://www.eaufrance.fr)

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