



30.8.2019

NOTICE TO MEMBERS

Subject: Petition No 1136/2018 by Giampiero Tola (Italian) on the lack of competition in water management in Sardinia

1. Summary of petition

The petitioner briefly explains the water management situation in Italy, and in particular in the Sardinia Region, where there is a monopoly. In his opinion, this conflicts with the provisions of the Treaties and of secondary legislation concerning services of general economic interest, which include the water supply.

2. Admissibility

Declared admissible on 5 March 2019. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 30 August 2019

Member States may consider the supply of water and water management services as services of general economic interest. Article 14 of the Treaty on the Functioning of the European Union (TFEU) notes the place occupied by services of general economic interest in the shared values of the EU and specifies that “the Union and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions”. Protocol 26 to the Treaties recognizes the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest aligned as closely as possible to the needs of users. Water distribution and supply services and waste water services are excluded from the Chapter on the Free Movement of Services of the

Services Directive¹, and public procurement rules do not apply when authorities decide to provide the services themselves.

As noted by the Commission in its Communication on the European Citizens' Initiative "Water and sanitation are a human right! Water is a public good, not a commodity"², the decision on how best to operate water services is firmly in the hands of the public authorities in the Member States, who are entirely free to either perform the relevant tasks themselves, or confer them onto legally distinct, completely public, "in-house" entities or outsource them to private or mixed management. The EU, for its part, takes care that key Treaty principles – such as transparency and equal treatment – are observed. At the same time, Treaty rules require it to remain neutral in relation to national decisions governing the ownership regime for water undertakings. Inter alia, State aid rules should be respected.

More specifically, in the case of Sardinia, the Commission examined, under State aid rules, restructuring aid granted to Abbanoa S.p.A, which provides a drinking water, sewage and waste water treatment service of general economic interest under monopoly, and which is owned by the local and regional authorities. The provider is subject to a public service obligation to provide a universal and affordable supply of water services within the whole territory of Sardinia. The Commission found that notified restructuring aid to allow continued service provision by Abbanoa S.p.A. was compatible with the internal market and decided not to raise objections to the State aid. The decision was based, among other things, on the restructuring plan of the company and on the commitments by Italy to reduce the duration of the concession period by three years, and, thereafter, not to assign the services in-house, without any selection procedure but, instead, to launch a transparent and non-discriminatory call for tender open to all interested operators in order to assign the provision of the services as of 1 January 2026³.

Conclusion

According to information available to the Commission, in Sardinia, the management of the water supply service is entrusted to an in-house provider owned by the local and regional authorities, on the basis of a lawful concession which is to expire in 2025. The Commission cannot identify at present any violation of EU public procurement rules in the provision of water supply services in Sardinia.

¹ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 36–68. See in particular Article 17(1)(d), OJ L 376, 27.12.2006, p. 36–68.

² COM (2014) 177 final.

³ Decision of 31.7.2013 in Case SA.35205 (2013/N) – Italy - Restructuring aid to Abbanoa S.p.A. JOUE C 279 of 27.9.2013, p.1.