THE EFFECTS OF THE LIBERALISATION OF PUBLIC SERVICES SERVICES OF GENERAL INTEREST

STUDY FOR THE EUROPEAN
UNITED LEFT/NORDIC GREEN LEFT GROUP
OF THE EUROPEAN PARLIAMENT

UNDER THE DIRECTION OF **PIERRE BAUBY**

GUE/NGL
Gauche Unitaire Européenne/Gauche Verte Nordique
European United Left/Nordic Green Left
Groupe Parlementaire · Parliamentary Group
PARLEMENT EUROPEEN · EUROPEAN PARLIAMENT
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FOREWORD

MARIE-PIERRE VIEU
Member of the European Parliament, member of the GUE/NGL, vice-president of the Public Services Intergroup and audit initiator..

« Social distribution and equality, foundation of a cohesive society, are at the heart of public services. There can be no Europe of peoples without a Europe of public services »

PIERRE BAUBY
PhD of IEP of Paris, researcher in political science, specialist in public action and public services in France and Europe.

« That the European Union becomes promote of the values of equality and solidarity of public services in order to meet the challenges of the 21st century. »

MARIE-CHRISTINE VERGIAT
Member of the European Parliament, member of the GUE/NGL, co-president and animator of the Social Economy Intergroup.

« Public services are based on the general interest. They meet the essential needs of the population and must be at the heart of any rebuilding project.»

Fourth railway package, which gave rise to the reform of the SNCF, third postal directive, multiple "*Energy*" packages... European liberalisation initiatives have increase since the 1990s..

What are we talking about? Everywhere in Europe, some services are not only subject to market, but also to specific rules whose aims are to meet three complementary goals to:

- **ensure the access** of each inhabitant to essential goods and services;
- develop economic, social, territorial and generational **solidarity relationships**;
- prepare the financial and **long-term** sustainability of necessary **infrastructures and investments.**

These services – called 'Public Services' in France, 'of General Economic Interest' in the European Treaties – are profoundly marked by the characteristics, histories and social relationships of the countries in which they operate.

VERY DIFFERENT EUROPEAN HISTORIES

Attempts to adopt common rules at European level in this area have necessarily taken place in **different political, social and economic contexts.**

When Spain joined the European Union in 1986, its public sector moved away from the Franco's regime approach of an internationally isolated and autarkic state in the economic sphere.

In Slovakia, at the fall of the wall in 1989, users were accustomed to affordable prices but also to deficient services, suffering from a persistent shortage of resources and obsolete equipment.

In France and (at least in the West) Germany, a large part of the population considers that the system worked and provided relatively general satisfaction at the time.

THERE IS NO **STRENGTH IN UNITY**

But European integration stagnated in the 1970s and 1980s, the social compromise of Keynesianism is no longer adapted and neo-liberalism is developing. It is in this context that the Single European Act was adopted in 1986 and that the Europeanisation of public services is truly under way.

More than 30 years later, after the adoption of dozens of European directives and regulations, there is **no overall evaluative analysis of their effects.** Despite repeated requests from members of European Parliament who are committed to people first, the European Commission has never seen fit to follow up on them.

WHY SUCH A STUDY ?

In order to start providing elements of knowledge and thinking, we have decided to initiate a European study, entrusted to university experts. At this stage, it concerns three sectors - rail transport, electricity and postal services - in four Member States - France, Germany, Spain and Slovakia.

Why these public services and not others? Because they have been the first to be affected, the necessary historical data are the most accessible - or rather sometimes the least inaccessible.

Why these countries? Because we found them to be representative of European diversity, due to their economic weight, geographical location and respective histories.

PUBLIC SERVICES[1], **EUROPE'S MISSED RENDEZ-VOUS**

Since the beginning of European construction history, there have been many debates, ideas and proposals: they have been aimed more at cooperation between States and their national operators than at seeking competition.

So many missed opportunities **to build an original and cohesive European reference framework for services of general interest!**

1. We use the term "public services" in its broadest sense, including sovereign, administrative, industrial and commercial services.

In the postal sector, during the 1960s and the 1970s, successive proposals, coming in particular from the Commission, looked for the development of certain postal harmonisation, for instance through tariff equalisation at the Community level, the creation of a European postal stamp or the setting up of a single tariff, but none had been retained at that time.

The 1980s saw a structural paradigm shift, marked by the calling into question of the state - described as bureaucratic and inefficient -, of the public - considered as wasteful or even corrupt -, of the social - presented as an obstacle to economic development and prosperity. This is how liberalisation policies will be conceived and developed.

THE FAULT OF THE GOVERNMENTS

The study does not limit its analyses to sectoral or national approaches and characteristics, but seeks to cross them. Developments are very different and the current situation is very disparate, even after thirty years of "common rules". This leads to the questioning of certain 'received ideas':

- It is the EU Member States that decide both European rules and their national implementation;
- they are as much, if not more, bearers of their national interests than of the Community interest.

If there has been liberalisation of public services, it is first and foremost because successive governments have been willing to do so...

THE REALITIES OF LIBERALISATION OF RAIL TRANSPORT, ELECTRICITY AND POSTAL SERVICES

Liberalisation had been presented as the miracle solution to instil competition in sectors considered sclerotic, competition that would be synonymous with accessible prices, better quality services, greater variety of choices and better innovation. What is it really like?

1 FROM MONOPOLY (NATIONAL PUBLIC OPERATOR) TO OLIGOPOLY (VERY FEW LARGE COMPANIES)

For rail transport, electricity and postal services, the situation has shifted from the domination of a monopoly (the national historical operator) to **the domination of a very small number of large companies** (oligopoly). Oligopolistic competition is neither free (one does not easily enter the market) nor not distorted, since the actors have the power to set themselves prices, the variety of services... We often end up with **the defaults of monopoly, without its advantages!**

IN THE SPANISH ELECTRICITY MARKET, FOR EXAMPLE, THREE OPERATORS SHARE 70% OF THE TOTAL ENERGY SUPPLIED.

These operators were generally national or local public companies 20 years ago. They now have the status of private companies whether they are publicly or privately owned: while there is no legal obligation in the European directives to privatise operators, the dynamics of liberalisation and the Europeanisation of large operators have gradually led national public authorities to embark on this path.

Incumbent operators have therefore become companies like any other. It is all well and good to promise that the change in the legal status of SNCF will not lead to its privatisation, history has raised doubts about this…

This small number of private companies has also diversified their activities and locations to compensate for their loss of market share in their home countries. **Therefore, oligopolisation tends** to become European; the European electricity sector, for example, is now dominated by four major groups (GDF-Suez – now, ENGIE, EDF, E.ON, RWE) which, through aggressive exportations, acquisitions, mergers, have conquered their smallest competitors. Are the beneficiaries of these capitalist power games the users... or their shareholders?

2 NEW MARKET APPROACHES

In this context of increasing competition, operators tend to develop three types of conduct:

- social and territorial segmentations, which call into question the previous principles of equal treatment or universality;
- financial returns, which may hinder long-term sustainability;
- increasing outsourcing with negative effects on society.

In the area of social relations, the trend is towards job precariousness within service provider companies: temporary employment, mini-jobs, self-employed or subcontracted work, reduced wages and/or internal training, more frequent professional conversion…, which have replaced the stable and properly paid jobs of former historical operators - even when the profitability conditions of companies have increased. The most famous case is certainly that of France Telecom renamed Orange (not covered in this study) but this trend is generally true.

In all sectors, budgetary rules and the cost-oriented financing of services have led to constant increase in tariffs for users.

IN SPAIN THERE HAS BEEN

AN 87 % INCREASE IN ENERGY PRICES

OVER THE LAST 15 YEARS.

14% to 26% of households are said to be in fuel poverty situation in Germany and in 2014,

352 000 HOUSEHOLD WERE CUT OFF THE ELECTRICAL NETWORK

in this country, revealing the extent of the debate on energy poverty, which is obviously largely due to the rise in energy prices.

Precarious jobs, increasing prices... are the profits made at least transformed into **investments?** The answer is no: the former German federal railways, for example, urgently need investment of 500 billion euros.

Finally, social segmentations are coupled with **territorial segmentation**, with the presence of services tending to be less ensured in sensitive suburban or rural areas than in some large cities.

WHILE THERE WERE STILL
29,000 POST OFFICES
ON THE TERRITORY OF THE FORMER GERMAN FEDERAL REPUBLIC IN 1983,
THERE ARE NOW ONLY 13,000 LEFT.

IN FRANCE,
RAIL TRANSPORT IS DETERIORATING BOTH QUANTITATIVELY AND QUALITATIVELY,

freight having been more affected than passenger transport (but things could get worse once the Fourth Railway Package is fully implemented). The essential achievements of the electricity public service obligations have been maintained, even if we have seen an increase in fuel poverty. The public postal service is facing increasing profitability and disengagement, but the debate remains open about the future of its network.

PATHS FOR PUBLIC SERVICES OVER 2020-2030

Building on the progressive experiences accumulated in the European Union and its Member States, the audit recommends overcoming the monopoly/competition opposition that has long structured the organisation and regulation of public services. For a new paradigm of values: the aim would be to give the European Union its place without leaving it in a situation of omnipotence that would accentuate the deregulation of public services.

Several objectives are proposed, including:

1. Review and enrich policies and standards developed over the past 30 years to take into account both the needs of all users and their evolution, fundamental rights and common values that should be effectively guaranteed, and defined objectives in terms of the environment, climate change or long-term sustainability.
2. Internalise all the positive and negative externalities of each technological or economic solution, for example by combating waste.
3. Encourage the development of regulatory approaches and progressive dynamics of participatory evaluation at each territorial level.

For their part, and in a convergent manner with European initiatives, Member States should:

1. Organise the expression of the needs of each user of the service and their evolution, in order to be able to clearly define the objectives and missions of each service, which justify its nature of public service or service of general interest, the specific rules and standards to which they are subject, the public service obligations (PSO) and/or universal service obligations (USO).
2. Determine the relevant territory and the most suitable mode of organisation of the activity and the sector concerned to meet the defined objectives; the mode of financing the activity, the access to the service and the compensation of PSO or USO imposed on operators.
3. Initiatives and responsibilities to be carried out successfully require a commitment to the complementarity of vertical and participatory approaches, of co-definition and co-organisation of public service or services of general interest.

CONCLUSION

We started this audit in the spring of 2018, even as railway workers in France were getting into a battle with the government over their status. With them, we said that the rail liberalisation directive did not in itself imply the Macron reform and the planned wage cuts for the sector. In our mind, it was not a question of exempting the European Union from its liberal orientation but of placing the responsibility of each one, States, EU and designating the right level and the relevant scales to develop balance of powers.

This study now provides us with real feedback. It responds to the need for a rebuild of public services to respond to the social and democratic emergency of our country, as well as of Europe: 9 million poor people in France, and according to the latest figures available 87 million people in the EU, or 17% of Europeans.

The audit was carried out by researchers; it is not a political manifesto. However, it reveals an emergency: that of removing public services from the logic of competition alone, in favour of democratic and citizen-based management. We are in favour of a moratorium on the directives on the liberalisation of public services and to work on other paths for the development of public services. We make this audit available to all to contribute to it!

INTRODUCTION

Starting with the second half of the 19th century, transport, communication and energy industries have been at the heart of the long-term development of the history of each European nation state, of each territory and the free movement within the national space, as well as of the national solidarity within each country. Thus, for a long time, postal letters had been the only means of communication on a large spatial scale; for almost one century, railway transport had been the only medium- and long-distance transport means; electricity constituted a decisive step in the meting of energy needs.

These sectors had been subject of particular objectives and rules, complementary to the common competition and market rules, to ensure universal access to these services in all countries, to ensure their provision through social or territorial forms of solidarity, to build up the needed medium- and long-term infrastructures. These objectives led to the setting up of national, regional or local monopoly situations; in all countries, these sectors have been subject to the definition of public service tasks – national terms or concepts being more or less similar.

Cross-border exchanges and cooperation had been developed everywhere, well before the creation of the European Communities, such as the Universal Postal Union for postal correspondence, electricity interconnection with border countries since the first half of the 20th century and international railway transport.

These common aspects are combined with different characteristics of each system:

- the railway industry involves the construction and maintenance of heavy infrastructure (railways, security system, stations) on which the circulation of trains is organised under important constraints; electricity involves heavy investments for its production; then it must be transported to the final consumer; mail and parcels sent by individuals or organisations must be delivered in any point of the territory;
- electricity is a very capitalistic activity, railway involves less capital and the postal service is mainly a workforce activity;
- in the postal sector, the service is paid by expeditors, in the railway sector by the community and users and in electricity, it is the final consumer that pays for the service.

These characteristics involve different "activity models", even if in the three sectors, the essential part of the financing of the service is ensured by users. These three sectors are at the heart of what is known as "network industries", which are characterised both by the existence of increasing re-

turns that spontaneously lead to the concentration of operators and the creation of monopolies or oligopolies, and to other growing social, territorial, generational, environmental and financial polarisations.

These characteristics are combined with "public services tasks" (or their equivalent in different languages and cultures) in each European state, whose aim is to organise the access to the service for each inhabitant, to develop solidarity reports allowing them to ensure economic, social, territorial and generational cohesion and to prepare for the future. They have been integrated into the responsibilities of national, regional or local public authorities, whether these take the form of direct management by the authority or delegation to autonomous public operators, to social or cooperative economy organisations or to private operators. During the 20th century, the structuring paradigm of integrated (national or territorial, public or private) monopoly has been dominant.

○ ○ ○

Following the Second World War, the European construction has impacted national developments. But its aim was not the creation of a super-state or a federation of states, but just to put together means and policies where common interest corresponds with the national interests of each Member State, by progressively implementing the four fundamental freedoms of movement of goods, services, persons and capital to pacify and enlarge exchanges in the context of the realisation of a "common market", then of an "internal market". Thus, progressive Europeanisation processes have been developed.

The three industries have been impacted distinctively by these processes. The coal sector in 1951, then nuclear energy in 1957, have been among the first to be subject to European Communities initiatives and actions. Since 1957, the transport sector has been among the four common policies, but each Member State preferred to keep its prerogatives in the field of railway transport. In fact, while the European Commission made a series of proposals for each of the three sectors, the six, then the twelve, Member States maintained a certain consensus for 30 years: each country organised and financed these three sectors according to their national capabilities.

The Single Act of 1986 aimed to bring common answers to the economic and social crisis that had begun 1973 and relaunched the Europeanisation of communication, transport and energy network industries.

Yet, there had been no reference or model to define adapted answers for the "European Community".

For some, these sectors had not been subject to the Europeanisation process; they should remain under the jurisdiction of national sovereignty or of regional or local prerogatives. While such ideas had delayed the Europeanisation process – 10 years were needed from the Single Act until the adoption in 1996 of the 'electricity internal market' directive and 11 years until the first postal directive of 1997 – they did not provide common answers to implementing the four fundamental freedoms of movement and new solidarities at the European level.

Could it be possible to follow a reverse approach, to implement a real European harmonisation and build genuine European services in these three sectors, such as the Federal Post of the USA, or to adopt a single European postal stamp? Such paths appeared to be too premature, and the legislator did not accept such provisions.

In fact, the European institutions – on the basis of their specific powers (see *infra*) – had been led to define original ways of progressive Europeanisation, adapted to the specific characteristics of each sector and taking into account national traditions and histories, in the context of the 1980s, which saw the development of globalisation and the growing importance of markets and competition.

While the first decades of the European construction had been characterised by the domination of references to Keynesianism, the balance between state and market, public and private, economic

and social [1], during the following period, structuring approaches have been marked by the put into question of the state – described as bureaucratic and inefficient, of the public sector – considered as wasteful or even corrupt, of the social aspects – presented as an obstacle to economic development and prosperity. It is in a new period, which both Reagan in the USA and Thatcher in the UK testify, that we saw the fall of the Berlin Wall and the implosion of states based on references to collectivisation, as well as the strategies of Europeanisation of public services – services of general interest. This is how progressive and specific liberalisation policies will be conceived and developed.

This study aims to present and analyse its effects on the basis of existing, available and accessible data in the countries and/or at the European level. It should be stressed here that, even if we are in the era of "open data", a whole series of elements of knowledge of the current situation and ongoing changes are missing.

How should we assess the effects of liberalisation policies? Answering this question is not an easy task. Effects are measured against a baseline situation. However, situations are very different according to countries and reference dates that we have chosen, as we will see.

Therefore, we tend to take into account transformations over a long period of time, to situate them in what historians call the "*temps long*".

1. The reference to the "glorious thirty" is often evoked.

1ST PART
EUROPEANISATION AND ITS CHALLENGES

AN INNOVATIVE HISTORICAL PROCESS

How should we Europeanise transport, electricity and postal services, which had been built over the long term in the context of each national history, anchored in institutions specific to each country? The Treaty of Rome has given no answer other than two directions: on the one hand, the gradual elimination of obstacles to exchanges between Member States, and on the other hand, the gradual elimination of any form of discrimination relating to national origins.

At that time, the only reference was that of the USA, but it was organised as a federal state, which did not correspond to the situation or objectives of European construction. Certainly, in the 1980s, Europe saw the experiment developed in the UK by the Margaret Thatcher's politics, but that consisted of the privatisation of public services and not their Europeanisation.

It was therefore necessary to find new solutions, and many proposals were made. In the context marked by references to Keynesianism, they expressed more often the search for cooperation between the Member States and their national operators, more so than the search for their competition. Thus, in the postal sector, during the 1960s and the 1970s, successive proposals, coming in particular from the Commission, looked for the development of certain postal harmonisation,[2] for instance through tariff equalisation at the Community level, the creation of a European postal stamp or the setting up of a single tariff, but they had not been retained by the Council. In the transport sector, in particular in the railway industry, the treaty of Rome provided for a common policy. Though, it was necessary for the European Parliament, supported by the Commission, to offer the Court of Justice in 1982 an appeal against the Council for failure to act so that the jurisdiction enforced the legislator to adopt and implement such a policy; and early proposals searched for the cooperation of incumbent operators.[3] As regards electricity, from 1957 until 2009, Member States looked to maintain it within their national energy policy, even if the European Commission made several proposals to define common objectives in the 1960s and 1970s.[4]

2. Cf. infra the Europeanisation in the postal sector.
3. Cf. infra the Europeanisation of the railway transport.
4. Cf. infra the Europeanisation of the electricity.

Who does what? The reciprocal institutional responsibilities of the EU and its Member States

We often have the occasion to see the role of the European Union called into question, as well as its institutions and in particular the European Commission, in terms of its relationship with the politics of liberalisation of public services – services of general interest.

In the context of the current *processus* at the European level, responsibilities should be recalled. The EU is not a super-national state, which would intervene to impose its orientations, policies and decisions on Member States.

The European Commission has the initiative legislative monopoly, but the responsibilities of the Member States are essential:

- They are negotiating, signing and ratify the treaties unanimously,
- The European Council defines the main political orientations of the EU,
- The Council of Ministers is the co-legislator, and there is a blocking minority, which allows two countries, such as Germany and France, in alliance with several others, to block the decision-making process,[5]
- The COREPER, which gathers representatives of Member States, continuously negotiates compromises that progressively become the "common interest", or the "Community interest". It is a tool of "bargaining" between governments to define consensual or unanimous orientations and decisions,
- Certainly, the Commission has the power to take sole directive and decisions in the field of SGEI (art. 106-3 TFEU); but it uses this power on several occasions, using it to initiate Member States to act,
- Member States can intervene in appeals before the ECJ, which is in charge of "saying the law" in appeals that come before it,
- European directives, once adopted, must be transposed into the national law of each state, with large room for manoeuvring as regards the means of implementation,
- The states ensure 70% of the budget of the European Union, as well as the essential tasks of the implementation of policies and of European law.

HARMONISATION/LIBERALISATION

During the 1980s and 1990s, European debates focused on the definition of Europeanisation strategies that would be adapted to the specific challenges of public services – services of general interest. The postal Green Paper[6] of the European Commission of 1991 [COM(91) 476] clearly presented the alternative: either "complete liberalisation", which would call into question affordable universal service for all, or "complete harmonisation", with a single operator, a single tariff, which would lead to rigid organisation and complementary costs, which no one demanded. At the same time, the Green Paper emphasises that the maintenance of the status quo would broaden the differences between already divergent positions and create a "two speed Europe". It is in that context that the Green Paper proposed combining a harmonisation based on a Community definition of a

5. During ten years of the first internal electricity market directive of 1996.

6. At the European level, a Green Paper opens a strategic debate by raising questions and advancing hypotheses; a White Paper proposes and open the debate on a strategy and solutions.

universal service of a certain quality at an affordable price and a partial and progressive liberalisation allowing the maintenance of the economic and financial equilibrium necessary for the provision of the universal service.

This approach combines the respective advantages of, on the one hand, harmonisation, cooperation, coordination and strategies of progressive convergence around the "common values" of services of general interest and, on the other hand, liberalisation, which has been implemented for a period by the European Commission, which is wrong to present itself as a supporter of a frenzied liberalisation. But the rejection by most Member States and interested organisations over a long period of any form of harmonisation in the name of maintaining national histories and prerogatives has led to unbalanced solutions, with the liberalisation strategy gradually taking precedence over possible harmonisations.

Free movement, harmonisation, liberalisation, privatisations: what are we talking about?

- The founding principle of non-discrimination and the objective of the four fundamental freedoms of movement in the "internal market" and the European space, which had been provided by the treaty of Rome of 1957 and deployed since then, are supposed to raise obstacles to exchanges, either legal, economic, technological, social or cultural, and to guarantee the effectiveness of fundamental freedoms.
- The common rules of the organisation of each internal market, which vary according to the specific characteristics of each (for instance, with the recognition of the "natural monopoly"[7] situation of some infrastructures, the relationships between unity and diversity in the EU, the debates between competition in the market (call for tenders allowing the selection of the operator to provide the service on a certain territory during a certain period of time), the definition of public services or services of general interest tasks, obligations and values, the choice of the funding mode).
- Most often, the common rules fall under an approach that combines a certain degree of harmonisation of rules, procedures, guarantees, with the sectoral liberalisation.
- The liberalisation, which is a public policy consisting of the leading of a progressive *processus* of transitions from one model of organisation to another, with openings to competition of markets that were in a *de jure* or *de facto* (quasi-)monopoly situation, with "winners" and "losers" as outcome. The opening to competition is not and has never been the only possible way for free movement and Europeanisation.
- The change of the status of operators and/or their privatisation for which, aside from some exceptions (Greece), European institutions do not impose obligations on Member States, which decide according to their willingness.

EUROPEAN/TERRITORIALISED MARKETS

The European strategy of Europeanisation has been based on steps of progressive elimination of obstacles to trade in the EU and the rejection of any form of discrimination. The aim was to integrate transport, electricity and postal services in the construction of a "common market", and then of an "internal market", which soon led to putting the objective of "internal markets" in each of these sectors.

7. We consider that an infrastructure is a "natural monopoly" when it appears that a single operator is more efficient than enterprises in competition and that it is absurd to duplicate such investments.

However, this approach partly rests on a myth. "Market" involves free movement and evolution of services within a certain territory, the meeting of offers and demands and well-informed actors, which allows price convergence. Or railway, electricity and postal "markets" are territorialised, that is, being anchored in territories, linked to physical, human, social, cultural specificities of each territory and requiring adapted infrastructures. That is why, in each of these three sectors, European rules have come to recognise that infrastructure networks might be subject to exclusive rights, as they constitute "natural monopolies", which represent a first twist from the "classic" definition. With the exception of the production of electricity (submitted to the constraints of losses when transported), the three services cannot be relocated.

More generally, territories represent both (development) opportunities and constraints (for needed adaptations to the specific needs of each community concerned).

While the existence of "internal markets" might observe long-term objectives, it involves solutions that are adapted to each territory: "territorialised services".

GENERALISED MERCHANDISING/PUBLIC SERVICE MISSIONS AND OBJECTIVES

During their long-term national construction, European states have been led to define, organise and operate "public services", "utilities" and "services of general interest", which constitute what European treaties call "shared values".

Everywhere, such services are not only subject to common rules of competition and to market rules, but also to specific rules whose aims are to ensure the access of each inhabitant to essential goods and services, to develop economic, social, territorial and generational solidarity or "cohesion", and to prepare the financial and long-term sustainability of necessary infrastructures and investments.

This balanced approach leads to the search for the best interactions between economic, social, environmental and financial factors, taking into account the specific characteristics of each sector.

Public services or services of general interest are not only intended to establish the best quality/price ratio of each activity in the short term, but to ensure the conditions for a sustainable development. They involve arbitrations, making choices, which are fundamentally "political" choices, that is, the definition and the conditions of living together, today, tomorrow, everywhere.

REPRESENTATIVE DEMOCRACY/PARTICIPATORY DEMOCRACY

Whilst the setting up of public policies and binding norms remains the responsibility of representative public authorities, the demand for participatory democracy has been developing over several decades.

At the European level, Protocol 26 of the Lisbon treaty recognises the meeting of users' needs and preferences as shared values of SGEIs.

In Europe, representative democracy has always been accompanied by certain forms of participation by users and stakeholders. However, their influence on the decision-making process is unequal,[8] and generally their opinions remain advisory.

More recently, we saw the multiplication of participatory practices in the production of some services of general interest. The co-production can occur upstream, during or downstream service delivery for the co-definition, co-design, co-planning, co-decision, co-organisation, co-management,

8. In 1969, Sherry Arnstein enshrined the concept of the "scale of participation" to refer to the different forms and intensities of participation.

co-implementation, co-financing and/or co-evaluation of services. The co-production concept involves not only informing and gathering users' opinions, but also co-constructing services, making services the "with" community and not only "for" it.

The new information and communication tools are supposed to promote the development of different forms of democratic participation, in addition to traditional tools.[9]

THE LONG EMERGENCE OF THE EU ACQUIS

The Treaty of Rome of 1957 referred to the notion of "public services" only in the field of transport[10] and invented the terms "services of general economic interest" in the section regarding the common rules of competition.[11] This minimal corpus of norms has long been the subject of controversies structured by opposing visions between, on the one hand, those who believed that the Treaty made public services - services of general interest - exceptions to the competition rules, which were gradually to become the norm and, on the other hand, those who argued that the Treaty gave priority to their "particular tasks".

It was not until the effects of the liberalisation policies launched at the end of the 1980s that services of general interest were taken into account, first, as "common values" and contributions to "social and territorial cohesion" (Amsterdam Treaty of 1997). Then, their access as "fundamental rights" was consecrated by the Charter of Fundamental Rights proclaimed in 2000 and incorporated into the treaties in 2009. The Lisbon treaty provided for the possibility of adopting secondary legislation on the legal basis of Article 14[12] - a procedure not yet implemented 10 years later - and an annexed protocol[13] identifies a set of shared values. Recently, the reference to "access to essential services"

9. Several electronic consultation platforms have emerged in recent years, such as the consultation launched in France at the initiative of Axelle Lemaire on the 2016 Digital Republic Act, or the "Today I decide" platform, launched in Estonia in 2001. These platforms have the advantage of being able to involve a large number of people in an interactive way, even if the participants are often part of the most "connected" population, thereby widening the digital divide.

10. Article 77 of the treaty of Rome: "Aids shall be compatible with this Treaty if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service."

11. Article 90 of the treaty of Rome: "1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 7 and Article 85 to 94.
2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenues-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.
3. The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States."

12. Article 14 of the treaty on the functioning of the European Union: "Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, 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. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services."

13. Protocol 26 annexed to the treaties on the European Union (TEU) and on the functioning of the European Union (TFEU).

was included in the Pillar of Social Rights proclaimed in Göteborg on 17 November 2017.

The result is now a "European acquis" that can be summarised as follows:

1. The Member States (national, regional and local authorities) have the general competence to define, 'provide, commission and organise' SGI, as well as funding SGEI.
2. The European institutions have the same responsibility for European services which prove necessary in order to achieve the EU's objectives.
3. For non-economic services, the rules of the internal market and the rules of competition do not apply; they merely come under the sole general principles of the EU (transparency, non-discrimination, equal treatment, proportionality).
4. For services of general economic interest, the public authorities must clearly define their 'special task' (principle of transparency).
5. On this basis, they can define the means best adapted to effectively achieving the 'special task' (proportionality principle), including, should it prove necessary and proportionate, aid and subsidies and exclusive or special rights.
6. The Member States are free to choose the styles of management: internal, 'in house', delegated.
7. These definitions must clearly establish the standards of 'quality, security and affordability, equal treatment and the promotion of universal access and of user rights' (see below, "shared values").
8. The rules of competition and the rules of the internal market only apply if they do not stand in the way, legally or factually, formally or in effect, of their specific mission being achieved. The development of trade must not be affected to such an extent as would be contrary to the interests of the EU.
9. The Member States are free to choose the type of company property (principle of neutrality).
10. In all cases, misuse can occur due to 'manifest error' that the Commission can raise, under the control of the CJEU.

THE EUROPEANISATION OF THE THREE SECTORS

Each of the three sectors of the report is the subject of an "inventory", presented below, which summarises the current state of the EU law and the history of its sedimentation.

The Europeanisation of rail transport

During their long history, each Member State has built up transport infrastructures, defined a public policy and implemented corresponding services, according to the characteristics of their physical and social geography and to their institutions and traditions. It would be sufficient to compare the maps of the railway infrastructures in France and Germany to have a quick overview of these historical differences.

Since the treaty of Rome of 1957, the European Economic Community has been required to develop a Community public policy in the field of transport, one of the four policies provided for by the founding treaty. The rationale behind this was obvious: the integration strategy that had been retained by the Community's founders rested on the creation of a "common market", which supposed the progressive elimination of obstacles to trade between the six founding Member States; this also

involved transports to be conceived and organised taking into account the technical, economical and social scale of the new territory to make possible the free movement of goods and persons.

Yet, since then, Europeanisation in the field of transport has been developed through small successive steps and many reserves from Member States. While the TEEC provided for a common policy, it did not defined the content of such a policy. But it mentioned some principles – such as the recognition of the "public service"[14] notion – as well as some rules and the procedure to be followed. When the treaty was negotiated, it was not possible to come to a complete agreement as regards the form and the provisions of a common transport policy. Therefore, the authors of the treaty had chosen to leave EEC institutions – at that time essentially the European Commission and the Council – the responsibility of defining the content of this policy, and they were conferred large powers. The European Commission made many frequent proposals (see below), but their adoption took time, as Member States had to accept that some common rules interfere with their national politics and policies.

The Community policy on railway transport was given concrete form by a Decision of the Council (65/271/EEC) of 13 May 1965 on the harmonisation of certain provisions affecting competition in transport by rail, road and inland waterway. Its aim was particularly "to reduce public service obligations to a minimum; to provide fair compensation for financial burdens resulting from those obligations which are maintained and from those involving reductions in rates on social grounds". The decision provided that "Obligations inherent in the concept of a public service imposed on transport undertakings may be maintained only in so far as is essential in order to ensure the provision of adequate transport services". Thus, while the Treaty of Rome has recognised the legitimacy of public service obligations, the Decision of the Council made them transitory derogations.

Then, on 26 June 1969, the Council adopted the regulation 1191/69 (called "PSO – public service obligations - regulation"), which states that:

"Whereas one of the objectives of the common transport policy is to eliminate disparities liable to cause substantial distortion in the conditions inherent in the concept of a public service which are imposed on transport undertakings by Member States; Whereas it is therefore necessary to terminate the public service obligations defined in this Regulation; whereas, however, it is essential in certain cases to maintain such obligations in order to ensure the provision of adequate transport services ; whereas the adequacy of transport services must be assessed in the light of the state of supply and demand in the transport sector and of the needs of the community".

The regulation defined for the first time in the Community law the term 'public service obligations': "'Public service obligations' means obligations which the transport undertaking in question, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions."

This definition has been made more precise by regulation 1370/2007 of 23 October 2007:

…"'public service obligation' means a requirement defined or determined by a competent authority in order to ensure public passenger transport services in the general interest that an operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions without reward."

But essentially, this is not about Europeanisation, as each Member State continues to prioritise its specific issues, national interests and operators far more than finding solutions in the framework of a common policy.

That is how – an aspect as yet only slightly developed – the European Parliament, supported by the

14. Article 77 of the Treaty of Rome: "Aids shall be compatible with this Treaty if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service".

European Commission, has introduced an action for a declaration of failure to act before the Court of Justice of the European Communities in 1982. The decision of the Court on 22 May 1985 (13/83) has declared that "The Council has failed to ensure freedom to provide services in the sphere of international transport and to lay down the conditions under which non-resident carriers may operate transport services in a Member State." This decision prompted the Council to progressively develop the process of Europeanisation of transports, which had been launched following the adoption of the Single Act of 1986.

In 1991, in the perspective of the accomplishment of the single market, the directive 91/440/EEC on the development of the Community's railways of 29 July 1991 was adopted by the Council. It marked an important step towards the Europeanisation of the sector. Its provisions regard in particular the autonomy of the management, the separation between the operation of transport services and the management of the infrastructure, the access to infrastructure and the transit rights for European groups of railway and for railway enterprises operating combined international freight transport, as well as the improvement of the financial structure of enterprises. The directive emphasises that "it is appropriate for Member States to retain general responsibility for the development of the appropriate railway infrastructure" and that, on the basis of a consultation with the manager of the infrastructure, they should lay down rules for the payment for the use of railway infrastructure. While it is often presented as a first step towards the liberalisation of rail transport (hardly mentioned for freight[15]), Directive 91/440 allows for the developing of cooperation processes between national operators and only requires the accounting separation of activities. It does not call into question the responsibilities of Member States and even allows them to assume previous debts, without this falling under the banner of "state aid".

Subsequently, two Council's directives of 19 June 1995 made more precise the nature of the licences given to railway enterprises (95/18/EC), the allocation of railway infrastructure capacities and the collection of railway infrastructure charges (95/19/EC).

In 1996, the European Commission published a White Paper, "A strategy for revitalizing Community's railways" [COM(96)42 of 30 July 1996], and, based on this initiative, a new series of directives ('first railway package') were adopted on 26 February 2001 by the European Parliament and the Council. Directive 2001/12/EC, which reinforced the separation between infrastructure and transport operations, set up the rights of access to the trans-European freight railway network and, from 2008 onwards at the latest, to the entire European railway network for the international railway freight services. Directive 2001/13/EC set up a framework so that a licence given in a Member State be considered valid all over the EU; directive 2001/14/EC established a transparent framework for the allocation of infrastructure capacities and its tariff setting, requiring the creation of independent regulatory authorities.

On the basis of a new White Paper, "European transport policy for 2010: time to decide" [COM(2002)18 of 23 January 2002], a 'second railways package' has been passed in 2004. It aimed to reinforce the safety, the interoperability and the opening to competition for the international

15. Article 10: "1. International groupings shall be granted access and transit rights in the Member States of establishment of their constituent railway undertakings, as well as transit rights in other Member States, for international services between the Member States where the undertakings constituting the said groupings are established.
2. Railway undertakings within the scope of Article 2 shall be granted access on equitable conditions to the infrastructure in the other Member States for the purpose of operating international combined transport goods services.
3. Railway undertakings engaged in international combined transport of goods and international groupings shall conclude the necessary administrative, technical and financial agreements with the managers of the railway infrastructure used with a view to regulating traffic control and safety issues concerning the international transport services referred to in paragraphs 1 and 2. The conditions governing such agreements shall be non-discriminatory".

railway freight market on 1 January 2006 and for the whole freight railway, including domestic markets, on 1 January 2007 (directive 2004/51/EC of 29 April 2004), as well as the setting up of a European Railway Agency.

In 2004, several weeks before the adoption of the second railway package, the European Commission published the draft of the 'Further integration of the European rail system: third railway package' [COM(2004)140 of 3 March 2004], concerning the certification of train drivers, the rights of the international passengers of railway transport, the opening of the markets to the international passengers transport services (and the cabotage) and the quality of freight railway transport services. The package has been adopted in September 2007 and contains the following: the regulation 1370/2007 of 23 October on public passenger transport services by rail and by road, the regulation 2007/1371 on rail passenger rights and obligations, the directive 2007/58/EC of 23 October on the allocation of railway infrastructure capacity and the directive 2007/59 on the certification of train drivers.

The regulation 1370/2007 is the result of over a decade of debates through the European institutions to review and actualise the regulation of 1969. The European Commission's aim was that all railway transport services submitted to public service obligations be subject to a public service contract following a call for competition, no matter the management model – whether it is in house or delegated management to a private enterprise, a proposal refuted both by the European Parliament and the Council.

The regulation provides that "where a competent authority decides to grant the operator of its choice an exclusive right and/or compensation, of whatever nature, in return for the discharge of public service obligations, it shall do within the framework of a public service contract." The public service contract should clearly define the public service obligations imposed to the operator as well as the territory concerned and the counterparts agreed (art. 3). The regulation provided in the article 5 that:

> …"unless prohibited by national law, any competent local authority, […] may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority […] exercises control similar to that exercised over its own departments" ['in house' operator]. Any competent authority which has recourse to a third party other than an internal operator, shall award public service contracts on the basis of a competitive tendering procedure, except in cases specified in paragraphs 4 [where the average annual value of contracts or where the annual distance concerned are low], 5 [in the event of an emergency measure] and 6 [transport by rail, with the exception of modes such as metro or tramways]."

The European Commission followed the co-legislator's decision. But it reviewed its previous proposals with a working document [SEC(2011) 391] of 28 March 2011 accompanying the White Paper "Roadmap to a single European transport area: Towards a competitive and resource-efficient transport system" [COM(2011)144 of 28 March 2011], where it announced that it "will propose an initiative for the introduction of competitive tendering for public service contracts, aimed at ensuring the efficient provision of high quality services".

Meanwhile, a new communication of the European Commission of 17 September 2010 "concerning the development of a Single European Railway Area" [COM(2010)474] specifically emphasises that:

> "The rail sector is an environmentally friendly mode of transport which can contribute to establishing new forms of mobility that are energy-efficient and limit the risks of aggravating pollution, congestion and (particularly if non-fossil fuel generated electricity is used) climate change. It can deliver high-quality, reliable, safe and secure services and thereby facilitate the sustainable development of the European economy."

This Communication has emphasised the necessity of ensuring "a level playing field with other transport modes", in particular through "measures to internalise the external costs of transport in a

coordinated and balanced manner across modes so that the charges reflect the level of the external cost imposed on society at large" [cf. Communication on the Future of Transport - COM(2009) 279].

The new White Paper of the European Commission of 28 March 2011 on transport clearly aimed to favour rail transport, both for freight and passengers. It emphasises that "obstacles to smooth functioning of and effective competition in the internal market persist"; it insists on the necessity of creating "a genuine Single European Transport Area by eliminating all residual barriers between modes and national systems, easing the process of integration and facilitating the emergence of multinational and multimodal operators", more than on the application of competition rules in each transport mode. It also supports "a higher degree of convergence and enforcement of social, safety, security and environmental rules, minimum service standards and user' rights".

These aspects make railway transport, together with waterway transport, the transport mode that is the most adequate for meeting the EU objectives provided for in the treaties as well as in the EU 2020 Strategy.

In 2013, the European Commission has proposed the 'forth railway package' [COM(2013)25], containing six legislative proposals concerning in particular the opening to competition of national passenger transport markets, the improvement of the management of the infrastructure, rules, authorisations and quality of railway employment. The legislative procedure led to a political compromise between the Council and the European Parliament, concluded in April 2016. It agreed on the opening to competition of commercial passenger railway lines by December 2020 at the latest (in France, this applies mainly to fast speed trains - TGV) and of lines submitted to public service obligations by December 2023. The act was adopted in December 2016.

In its proposal for the fourth railway package, the European Commission has relaunched the idea of a compulsory tendering of all public service contracts, but the European Parliament and the Council required that, after 2026, the future regulation preserves the possibility for the organising authorities to choose between a direct mandate of the service operation and a competitive bidding.

The European Commission emphasises that opening to competition should become the rule and direct attribution of contracts the exception. In reality, the exemptions that allow the direct award of contracts are very large: small contracts, small markets, isolated networks, emergency situations… and especially if the contract awarded directly would improve the quality of services and/or the profitability compared with the most recently awarded public service contract. That ensures significant flexibility and consolidates the freedom of choice of organising authorities.

The Europeanisation of electricity

Since 1951, energy has been at the heart of the first treaty of European integration, which created the European Coal and Steel Community (ECSC). In fact, coal was the main energy used at that time, and it was of key importance during the reconstruction after the Second World War. The cooperation in the coal field appeared to be a major element for the economic development as well as for establishing the peace between France, Germany, Italy and Benelux.

We can find the energy topic in 1957 in a Euratom treaty signed in Rome between the six founding Member States to develop a cooperation in the field of the peaceful use of nuclear energy.[16] On the contrary, energy is lacking in the other treaty of Rome, which set up the European Economic Community and it was necessary to wait until 2009 to see coming into force of the treaty of Lisbon, which provides for a common energy policy.

What today seems difficult to understand was driven by structural realities. In the energy field, a se-

16. This treaty has been often presented as a model which could be drawn upon for a European cooperation in the energy field. See Michel Derdevet, L'Europe en panne d'énergie: pour une politique énergétique commune, Descartes, 2009.

ries of situations and issues exist in Europe. The primary energy resources are abundant or rare, and needs are very different according to geographic, economic or climate conditions. Some Member States had been energy exporters for a long time, such as Germany, while others had been mainly importers, such as France. These opposing interests and choices of their energy policies and the way they ensure the security of their supply explain why, from 1957 until 2009, Member States wished to keep energy policy under their purview, even if the European Commission made several proposals in the 1960s and 1970s to define common objectives.[17]

Energy is not a field that remained external to the process of European integration. In fact, after the Single Act of 1986, European institutions have developed a competency concerning electricity and gas not on the basis of a common policy, but to implement the four fundamental freedoms of movement (of persons, goods, services and capital), with the objective to build up an internal market of electricity and an internal market of gas, based on the progressive elimination of obstacles to trade, as well as on the improvement of the efficiency of energetic systems. But this process was not balanced in the beginning, as it was not accompanied by a common energy policy nor by European objectives of solidarity and cohesion.

The objective of free movement has led European institutions to put into question national, regional or local monopolies in all European countries ('historical monopolies'), to develop a process of liberalisation based on the progressive introduction of competition and to adopt internal market directives integrating the particularities of each form of energy, while at the same time leaving Member States the responsibility for conducting (or not conducting) privatisation.

Unlike other sectors, electricity must be produced from other sources of primary energy, which exist in different contexts according to the territory. Some Member States had many energy resources (coal and lignite in Germany and central Europe, gas in The Netherlands and oil and gas in the North Sea, as well as in France.).

At the same time, electricity can rarely be stocked, and it requires that at any moment the production facilitates the satisfaction of the demand that evolves greatly according to places, times and seasons. The networks of transport and distribution must ensure this equilibrium; but the cost of the transport of electricity is growing over long distances (because of losses). This involves also a strong cooperation between actors. This is the reason why all Member States have been led to implement integrated systems of production-transport-distribution, either at the national scale (as was the case in England, Italy and France) or at the regional level (Germany), with territorial monopolies so that the freedom of movement and internal market logic put into question. Furthermore, the physical networks of transport and distribution are essentially organised as a natural monopoly. In Europe, there are natural obstacles to exchanges (islands, peninsula, faraway countries) and very different characteristics of offers and energy systems. In fact, there are regional markets rather than a unified internal market. These diversities are structural, and they will continue to mark the situation for a long time, limiting the possibilities of a genuine, integrated 'internal market'.

The first directives of the Council on the transit of electricity between grids (90/547 and 91/296) has been adopted upon the request of France and in the name of the objectives of the freedom of movement. The aim was, in particular, to prevent Spain from banning the exportation of the electricity coming from France towards Portugal. It was only in 1996, ten years after the Single Act, that the Council agreed, on the basis of a Franco-German agreement, on a compromise allowing the adoption by the European Parliament and the Council of directive 96/92 adopted on 19 December 1996. It marked the first stage in the realisation of the internal market of electricity with a minimum

17. Memorandum on a common energy policy presented by the executives of the three Communities to the ECCS in June 1962; Project of directive concerning the realisation of the freedom of establishment and the free provision of services for self-employed activities in electricity, gas, water and sanitary activities [COM(1964) 350]; First Guidelines for a common energy policy presented to the Council in December 1968; Communication on a new strategy of energy policy for the Community transmitted to the Council in June 1974.

opening to competition for the big consumers, the access of third parties to networks, the possibility for States to define 'public service obligations' and a long-term energy policy.

Directive 2003/54, of 26 June 2003, follows the liberalisation process and provides for the opening of markets for professional consumers in 2004 and, for all consumers on 1 July 2007, provides the obligation of accountable separation of the legal separation of networks, as well as some universal service and public service obligations. Subsequently, directive 2009/72 of 13 July 2009 that was applied progressively in March 2011 and March 2012 recognises the capacity of Member States to define the criteria for the capacities of production, set up the principle of accountable separation of transport and distribution networks, provide the objectives, mission and competences of national regulatory authorities (tariffs of transport and distribution, trans-frontier cooperation, the monitoring of the investments plans of transport network management operators) and define the relationships with the Agency of Cooperation of Energy Regulators (ACER), created by regulation 713/2009 of 13 July 2009.

The rules of organisation of the sector have, as an objective, the need to develop a competitive internal market of electricity, which is safe and sustainable from an environmental perspective. It establishes the principle of the free choice of the provider by each user, with the network aiming to support its implementation.

In the field of public service and universal service obligations, article 3 of the directive of 13 July 2009 defines universal service: the right to be supplied with electricity of a defined quality, at reasonable prices, easily and clearly comparable and transparent and non-discriminatory. For the residential clients and eventually for small enterprises: "Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency, energy from renewable sources and climate protection". National consumers should have equal access to electricity enterprises; the protection of vulnerable clients is integrated; clients must have access to information concerning the nature of electricity at their disposal; Member States should impose measures to favour economic and social cohesion, the protection of the environment and the fight against climate change; and they should inform the Commission of the measures implementing the directive.

In October 2014, the European Council adopted the main energy objectives for 2030. Thereafter, a new package of legislative proposals in the field of energy was presented by the European Commission on 30 November 2016. Under the title "Clean energy", the package contains eight legislative proposals, of which four are on the functioning of the internal electricity market and the cooperation of European regulators in the framework of ACER. The implementation of the package looks to support the energy transition,[18] the development and creation of employment, particularly through new measures of energy efficiency and a 30% reduction of energy consumption by 2030, as well as the development of renewable energies so that their part in the European consumption attains at least 27% (or even 50%) by 2030 at a lower cost. The proposals also aim to create a more appropriate framework for more active involvement of consumers in the internal market ('prosumers') with a number of new rights to be conferred: to produce, to stock and to resale energy on a network, to participate in local energy communities, to contract with an aggregator of energy without the consent of the provider and to have access to at least one comparator of certified offers.

At the same time, the electricity sector has been the subject of intense reorganisations. The main 'incumbent operators', which had a national basis, have first (since the end of the 1990s) looked to compensate the opening – event-limited – of their internal markets. Then, they seek to take profit from the opportunities of the liberalisation by developing offensive strategies for conquering other

18. The first of the eight legislative proposals was adopted at the end of May 2018 – Directive (EU) 2018/844 of 30 May 2018 amending Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency.

European markets (exportations, acquisitions, fusions), at the point that an oligopoly of four big European groups (GDF-Suez, EDF, E.ON, RWE) are dominating and structuring the heart of the European market, even if other operators are active next to them.

Most operators, which, 20 years ago, were national or local public enterprises, are now organised under the statute of a private enterprise, and the majority of their capital is owned by private investors: while there is no legal obligation to privatise operators in the European directives, the dynamics of liberalisation and Europeanisation of the big operators progressively led national public authorities to do so.

The Europeanisation of the postal sector

At the moment of the creation of the European Communities, the postal sector was characterised by its historical development as national public sector where each postal service was based on different social, geographical, economic and policy situations of each Member State.

At the end of the 19th century, the creation of the Universal Postal Union (UPU) introduced a framework of international cooperation between the postal administrations to set up a unified global space at the universal level. However, the international norms adopted by UPU only governed trans-frontier postal activities[19] and did not seek, as a matter of principle, to regulate the liberalisation of the sector. On the contrary, by the exigencies they imposed, UPU's norms have been the source of some obligations for national postal administrations.

In Europe, the necessity to tighten the cooperation between the Member States of the ECSC was emphasised by the Conference of Messine and the Spaak Report. The context of the creation of the European Economic Community (treaty of Rome, 1957), the creation of a 'European Post and Telecommunication Community' had been considered, but the project was abandoned in 1959 when the European Conference of Postal and Telecommunication (ECPT) was created on a more large European scale, in the framework of a consolidated administrative cooperation, whose decisions were not mandatory for Member States.

During the subsequent decades, proposals were successively made at the Community level, aiming to put into place a certain postal harmonisation (simplification of tariffs, reduction of postal intra-Community tariffs, equalisation of tariffs within the Community, creation of a pan-European postal stamp, application of the national tariffs to intra-Community exchanges, instauration of a uniform price or of a specific Community tariff). At the same time, none of these proposals, essentially made by the European Commission or the European Parliament,[20] did not lead to decisions of the EEC for the postal sector.

Following the coming into force of the Single European Act, in September 1989, the Council of Ministers invited the Commission to prepare Community measures for the postal sector for the realisation of the internal market.

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19. The UPU Convention is revised by the Congress of the organisation every five years.

20. In 1965, the European Commission had been drafting a directive aiming for the introduction of a single tariff in the Community (converted into national currencies) for the letters up to 20g and postal cards (at that time, they represented about 80% of the correspondence); then, in 1991, in its Green paper on the postal sector, it proposed the creation of a European postal stamp. The idea of a supranational uniform stamp had also been discussed several times by the European Conference of Post and Telecommunication from 1959 onwards, and the European Parliament had returned on these proposals in a resolution and a report in the beginning of the 1980s, but these proposals were not retained.
More recently, in France, some opinions went further to imagine than when "the price of the stamp would be the same in France, in Germany, in Spain, in Italy, in Greece, the following question would be the fusion of the European posts". According to the same opinion, "it would be possible that the post become, in the future years, the first European public service" (Stoffaës dans Larcher, 2001, p. 51). Clearly, the process of Europeanisation, as implemented so far, did not join any of these paths.

Thereafter, several stages have preceded the adoption in 1997 of the first Community-specific legislation on the postal sector.[21] It was mainly the debate around the "Green Paper on the development of the internal market of postal services" [COM(91)476] which created a particular framework of discussion for the decision-making process in the postal sector and that had no equivalent in the energy or transport sectors.

This document primarily raised the question of the lack of harmonisation between the postal services of Member States and its implications for the internal market. It proposed the key principles for a Community action: to guarantee a universal service at affordable prices, reasonable quality and accessible to all and, as far as possible, a service open to competition. The Commission considered that three options are not compatible with these principles: a total liberalisation of the sector, a complete harmonisation and the *status quo*. For them, a more balanced approach should be favoured, based on a selective harmonisation to guarantee everywhere in the Community a universal service of quality combined with the progressive opening to competition of other services.[22] The process of public consultation on the Green Paper and the subsequent negotiations in the Council and between the Council and the Parliament followed this last approach and defined the level of harmonisation and the degree of competition admitted by all.

This decision-making process at the Community level had been organised at the same time as the international negotiations in the framework of the General Agreement on Tariffs and Trade[23] that were launched in 1986 in Punta de Este (Uruguay cycle, then Doha cycle) to try to enlarge the base principles of the liberalised trade to the international trade of service. The framework of this agreement, known under the acronym GATS and adopted in 1994 (four years later than originally anticipated), recovers postal services. Given that the international legal situation has been characterised by a tendency towards the opening of postal markets, "steps must be taken to ensure compatibility between Community regulatory initiatives and initiatives in other parts of the world, (…), and in this way to make it easier for European operators to gain access to markets outside the Community, and vice versa" [COM(95)227].

The proposal for a directive "for the development of Community postal services and the improvement of quality of service" was published by the Commission in 1995. After long debates with the European Parliament and the Council, it was adopted on 16 December 1997 (directive 97/67/EC). The directive defines an ambitious minimum universal service and it allows Member States to implement a maximum partial "reserved sector" (monopoly) so as not to surpass what is needed to ensure the financing of the universal service, as well as a timetable for the continuation of the liberalisation process. The second postal directive 2002/39/EC of 10 June 2002 has mainly limited the reserved

21. Beforehand, the general principles of law were applied in decisions and interventions linked to postal services, in particular, the free movement of goods and services, the restrictions of freedoms for non-economic reasons of general interest, the rules of competition and the principle of neutrality (art. 222 TEC). Thus, the legal situation of the postal monopoly has evolved since the 1980s and the intervention of the European Commission could play an important role (see, in particular, the case law regarding the legal statute of express services, which had been taken out from the monopoly of the postal administration to be qualified as non-standard services, but value-added services and therefore non-reserved). Then, in the beginning of the 1990s, a reflection had been offered on a potential choice of article 90, paragraph 3 of the treaty, as a legal base for the directive's proposals. However, the European Parliament required the fact that article 100A of the treaty constitute the unique legal basis for future proposals, taking into consideration that the measures should be adopted by the European legislator and that the European Parliament should be fully associated to the legislative process. See, for instance, the Resolution on the Green paper on the development of the internal market of postal services of 22 January 1993 and the Resolution on the single market of postal services of 22 June 1993, Resolution, as well as the Resolution on postal services of 29 October 1993.

22. The postal sector was already partially liberalised (according to the Green Paper, about 50% of revenues were realised in non-reserved sectors – in particular by parcel post services and, in some Member States, by express services, direct mail and trans-frontier mail).

23. The GATT was created after the Second World War and it was replaced by OMC in 1994.

sector and completely liberalised the trans-frontier mail starting from 1 January 2003, save for justified exceptions to maintain universal service. The third postal directive 2008/6/EC of 20 February 2008 constitutes the final stage of the process of progressive opening of the postal market, but preliminary works are in progress to prepare the modification of the directive as regards the universal service (proposals expected in 2019 or later). A harmonised perimeter of liberalisation of the postal sector has resulted in a minimum level of universal service and some quality criteria as regards trans-frontier postal service.

According to the directive, as amended, universal service:

- … "guarantee(s) every working day and not less than five days a week, save in circumstances or geographical conditions deemed exceptional by the national regulatory authorities, as a minimum:
- one clearance,
- one delivery
- to the home or premises of every natural or legal person or, by way of derogation, under conditions at the discretion of the national regulatory authority, one delivery to appropriate installations."

Universal service:

- …"includes the following minimum facilities:
- the clearance, sorting, transport and distribution of postal items up to two kilograms,
- the clearance, sorting, transport and distribution of postal packages up to 10 kilograms,
- services for registered items and insured items.

The national regulatory authorities may increase the weight limit of universal service coverage for postal packages to any weight not exceeding 20 kilograms and may lay down special arrangements for the door-to-door delivery of such packages." (Article 3 of the directive 97/67)

Universal service contains both national services and trans-frontier services and it provides that "it shall not be interrupted or stopped except in cases of force majeure".

Therefore, universal service represents an important part of the postal service, which concerns the most traditional postal task of historical operators.

The directive also allows the Member State to: define quality norms for the service;[24] ensure procedures for dealing with users' complaints and settling disputes with provision, where warranted, for a system of reimbursement and/or compensation; designate an operator as universal service provider; guarantee "compliance with the essential requirements", including the respect of working conditions and social security regimes, the respect of collective conventions, environment protection and spatial planning; guarantee identical service to users under comparable conditions (equal treatment) and without any form of discrimination whatsoever, especially without discrimination arising from political, religious or ideological considerations and evolve in response to the technical, economic and social environment and to the needs of users; and decide a uniform tariff to be applied throughout their national territory for each of the services that are part of the universal service and guarantee its affordability for all users.

24. The quality of the postal service appears as an essential component of the directive 97/67/EC, which evokes event in the title. The quality norms focus in particular on the delivery times, as well as the regularity and the reliability of services (art. 16). The norms of quality defined at each national level have to be "compatible with those laid down for intra-Community cross-border services" (D+3 for 85% of mail and D+5 for 97% of mail. The objective D+3 for 85% of the correspondence is the same as the objective established in an informal way by the ECPT for the trans-frontier mail (yet, it seems that at the beginning of the 1990s, the trans-frontier intra-Community performance of postal correspondence averaged around 40%, the objective fixed by ECPT being non-compulsory). The Member States can define more demanding norms of quality.

It requires that: "[…] the Member States shall take steps to ensure that the density of the points of contact and of the access points takes account of the needs of users" (article 3, paragraph 2). But it leaves the Member States the freedom of choice as to the criteria of access to postal points.

The possibility to finance the overhead costs of the universal service by the existence of a reserved sector for a part of the service has been cancelled, but the text offers large room for manoeuvring as regards the financing on the occasion of the transposal of the directive. This involves precisely calculating the overheads, then defining its mode of financing and compensation. Thus, the directive allows public subventions, the financing of the service by users or a 'play or pay' system where a new entrant or a potential competitor engages itself either to respect and assume all universal service obligations under the same conditions as the historical operator or to pay a fee to a compensation fund (a percentage of its turnover), calculated on the engagements it takes, to balance the conditions of competition.

The choice of the tariff practices as regards the universal service remains within the national discretionary powers, in the framework of principles of tariff-setting posed by the directive (in particular, article 12):

- affordable price "such that all users have access to the services provided", and possibility of free postal services for blind and partially sighted persons;
- price geared to costs inciting an efficient management, but possibility to apply a uniform tariff throughout the national territory and/or cross-border mail, as well as individual tariff agreements;
- transparent and non-discriminatory tariffs, including in case of special tariffs, for instance for services to enterprises, bulk mailers or consolidators.

Among others, the directive provides a mechanism allowing the European Committee for Standardisation (CEN) to develop and adopt harmonised norms necessary for the improvement of the interoperability of postal networks and the quality of the services provided to users, as well as for the standardisation of measurement systems. In fact, since 1996, the CEN has received a demand for the adoption of European norms for the postal sector (mandate M/240 for the CEN/TC331). The first European norm in the field of postal sector was adopted in 2000,[25] and other norms have been approved since then.[26]

As regards postal operators, the postal directive mainly requires Member States to ensure that "transparent, non-discriminatory access conditions are available to elements of postal infrastructure", "whenever necessary to protect the interest of users and/or to promote effective competition, and in the lights of national conditions and national legislation".

A decision from the European Commission (2010/C 217/07) of 10 August 2010 set up the European Group of European Postal Regulators to support and assist the Commission in the developing of the internal market of postal services, for a uniform application of the European regulatory framework in all Member States and the consultation of market actors, consumers and users.

In 2015, the Commission launched a consultation on the distribution of cross-border packages to prepare a legislative proposal in the context of the growing importance of this postal market segment as a consequence of the development of e-commerce. Regulation 2018/644 of 18 April 2018

25. PR XP ENV 13712.

26. The whole list is available here: https://standards.cen.eu/dyn/www/f?p=204:32:0::::FSP_ORG_ID,FSP_LANG_ID:6312,34&cs=1D2E-3D18A259B3783FCC5B0462DD56638

on cross-border parcel delivery services mainly aims to render these services more affordable[27] by instituting transparency, evaluation and information obligations as regards tariffs (for postal operators having more than 50 employees), as well as to give public authorities reinforced means for the regulation of the market. Each year, by 31 March at the latest, the European Commission has to publish a neutral and non-commercial Internet site with public data concerning the tariffs gathered by national regulatory authorities.

This regulation mainly provides the obligation for the providers of parcel delivery services to communicate to the national regulatory authority of the Member State in which they are established information concerning the number of persons working for them, including breakdowns showing the number of persons by employment status, and, in particular, those working full-time and part-time, those who are temporary employees and those who are self-employed. The implementation of this obligation, even if it covers only a part of the operators, would ensure a better knowledge of social evolution, in light of the fact that directive 97/67/CE does not provides similar provisions.

27. Today, the prices for the trans-frontier postal service are three to five times more expensive that the internal prices, and a significant part of the difference cannot be explained by the difference in the cost of delivery (for instance, a package sent from Brussels to Cologne costs 16 euros, while a package sent from Munich to Berlin costs only 4 euros; or sending a package from The Netherlands to Spain costs 8.73 euros, while the cost of expedition of the same package from Spain to The Netherlands is 30.37 euros).

2ND PART
EUROPEANISATION AND ITS EFFECTS

NATIONAL MONOGRAPHS

The annex contains the four country monographs prepared by researchers from each country. They put into perspective the effects of European liberalisation policies in each of the three sectors covered by this study.[28]

These monographs appear to be marked in depth by national characteristics and histories. Therefore, the same European rules and directives coexist with modes of organisation and regulation that are often very different between Member States, which allows them to take into account the diversified expectations of the various stakeholders.

These monographs refer to "long histories", to both changes and historical continuities, to relationships and tensions between diversity – linked both to history and to the wishes of Member States – and unity of converging trends and common values.

Slovakia

Slovakia is the last Member State of the four countries in our study to have joined the European Union, in May 2004.

It is important to stress here the extent of the changes experienced by this country in the centre of the European continent in a few years. After having imposed a totalitarian system from the "Prague coup" of 1948 to the "velvet revolution" of 1989, including the repression of the "Prague Spring" of 1968, the country embarked in 1990 on the path of "*désétatisation*", with what is known as "big" and "small" privatisation, the search for a path towards a "market economy", the separation from the Czech Republic in 1993, the aim to join the European Union, which will involve the accelerated

28. Their content binds only the respective author(s).

import of the "acquis communautaire"[29] until their accession in May 2004 and the fulfilment of the conditions to join the Euro Zone in 2009.[30]

It is easy to understand that in such a national historical context and with a dominant tendency in the European Union to promote liberalisation, most Slovak actors have embraced this dynamic. Not only because of the "pendulum" effect, as a counterpoint to the forty years of bureaucratic, over-regulatory and paternalistic "*étatisme*", of egalitarian and very cheap, kinds of "low cost" before their invention..., often poor and inefficient "state monopoly public services", but also because in the history of Slovakia there has not been an established doctrine of "public service" that could serve as a reference.[31]

This has been firstly reflected in the aim to "restore" the ownership of public operators, sometimes by opening up to investors and operators from other European countries, most often by breaking up property ownership.

Data and references collected in this monograph do not paint an idyllic picture of the current situation of services of general interest in Slovakia, but point to real improvements compared to the previous situation:

- the possibility of freedom of choice for users in certain segments of the postal sector, but also the alternatives offered by the entry of new operators into the rail sector;
- better consideration of users, with, for example, the creation of an ombudsman in the postal service, or, in the electricity sector (although of less importance in terms of heating), the attention to the problem of fuel poverty, which was not a concern of public action during the totalitarian regime;
- certain improvement in the quality of supply and services, either by modernising the services provided by the incumbent operator, as shown by the situation in the postal sector, or by new services offered by new operators; quality assessment is also developing, in all sectors, even if in a heterogeneous way;
- prices, of course difficult to compare with the previous situation, but which remain accessible; in addition, free rail transport for certain categories of passengers encourages the use of public transport;
- regained investment capacity for operators and even profitability for the state shareholder; thus, price regulation and the compensation scheme for the universal postal service, together with the renewed management of the service, ensure not only a certain improvement in the service, but also, in recent years, the profitability of the public company.

"Liberalisation" as presented and analysed is neither "savage" nor "ultra". The elements of competition that have been introduced remain limited and, at this stage, they appear to be more of a stimulus to improve the quality and efficiency of services. In addition, competition can develop in differentiated way, depending on whether customers are professional or private, as shown by the situation in the electricity sector.

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29. As far as SGIs are concerned, there is only Article 90 on the possibility of not applying the competition rules if this prevents the fulfilment of their particular tasks, and Article 16 of the Treaty of Amsterdam mentioning their place within the "shared values" and their role in ensuring social and territorial cohesion, without direct legal effect, but not yet the effect of the Charter of Fundamental Rights which was only "proclaimed" in 2000, and of course neither Article 14 and Protocol 26 of the Treaty of Lisbon, nor the 2017 Social Rights Pillar.

30. Euro was introduced on 1 January 1999 in 11 Member States of the EU (Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Portugal and Spain), then in Greece on 1st January 2001, Slovenia in 2007, Cyprus and Malta in 2008, Slovakia in 2009, Estonia in 2011, Latvia in 2014 and finally Lithuania in 2015.

31. Not during the Austro-Hungarian Empire, nor in the period between the two World Wars, nor during the totalitarian period.

However, the monograph highlights the need for active regulation, as evidenced by the experience in 2012, when energy price regulation had been stopped for small businesses, as it led to uncontrollable increases, or by the need to introduce regulatory mechanisms that encourage more efficient operation of services. Similarly, the monograph shows the obstacles that former state monopolies tend to place, under various forms, to the regulated entry on markets, underlining the need for specific competition regulation.

Competition, especially if as many stakeholders desire obstacles to the entry of new operators to continue to be removed, can only lead to polarisations and the development of inequalities, which would involve both national and European public initiatives and policies.

Germany

The contrasts are striking between Slovakia and Germany, one of the six Member States of European integration, from the ECSC of 1951 to the Treaties of Rome of 1957 (EEC and Euratom, including the failed CED project), whose successes, particularly economic and monetary, are significant.

Although, only by considering a long period of time can we understand the challenges that have led Germany to the current situation.

First, it was the accelerated integration of the GDR from 1990, whose characteristics were close to Slovakia, with the obligation to adopt the Western German economic and social model, the new Eastern Länder, the parity of the marks. Thus, the monograph points out that the former structures of the GDR have been integrated into the existing structures of the FRG.

Secondly, the essential fact that Western Germany, which is engaged in the construction of Europe, had suffered two successive defeats, was occupied by the three winning countries, and its infrastructure and economy was seriously destroyed. Unlike France at the time, whose reconstruction had been led by the centralised State, Germany would only build a central, federal, less interventionist and decentralised state, based on the principle of subsidiarity, because the allies wanted to avoid the return of the *konzerns* of the Third Reich. We must also take into account the effects of the 1929 crisis and the hyperinflation of the 1930s, the conditions that led to Nazism.

The reconstruction of the Federal Republic of Germany take place in this highly constrained context and had be cemented in a highly consensual way by the political-economic philosophy of the "social market economy", of "ordo-liberalism".

In the context of the dominant post-war Keynesianism, the German doctrine is neither that of the French-style orchestrator and actor state, or the minimal and ultra-liberal state conceived by Hayek, but a state (at the federal-Bund level, as well as at the Länder-State level) that guarantees both economic, political, organised and temperate liberalism.

In a nutshell, ordo-liberalism is both:

- a strong state that sets the rules of living together and the general interest, ensures their implementation and control, trusts its members, stimulates more than it acts itself;
- the principle of subsidiarity to govern relationships between human communities and public authorities, consisting of assigning responsibilities at a level that is better able to assume them than each actor acting separately;
- sound and balanced public finances, a monetary policy focused on price stability;
- the development and monitoring of fair competition rules between economic actors, avoiding distortions, monopolisations and subsidies, promoting emulation and innovation;
- opening up to world markets and trade and reducing forms of protectionism;
- the organisation of civic, societal and social dialogue and participation, to decide and implement forms of exchange, negotiation and public space in the company and the city, to adapt

the rules of public space to changing situations and needs, thus giving trade union organisations (the DGB at the inter-professional level, Ver.di in the services sector[32]) an important recognised and organised role;

- ✦ openness and integration.

From this perspective, "public services" are not subject to legal, economic and political doctrines as is the case in France (see below), but to a pragmatic vision, which can be summarised in the expression *Daseinsvorsorge* (literally, social welfare services).

The organisation of the electricity system since the Second World War clearly reflects this complex and evolving "alchemy". Today, there are more than 4,000 operators, some private, such as the oligopoly of the four main electricity producers and transporters, with demarcation-cooperation agreements between them, others public or mixed, such as municipal companies (*Stadwerke*). Thus, the creation of a national monopoly that could abuse its dominant position is avoided, while, on the one hand, a certain oligopolisation exists at the national level and, on the other hand, local actions are rendered possible.

These structuring references of German economic and social life shed light on the precise data, knowledge and contributions that researchers at the Competence Centre on Public Economics and Public Services in Leipzig have gathered for the German monograph.

They point out that after thirty years of implementation of liberalisation policies, the current situation remains marked by a *de facto* quasi-monopoly in the rail sector, a dominant oligopoly in electricity, yet confronted with the challenges of the energy transition, a universal service guaranteeing the monopoly in the postal sector. Under these circumstances, the monograph focuses on the removal of the various existing obstacles to the introduction of competition if one really wants to appreciate the effects of a liberalisation which remains limited today.

But the situation in Germany, as in other European countries, shows that in the infrastructure network sectors studied here, there can be no situation of pure and perfect competition, but rather, of combining forms of monopoly where necessary, and competition where it can stimulate operators to improve their efficiency and establish the best price-quality ratio for users.

The monograph shows that the liberalisation process is progressive and leads to constant and specific adjustments in all sectors, under increasingly complex influences.

Competition has developed, even if unevenly, and remains higher in certain sectors or market segments (for example, in rail transport, more in freight than in passenger transport, more on regional lines than on national lines; in postal transport, more in relation to business customers than to individuals and more in parcel services than in courier services; in electricity, especially in marketing and in the production of renewable energy).

Services of general interest are more precisely defined at the normative level, and new guarantees are emerging (e.g. for people with disabilities).

Qualitative aspects and user needs are increasingly being taken into account, integrated and formalised in all sectors (normative requirements, commitments and indicators, rights and guarantees, investments and new technologies), even if changes have not always guaranteed them equally and/or universally and in terms of cohesion. The monograph points out that not only improvements, but also setbacks, can be observed.

The regulation for economic performance is developing, as shown, for example, by the incentive regulation of electricity charges to optimise investment conditions and productivity, as well as the

32. See Marie-Hélène Pautrat, "Ver.di : un géant sans cohesion", in Isabelle Bourgeois (dir.), Le modèle social allemand en mutation, CIRAC, Cergy-Pontoise, 2005, p. 87-92 https://books.openedition.org/cirac/718?lang=fr

contractual performance and investment framework between public rail operators and the federal government. The economic capacity of the incumbent national operators seems to have improved, and their profitability has developed.

Environmental protection, even if it does not have the same weight in all sectoral policies and is developing in a tension with the ancient approaches, is becoming an increasingly important objective, particularly in the field of energy, where renewable energy producers have guaranteed a positive discriminatory right of access to the electricity grid.

Spain

The Spanish monograph presents a situation and developments that are just as unique as those of Slovakia and Germany.

Spain was part of the European Community enlargement on 1 January 1986, showing a profound change after the dictatorship of General Franco (1939–1975). The country has been marked in the field of public services by a highly interventionist, internationally isolated and protectionist model, with monopolistic, state-owned enterprises. In the early 1980s, they accounted for two-thirds of the total value of the country's industries.

The monograph shows that given this legacy, the first decisions of the Spanish authorities were to initiate policies of privatisation of public assets as an instrument of liberalisation, first during the 12 years of government of the Spanish Socialist Workers' Party (1984–1996) and then of the People's Party (1996–2004), demonstrating a broad consensus for a "désétatisation" of the economy and society.

The monograph highlights a specific Spanish feature: the merger of the national sectoral regulatory commissions – as there were in most European countries – into a national commission on markets and competition (CNMC) in 2013. It has been conferred very broad scope of competence, but is focused on the promotion and application of competition rules, with powers of sanction.

Nevertheless, in the three sectors of our research, the monograph points out that even if there is a large number of new players in markets of general interest, they have not succeeded in gaining market shares that threaten the hegemonic position of the former monopoly or oligopolies in the respective sectors. In the electricity, postal and railway sectors, there is no real competition, prices are artificially high and the main changes have been imposed by the administration's regulatory measures.

However, the monograph highlights the reality of some changes that have occurred, such as:

- the development of rail service quality measurement,
- the existence of partial competition in the urgent and industrial postal sector, as well as on economically viable rail lines,
- the need to develop measures for vulnerable customers in the electricity sector.

The small number of key operators in these markets means they constitute important and powerful groups of companies, both economically and politically. Network ownership, although conditioned by specific industry regulations, offers its owner a dominant position and the possibility of abuse: delays in access management and delaying barriers explained by technical reasons because the network operator serves competing companies.

For each of the three sectors, the monograph seems to focus on "arrangements" between actors and with the administration to limit or temper competition, in which public service objectives and missions play a secondary role. This is reflected in the monograph's emphasis on the circulation of former ministers and presidents among the boards of directors and management of large electricity companies and the highly politicised appointment of CNMC directors.

The monograph emphasises the questioning of the transition from traditional public service criteria to the new concept of "activities of general interest", "essential services" or "services of general interest", which may resemble the Spanish and French situations. In Spain, for example, there is a high level of dissatisfaction and mistrust among electricity consumers, according to the latest "Consumer Markets Scoreboard" published by the European Commission (2016). This service has deteriorated significantly in recent years and is at the bottom of the list of services analysed.

France

In this context, the case of France may be seen as "exceptional", singular or truly particular.

It is the continuity of a highly centralised state – despite nearly 40 years of "decentralisation" – and the driving force behind its development, and of a related regulatory organisation, characterised by the important weight of the senior civil service, in particular, polytechnic engineers and *enarques*, that has profound impact on the organisation and functioning of the state and national public services.

The three sectors covered by this study – railways, electricity and postal services – are emblematic of the French "industrial and commercial public services".

This subcategory had been developed in the 20th century to distinguish it from "administrative public services" because of the "industrial", "economic" or "commercial" nature of their activities and because their financing is based more on user participation than on the budgets of the state and/or local authorities.

This model of national "public service" entrusted to large national public companies (an attempt to converge organic and functional objectives), the cementing of the nation, the Republic and citizenship, remained stable for 50 years, until the recent changes in the legal status of the three historical operators. They were the driving force behind reconstruction after the Second World War and the economic and social development of the "Glorious Thirty", innovations and modernisations (electricity, TGV) and were the subject of general user satisfaction.

Designed, defined, organised and financed as part of nation-state building, they are often considered part of the "national heritage" or "republican values".

They have been confronted with the European construction, other histories and modes of organisation, as well as processes of Europeanisation, but most stakeholders firstly had defensive reactions: why would the EU "force" us to change a "system that works well"?

During the 30 years that separated the 1957 Treaty of Rome from the 1986 Single Act, France promoted the idea of maintaining national competences for each of the fields concerned; then, in the years following the Single Act, it tried to block any proposal for European rules based on the internal market (in electricity until 1996, for postal services until 1997 or, as regards rail transport, by not seizing the potential for transnational cooperation and the cancellation of SNCF's debt opened by the 1991 Directive (91/440) and by refusing to include in the public service tasks freight railway, on the one hand, and high-speed trains, on the other, on the grounds that it was a "beneficiary" activity).

But the monograph shows that we have seen a gradual increase in the power of another strategy consisting of exploiting the possibilities of Europeanisation in favour of French interests and operators, as with the 1990 "transit" electricity directive, using the "internal market" approach to develop EDF's exports.

Then, the strategy was more offensive around the objective of promoting the "French champions", their European deployment, in the context of European liberalisation. Thus, France did not limit itself to defend the EDF's interests as best it could in the electricity sector, but organised the merger

of Gaz de France and Suez - now Engie - to form a second major French-based group that could claim to be part of the European oligopoly that structures the market, together with the German groups RWE and E.ON.

Very quickly, France organised the change in the status of its national champions, in order to turn them into "companies like many other", multinational service companies[33], with certain public service missions, public service or universal service obligations, which some consider to be a legacy of the past rather than a solid foundation for their development and of the society.

The monograph points out that compared to some European countries, France has experienced rather "temperate" liberalisations over the past 20 years. There was no frontal questioning of the fundamental characteristics of public rail transport, electricity and postal services, but there was a series of specific reconsiderations:

- Trends manifested towards the quantitative and qualitative degradation of rail transport, freight having been more affected than passenger transport, whose regionalisation has enabled real redeployments.
- The essential achievements of the public electricity service have been maintained, even if we have seen an increase in fuel poverty, as well as the still-cautious development of renewable energies and self-consumption.
- The public postal service is facing increasing profitability and disengagement, but the debate remains open about the future of its network.

These aspects, which have been somewhat cushioned from the threats, are due to a combination of factors: the attachment of the French population to public services and their achievements, trade unions, local authorities and civil society organisation mobilisations to resist the most significant challenges.

However, the trend towards increasing degradation requires more than just defensive measures. It would probably be necessary to build on the diversity of situations and needs to rebuild the public service of the 2020s and beyond...

THE EFFECTS OF THE LIBERALISATION

While most analyses tend to be developed in a sectoral framework – for instance by the Commission, the European Parliament (with the exception of the Public Services Intergroup), the EESC (with the exception of the SGI permanent group), and most of the European regulation – the interest of our study is, thanks to the national monographs, to cross the sectoral and national dimensions to try to approach a holistic vision of the Europeanisation of the public services – services of general interest and the effects of the liberalisation.

The effects of the Europeanisation of the three sectors in the contrasting European countries we have chosen, in particular, the "liberalisations" decided by the Community institutions, are particularly difficult to dissect and analyse.

The changes that have taken place in these sectors over the past 70 years combine multifaceted

33. According to a joint press release issued by SNCF, Blablacar and Ouibus on 12 November 2018, "The European carpooling leader Blablacar entered into exclusive negotiations with SNCF for the acquisition of 100% of Ouibus and SNCF's stake in it, SNCF is joining forces with Blablacar to develop multimodality", an operation worthy of a capitalist company, reminding us of another instance, when SNCF had invested in the Italian railway company NTV, which had long been in deficit. SNCF finally threw in the towel at the worst possible time, just before a spectacular recovery and a recent buyout at high prices by an American investment fund. On this occasion, SNCF lost 100 million euros. SNCF's strategy is increasingly similar to that of a multinational company. It should be recalled that the stated objective is to have 50% of its turnover in France, 25% in Europe and 25% in the rest of the world.

transformations – technical and technological changes, evolving economic approaches, adapted user needs and expectations, social relations and environmental interactions – each with its own logic and dynamics, which can hardly be unravelled and individualised.

The national monographs show the diversity of situations in each of the Member States at the dawn of the 2020s, even though, for decades, "common rules" have been decided, which the aim to achieve "internal markets".

However, we try to disentangle from this maelstrom some general trends, to approach the effects of the liberalisation process in three areas: social, economic and financial and societal.

Economic and financial effects

Today, in each of the four Member States, the situation of the three sectors is very different from what it was at the end of the 1980s, when there were national or regional and public, mixed or private monopolies.

The general trend towards the opening of markets, the introduction of forms of competition, the Europeanisation of strategies and initiatives of operators is at work. But nowhere has this trend led to complete deregulation or savage forms of "deregulation".

Everywhere there are new rules, just as numerous and binding if not more so than before, national regulatory authorities – and increasingly coordinated at European level, to ensure, frame and control the conditions of competition, to define, develop or guarantee public service or universal service tasks or objectives and to uphold the principle of non-discrimination, among others.

In each sector, there are new operators, sometimes several hundred or tens (for instance, in the railways sector in Germany or in the postal sector in France and Spain), but barriers to entry prevent real "pure and perfect markets". The tendency is rather to the oligopolisation of markets, with 3 or 4 dominant and structural operators (often the old historical operators), and tendencies for the most important ones to leave their national territory of origin and to develop at European level.

In fact, how should we measure competition? By taking into account the number of operators on the market or the number of authorised operators? But this means putting on the same level a multinational and a small, local marketer. By the number of users who change their operator? Yet, remaining in contract with the same operator can come not only as a consequence of user satisfaction, but also of the barriers that incumbent operator puts at the entry of competitors. In fact, there is no single and simple indicator that provides a true measure of competition, and national reports rely on a variety of available data.

Everywhere, national historic public operators have seen their legal status changed to become "limited companies", 'companies like the others' – the largest of them diversifying their activities and intervention spaces to compensate for their loss of market share in their country of origin or to ensure their growth. But these changes in legal status – and often in this context of the aims and objectives of the companies – have always been decided by the national public authorities, without any binding obligation coming from the European institutions.

The tendency towards oligopolisation tends to become European, as we find the same groups of services or even multi-services, seeking to deploy strategies for the production of value at the level of the European Union.

Competition is instead developing on geographical, technological or social 'niches', which make it possible to 'skim' the most profitable sub-markets, at the risk of unbalancing the universality of services and the financing of the PSO/USO.

More generally, it is necessary to consider the field to be opened up to competition. Since the 1980s, the European approach has consisted of defining "common rules" for each of the "internal

markets", taking into account the specificities of each activity, but to the point of giving priority to the introduction of competition within each sub-sector. The most significant example is that of transport, where the introduction of competition within each mode of transport has been promoted, the effects of which in rail are essentially limited to providing incentives for operators' efficiency, rather than taking into account intermodal competition between rail and road, with very unequal conditions, particularly for freight. Similarly, in the energy sector, European rules first concerned the internal electricity and gas markets, then energy efficiency and the development of renewable energies – elements that are currently insufficiently linked in the "Energy Union". In addition, most major operators have developed value generation strategies that go beyond the narrow scope of sectors or sub-sectors.

Social effects

In the area of social relations, employment and working conditions of employees, the trend is not towards widespread social dumping or massive reductions in the number of jobs in the sectors concerned, but rather to put into question previous employment and/or 'status' conditions and to the development of forms of 'job precariousness' (temporary employment, mini-jobs, self-employed work, reduced wages and/or internal training, more frequent professional conversion), sometimes in conditions of increased profitability of companies.

For example, part-time work is developing in the public postal sector in France and Germany, at the same time as it remains far from being as developed as in the private sector. However, the public sector somehow 'internalises' such social situations when it contracts or subcontracts with the private sector concerned.

The transformation of the legal status of public operators is accompanied by the gradual transition from public law employment status to private employment status, including lower pay levels, but also a level of training that might not always be as demanding. More generally, the private sector has become an increasingly important supplier to the public sector, even though some outsourcing practices have been developing for several decades and are not specifically linked to the liberalisation process (see in particular the outsourcing of maintenance works in the French nuclear power sector).

The larger the share of labour in the economy of a sector (as in the area of postal sector distribution), the more the productivity gains risk to encroach on labour, sometimes favoured by new technologies (for example, mail-sorting technologies that replace manual sorting).

At the same time, new technologies or the creation of innovative services can foster job creation.

Thus, the German report mentions a higher level of employment in the public and private sector of renewable energies, whereas the weight of these energies in the production of energy is lower; this is because the sector is supported by significant public policies and funding. In the future, an important development of energy 'prosumers' would also have a significant impact on the labour market.

The development of the railway transport due to environmental considerations could also lead to increased employment, especially in the public sector, which is dominant is this field (for example, Deutsche Bahn has created more than 20,000 jobs between 2012 and 2017). At the same time, in the Spanish case, there are the alternative operators who invest in rail freight, thanks to the opportunities created by liberalisation, at the same time as the activity of the public operator was declining.

In the postal sector, the development of e-commerce leads to the development of parcel delivery and distribution services, even if these services are partly integrated directly with merchants. In this sector, innovative services favour the entry of start-ups on the market.

Societal effects

The introduction of even progressive, controlled and regulated forms of competition and market logic spontaneously leads to the development of trends towards social, territorial, generational and environmental polarisations.

Operators' value production strategies lead them to implement social segmentation of markets, therefore challenging the previous principles of equal treatment, which are part of the common values of the EU and its Member States.

But social segmentations may ultimately jeopardise both universal access to services (for instance, in the 'sensitive areas' of the suburbs of some large cities) and their affordability.

In all sectors, budgetary rules and cost-based service funding have led to a steady increase in user fees. The affordability of services requires in-depth studies. It seems to be less integrated in public policies than other economic considerations such as the efficiency, productivity and profit of operators ('reasonable' profit according to state aid rules). There seems to be no articulation between these considerations and the affordability that ensures universal access to services. Not only are regulated prices rising, but price liberalisation does not necessarily lead to lower bills for users (sometimes due to additional taxation to support other public policies in the sector, for example, to support renewable energies).

In fact, the guarantee of universal access to SGEIs tend more and more to be ensured not by their affordable character, but, at least for some users, by the development of a social policy targeting a small part of those in need (the poorest – policies of fuel poverty following its inclusion in the electricity directive,[34] free universal postal service for blind people that is admitted by the postal directive), by the change in consumer behaviour (reduced energy consumption, less use of transport services), through the empowerment of consumers. The emerging trend is that of the disengagement of previous forms of internalisation of social solidarity, even if national monographs identify the survival of some old approaches (for example, free rail transport for all children, students and pensioners in Slovakia, whomever provides the service, whether public or private operators). In these cases, all taxpayers cover the costs of the service. However, in a liberalised environment, as shown by the Spanish report for the postal sector, a regulated price that is too low can become a barrier to competition and market entry since competitors cannot ensure their economic viability below a certain price level, whereas the public subsidy is granted only to compensate for the low price of the universal service for which only the incumbent operator is responsible.

However, competition may have contributed to developing services at lower prices in some market segments. For example, the delivery of parcels in relay or automatic delivery points costs less for the recipient, since he does not benefit from a distribution at home but has made the choice to recover directly his parcel at the point of delivery. In the electricity sector, there are more and more alternative distributors and regulations aimed at promoting their entry into the market and offering lower rates. However, until now, tariff cuts have not been high enough to encourage a significant switch of operators. And the change of operation is not always the guarantee of a lower price, with the Spanish case showing that many customers who have changed their operator have had to pay higher prices because of false advertisements. Such practices raise the question of the regulation of the relationship between consumers and operators.

In the liberalised context of other sectors (air transport, communications, high-speed rail), we have also seen the development of 'low-cost' pricing systems. While these systems allow certain users in certain circumstances (upstream purchases, promotions, bonuses) to be able to access lower or very low rates, they do not guarantee universal affordability because they do not ensure either equal or

34. A website of the European Commission gathers measures implemented by Member States: https://www.energypoverty.eu/policies-measures

fair access (access to these rates is not necessarily proportional to users' financial capacity).

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The same phenomena of segmentation tends to develop at the territorial/local level. The example of "white areas" and "grey areas" of telecommunications networks is well known. But we also tend to find the effects of market segmentation both in the French debate on the maintenance of "small railway lines" and in the abandonment of rural areas by German rail operators, as well as in the progressive disengagement of postal offices from rural areas.

In two other areas, the trends are peculiar, but have the same consequences in terms of polarisations. The introduction of competition, market logic and variations in financial results or share prices lead to an attempt to limit spending. This can lead both to pressure on the wage bill (jobs and salary conditions), to limit or postpone research and development spending that has only long-term profitability and to reduce maintenance expenses or future investment. All these elements tend to favour short-term gains over long-term goals and therefore over the real sustainability of the service and the interests of future generations.

In the same way, these logics develop tendencies to externalise as much as possible the negative consequences of the activity of the operator on his environment, which raise the problem of the socialisation of negative externalities by the community, while the service operator appropriates positive externalities.

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These different trends produce few immediate and easily measurable effects. But they are at work in a progressive way, impact tasks and objectives of general interest to which these services belong and undermine the values they embody. So much so that we can ask ourselves what remains or what could remain tomorrow of "services of general interest"?

The "commons" and services of general interest

In recent years, we have witnessed the development of responses that are intended to be new and adapted in terms of "common good" or "commons".

It is a question of emphasising both the need for control and proximity, for collective management – one could say "self-management" – for promoting cooperation between actors and competition, for a large number of services for local communities or their regroupings.

To be operational, this approach necessitates an adequacy between a territory, resources, management and management capacities, a technical and economic organisation mesh that allows it and a genuine participation.

But what is undoubtedly the main obstacle to the development of "communs" is due, on the one hand, to the spontaneous tendency towards polarisation and inequalities according to available resources of the "community" and, on the other hand, to the mistrust that exists in current experiments regarding the interventions of public and local authorities. Yet it was precisely what characterised the "public service" or "service of general interest" to combat inequalities in provisions and resources by developing relations of solidarity and economic, social and territorial cohesion, from the most territorialised level to the various levels of organisation of collective life, including at the European level.

Rather than opposing initiatives of "commons" and "public service missions" or "universal service", is it not a question of combining them, while decentralising as much as possible the organisation and regulation of public services, by developing democratic participation and by bringing to life the common values that are those of services of general interest?

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One of the errors of the EU – and therefore of the Member States – is probably to have favoured modal competition (in the railway, in road transport, for each mode of communication and in the electricity sector), while neglecting externalities and separating them instead of focusing on intermodal interactions.

In fact, in regards to public services – services of general interest – one must start from the "needs" of users, which are not of:

- railway, but of transport and mobility, to meet the real needs of mobility, intermodality and integration of all the positive and negative externalities of each transport mode, in order to rebalance them and to develop cooperation;
- electricity, but of energy, in order to promote "positive energy" technologies and uses, by designing new roles for operators, user-producers ("prosumers") and networks;
- posts, not of means of communication, but of means of communication based on the potential of the unique network of postal services to break out of sectoral silos and co-organise the response to the diversity of social and territorial needs.

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Unity-diversity

In the unity-diversity relationship that structures the Europeanisation of services of general interest, as in any other area subject to this process, unity does not reside in:

- the different words and terms used in each of the languages,
- nor in the concepts more or less elaborated in national constructions,
- nor in different economic, social and political histories,
- nor in legal or political doctrines – to which the French and other Europeans, such as the Spanish – are very attached, but which are part of specific secular constructions and are not "universal" in Europe.

Unity is about values common to the European Union and its Member States, to a model of society and to a civilisation.

It is this unity that provides the basis for the search for new solutions for the years 2020 and 2030.

3 structuring paradigms

More generally, while the 3 sectors in the 4 Member States have undergone different and asynchronous evolutions, we can also identify some "regularities", which have as a baseline 3 structuring paradigms:

1) The structuring paradigm of the integrated monopoly

In the second half of the 20th century, we saw the emergence and development of a "model" based on the integrated territorial or national, public or private, monopoly: the "network industries". This was the dominant structuring paradigm in the aftermath of the Second World War for about forty years.

2) The structuring paradigm of competition

From the 1970s and 1980s onwards, profound changes took place in telecommunications, air transport, and energy... Today, the effects of digitisation and increasing interactivity, in particular, accentuate these changes.

Europeanisation has been based on the four fundamental freedoms of movement. The historical alternatives and the context of the 1980s led to liberalisation policies with progressive competition.

The natural monopoly of the networks has, however, been maintained, but its role has become secondary.

Competition becomes the dominant and structuring paradigm. Its implementation gradually leads to European oligopolisations.

However, in the transport, electricity and postal services sectors:

- oligopolistic competition is neither free (we do not easily enter the market), nor undistorted, since the oligopoly only distorts it;
- oligopolistic competition has all the shortcomings of the monopoly, but not its advantages (in terms of concentration and centralisation, reduction of "transaction costs");
- there are monopoly-oligopoly rents, which raise the questions of their nature, their importance and their distribution.

PSO/USO had been defined in each of the three sectors, but:

- they are mainly at the discretion of the Member States and are not harmonised;
- they are not subject to the same monitoring by the European authorities as the implementation of the competition and internal market rules;
- some would see them reduced to a social assistance goal, for the poorest.

3) The emergence of the new structuring paradigm of values

This situation leads to new economic, social, territorial, generational, financial polarisations, generating social movements and political debates.

At the same time, common values emerge:

- the right of access to SGI is a fundamental right (Charter of Fundamental Rights, social rights charter);
- common objectives are included in the Lisbon Treaty: quality, safety, affordability, equal treatment, universal access, user rights;
- unity in diversity becomes structuring: respect of the principle of subsidiarity, of national and local powers and a diversity of needs and preferences of users, due to their different geographical, social or cultural situations.

Since the Amsterdam Treaty of 1997, this system of values has promoted services of general economic interest as shared values of the European Union and its Member States.

Thus, a new paradigm seems to appear, the paradigm of values, which could become structuring to overcome the opposition between monopoly and competition, to combine their respective advantages, to guarantee common values and fundamental rights.

3RD PART
THE RESPONSIBILITIES OF THE EU FOR THE 2020s. TOWARDS A EUROPEANISATION BASED ON THE COMMON VALUES

This report has tried to identify the main trends at work in the process of Europeanisation of public services – services of general interest – and to approach the effects of liberalisation, by crossing the sectoral specificities in 3 key sectors and the national dimensions in 4 Member States with contrasted historical, institutional and "cultural" national characteristics. It is not intended to advance value judgments or to stigmatise the responsibilities of each of the main actors, or to make normative recommendations or adopt an ideological or political position. Each of the actors concerned can make its own profit from the many elements gathered here and each can construct his own "ideal model".

For our part, we will limit ourselves here to a few recommendations for the 2020s, to give key players some keys to approaching the main issues.

WHAT RESPONSIBILITIES FOR THE EU?

For many actors in France, the EU is seen as 'the gravedigger' of public services, as it has emerged as the bearer of essential challenges of a conception making public services the key to citizenship; in other countries, like Spain, the EU appears as an opportunity for their modernisation after the long Franco period; in the countries of Central and Eastern Europe, such as Slovakia, the EU appears as a way out of the administered, uniform and inefficient economy, to meet the needs of the people; in federal states, like Germany, the EU is often seen as a means of defending and promoting subsidiarity.

These multi-valent expectations have been the backdrop to the process of Europeanisation of public services – services of general interest. They found themselves in the difficulties that the Member States had to define common orientations, to define common rules and to organise cooperation to build the European territory.

In fact, as we have seen, the Member States first sought to defend their specific interests or the interests of their "national champions", rather than to seek solutions that would enable them to combine the common interest they could have and their expectations. It took a long time to overcome the initial blockages and initiate a progressive process of Europeanisation based on the removal of obstacles to the four fundamental freedoms of movement from which everyone could hope to benefit.

However, in today's globalised world, the EU is the relevant space to strengthen and modernise a way of living and a civilisation, based on the search for an evolutionary balance between the State and the market, between economic, social and environmental objectives, public, private or social economy, between rights and duties, between freedoms and solidarities and between centralisation and decentralisation, among others. Each Member State of the EU is no longer able to participate alone in the structuring of a multipolar world. But together, European states may be able to continue to weigh, defend and promote their values.

This approach, which has been initiated in the aftermath of the Second World War and developed since then despite many difficulties and crises, is the only possible strategy for the future:

- always look for interests that may be common;
- always draw common objectives and policies, as well as tools to implement them;
- always emphasise the "added value" that EU action can represent compared to the action of each State acting separately;
- always aim to combine unity (of what we do together) and diversity of means of implementation on the European territory, at the national, regional and local levels;
- always concentrate on the essential, without getting caught up by bureaucratic or pointillist logics.

These main elements necessitate that the EU regain its role, just its role, but all its role, by re-examining which European policies and standards do not correspond to the actual needs; by promoting solutions that integrate the orientations implied by the urgency of the environmental situation of the planet and by the persistent effects of the financial, economic and social crisis that began in 2008.

European rules do not consist of implementing a pre-established "model", but of pragmatically defining the best solutions to combine the common interest and the specific interests of each Member State, to combine the unity and diversity of each sector, of each Member State and of the EU itself.

The EU as it exists today cannot be regarded as a "super-nation-state" which would replace or lead the European nation states, which would impose a uniform model in every part of the European territory and automatically apply the same issues everywhere.

Since the Treaty of Rome of 1957 and the Single Act of 1986, the objectives, tasks and responsibilities of the European construction have been developed both quantitatively and qualitatively (cohesion, trans-European networks, consumer protection, energy Union, the fight against climate change, the Charter of Fundamental Rights and the Pillar for Social Rights). All these elements must lead to the completion, revision and transformation of European rules that have been for most developed in another context.

In the field of services of general interest, we are no longer in the 1980s, and the objectives of the European Union are explicitly today at once economic, social, environmental, cultural and of international security and solidarity. It is by combining these dimensions that we can try to define and initiate new strategic approaches for the 2020s:

- to enrich and revise the policies and standards developed over the past 30 years in another context, by integrating, in interface with the previous issues of "internal markets", the envi-

ronmental stakes, the fight against climate change or long-term sustainability in the transport, energy and communication policies;

- to internalise all the positive and negative externalities of each technological or economic solution, in order to re-examine previous economic and financial relationships (for example between rail and road, between fossil and renewable energies, between different modes of communication);
- to call into question centralised, hierarchical, sectoralised approaches when they prevent the definition of solutions allowing the satisfaction of the different territorialised needs which are those of transport-mobility, sustainable and accessible energy, universal and interactive communication;
- not only to proclaim fundamental rights, the pillar of social rights, but to take steps to guarantee them effectively for every inhabitant and citizen;
- to put in their place the logic of competition, which is a positive means when it is a spur for innovation, efficiency or effectiveness, but which spontaneously generates polarisations that can prevent the achievement of general interest objectives, tasks and obligations;
- to encourage the development of regulatory approaches, at each territorial level of the organisation of services, the development of the diversity and interactions of the interests of the various actors and of the interlocking of objectives and standards, in particular between competition rules and objectives of general interest, whose legitimacy necessitates openness to the expression of all demands, aspirations and complaints;
- to stimulate progressive dynamics of participatory evaluation, beginning with the establishment and circulation of data, intended not to classify or sanction services, operators or institutions, but to promote innovative and effective solutions and to draw lessons difficulties or failures, to develop free movement of experiences, practices and ideas;
- to promote the common values of services of several Interest, which are the respect of the principle of subsidiarity and of the responsibilities of national and local authorities, the diversity of needs and preferences of users, because of different geographical, social or cultural situations, and the objectives of quality, safety, affordability, equal treatment, universal access and user rights.

An EU based on the principle of subsidiarity, the combination of unity and diversity and the deployment of the common values of the Union and its Member States is the key to implementing a modern concept of services of interest general, based on the *acquis* and meeting the challenges and needs of the 21st century.

Therefore, the EU should take an open approach to co-construct a new European paradigm of services of general interest, the paradigm of values.

WHAT ARE THE RESPONSIBILITIES FOR THE EU MEMBER STATES?

For the European Union to undertake such strategic approaches according to the current decision-making process, it is necessary to secure the agreement or at least the consent of its Member States.

This implies that national, regional and local public authorities promote convergent objectives.

Public services – services of general interest – only exist to meet the needs of each inhabitant as well as of any community and their different actors (economic, social, cultural).

Their existence is the responsibility of national, regional, local and European public authorities in order to ensure universal access to services considered necessary in the 21st century, to establish solidarity and economic, social, territorial and generational cohesion relationships, to guarantee the conditions for long-term sustainable development.

This means that their field and definition are evolving in time and space. They come under "political" decisions and choices, that is, under the definition of "living together" today and tomorrow.

Public authorities must therefore organise the expression of the needs of each user and their evolution, in order to be able to clearly define the objectives and missions of each service, which justify its nature of public service or service of general interest. The expression of the diversity of needs makes it possible to determine the most relevant territory for organising the service and, on this basis, to define the organising authority, which, in interaction with the upstream and downstream levels, is ultimately responsible for the definition and the accomplishment of tasks, and therefore for the organisation of their financing. These tasks are the subject of the more or less extensive definition of "public service obligations" (PSOs) and/or "universal service obligations" (USOs).

In order to fulfil these tasks, public authorities have to make public services – services of general interest – subject to specific rules and norms, more or less complementary to the general competition law and general market rules. Because, as shown previously, the latter spontaneously lead to economic, social, territorial and generational polarisations and outsourcing on society of the negative effects of the activity.

This prerequisite enables public authorities to determine the most appropriate model of organisation of the activity and the sector concerned according to their goals; the organisation can be the subject of a monopoly – which may concern a part of the activity (as we have seen for infrastructure networks, which are part of a "natural monopoly") or the entire sector – or can be subject to forms of competition, which may be:

- in the market, with rules that can define the conditions of entry to the market (licences, authorisations) or operation of the activity;
- for the market, identified in time and in space, with "specifications", invitation to tender and a temporary and territorial monopoly for the selected operator.

These choices, between monopoly and competition and, in this later case, in or for the market, are in no way to be dictated by technical or economic or ideological considerations: there is no solution that would have universally proved its superiority over another.

Competition is not a goal in itself but one of the available means to organise and regulate life in society. It is always, in each case and at each moment, a question of finding the best or the least bad solution; experience shows that it is desirable to be able to organise the reversibility of choice that has been made, in order to avoid being locked in closed logics. There may be forms of cooperation organised by contracts between operators, forms of "coopetition" (combining the respective advantages of competition and cooperation), which require strong regulation. We must restore the hierarchy of societal relationships. The general interest objectives – the satisfaction of needs and values – have pre-eminence.

Therefore, the public organising authority has to decide how to finance the activity and the compensation of the obligations (PSO or USO) it imposes on the operators. There is a wide range of possible choices in this area, ranging from free access for users, which involves community funding, to full cost recovery by users.

Here, again, there is no solution that has proved universally superior. In the history and for the services discussed in this report, most European countries defined mixed financing, with a share paid by the users and another by the public authority (whether for the financing of the new investments or the compensations OSP-OSU, often with territorial and/or social forms of equalisation to allow

universal access). But in recent years, there has been a growing demand for full cost recovery and a disengagement of public funding, except to ensure through social policies the "safety net" that allows the poorest or most isolated to have access to the service.

The responsibilities of the public authorities do not limit themselves to these definitions and decisions. With regard to evolving issues and decisions that are not subject to "laws" but to the search for the best relationship between different forms or organisation, they have to define the forms of arbitration of the tensions that will exist between all the actors concerned. This leads to the establishment of regulatory authorities whose functions and objectives must be clearly defined (regulating competition between operators – which may be the responsibility of the competition authority, and/or ensuring that public service, the PSO and USO and their compensation are effectively insured, or benefit new entrants in order to develop competition). They also have to organise the assessment of the organisation chosen, the performance of the operators and the handling of complaints, so as to improve the satisfaction of users' needs.

These initiatives and responsibilities require combining "top-down" and "bottom-up" approaches and democratic participation approaches.

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These responsibilities of the public authorities are essential. Because their essence is to be made in the common interest: the *long durée*, the sustainability and the general interest of their community. And general interest has to combine all local, regional, national and European levels. General interest can only be multi-level and result from the participation of all in the definition of its content: it must be defined by multiple actors.

AFTERWORD

Any change gathers indissolubly threats and opportunities.

From this "dialectic" ("unity of contradictory") of threats/opportunities could raise "monsters"[35] (Gramsci), or the "icy waters of selfish behaviour"[36], as well as real innovations-revolutions.

30 years later, it is clear that the 1990s had not been those of innovation and implementation of a "new model" of "services of general interest" which, after Reagan and Thatcher and the fall of the Berlin Wall, would have taken advantage of the new opportunities of the Maastricht Treaty of 1992 (environmental protection, economic and social cohesion, trans-European networks, consumer protection, European citizenship), in order to, on the one hand, develop European initiatives in domains where the EU is more efficient than each State acting separately or, on the other hand, implement real decentralisations and participations of stakeholders.

It makes no sense to regret this absence – "History never repeats itself" – or to develop the myth of a return to the previous situation.

It is also not essential to make a process to the actors of that time.

We are not in the 1980s or the 1990s any longer. But maybe we have entered a new situation, a sort of "alignment of planets", with the opportunities of a multi-polarisation of the world, the vital issues of environment protection, the decarbonisation, fight against climate change, the extraordinary potential offered by digital technology, in particular in terms of interactivity or autonomous vehicles, as well as for "transports on demand" in metropolises and awareness of the role of the EU as bearer of essential values for the future of the Humanity – of a "civilisation".

35. "The old world is dying away, and the new world struggles to come forth: now is the time of monsters", Antonio Gramsci, Prison notebooks.

36. Karl Marx, Manifesto of the Communist Party, 1848.

GERMANY
FRANCE
SLOVAKIA
SPAIN

NATIONAL MONOGRAPHS

SLOVAKIA
GERMANY
SPAIN
FRANCE

SLOVAKIA

SLOVAKIA

THE LIBERALISATION OF PUBLIC SERVICES IN THE SLOVAK REPUBLIC

MARIA HOREHAJOVA
JANA MARASOVA
MATEJ BEL UNIVERSITY OF BANSKÁ BYSTRICA, FACULTY OF ECONOMICS

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INTRODUCTION

The current territory of Slovakia was part of the Austro-Hungarian Empire for almost two centuries (16th - 18th). After the break-up of the latter at the end of the First World War, the Czechoslovak Republic was created by a declaration of October 1918 on the Union of the Czech and Slovak Nations. During the Second World War, from 1939 to 1945, Slovakia existed as an independent state after which the Czechoslovak Republic was renewed. However, as the Communist Party won the first post-war elections (1946) throughout the country, even if it did not win in Slovakia, the "Prague coup" resulted in a communist Czechoslovak government, formed in early 1948, subject in all respects to the Moscow regime, which began the process of nationalisation.

During the next forty years, Czechoslovakia functioned as centralised and planned economy, which had considerable impact on the development of the industrial, agricultural and services sectors. The existence of the totalitarian political system has blocked technological development and innovation, and the paternalism of the state has minimized individual initiative and creativity. During these four decades, the private sector and entrepreneurship have hardly existed. Halfway along this path, the events of 1968, which marked the beginning of certain political opening, led to the invasion of the Soviet army and the period of "normalisation" that followed. During the same year, the Czechoslovak Socialist Republic became a federation, which should have given the two - Czech and Slovak - republics more autonomy. Apart from common federal bodies, each has had its own government, some ministries and parliament. However, the powers of national institutions were very limited, with attempts towards recentralisation in the 1970s. The three service sectors of general economic interest that are the subject of this monograph were managed by the corresponding federal ministries.

The fall of the totalitarian regime after the "Velvet Revolution" in November 1989 and the subsequent political and institutional changes concluded the period of centralized management in Czechoslovakia and created the basis for a liberal and democratic system. However, too different visions regarding the new political representatives on the future cohabitation between Czechs and Slovaks led the separation of the two countries, without even consulting their peoples.

Thus, the Slovak Republic is a young democratic country, born on 1st January 1993, as a result of the division of Czechoslovakia, after 70 years of common being. The history of its market economy is also short as it has only begun with a process of transition from the old system in the early 1990s. The economic transformation has started within the still common federal state and it was marked by the liberalisation of economic and social life.

On the economic front, the restitution and privatisation of national ownership, which was almost 100% state-owned, has been essential. Since no model of such a large-scale privatisation existed in the world, each of the countries concerned by this process in Central and Eastern Europe carried it out in its own way. In Czechoslovakia, and then in Slovakia, it was carried out in two stages known as small and large privatisation. Small privatization has transformed the services sector relatively quickly, relying on the direct sale of small businesses to private owners, most often through auctions. With regard to large industrial companies, the country did not own enough private capital available to buy them directly. Thus, voucher privatisation has been applied, effectively distributing state property to citizens in the form of vouchers almost free of charge.

Small and large privatisations were completed in the late 1990s, except in the natural monopoly sectors. The phenomenon of over-regulation and subsidised prices had persisted in these sectors for a long time, distorting the decisions on investments. Concepts such as effectiveness or efficiency had also disappeared from users references. The prices of the latter did not even follow the evolution of inflation. As a result, there was a considerable lack of resources from state monopolies to

follow the technological progress, resulting in increasingly obsolete equipment. Under these conditions, the liberalisation of these markets appeared to be the only rational and strategic solution.

Genuine discussions on the privatisation of services of general economic interest and their preparation only started at the beginning of the new millennium, as the country approached its accession to the European Union (2004). Liberalisation was initiated in 2002 and was structured in particular by European legislation. However, some difficulties still continued, due to the reasoning inherited from the past, from both public officials and the management of former transformed or privatised monopolies. Nowadays, even if regulations on liberalisation are gradually applied, old state companies, which still have a dominant position on the markets concerned, still have difficulty in accepting in practice the new conditions on these markets.

In respect of the perception inhabitants had on liberalisation, they were not attached to the public character of activities, no more than to other products and services assumed in the past by the state as a whole. Thus, while older generations manifest some nostalgia for the old system, this refers to the vanished role of the "welfare state" in general. As for the population's expectations regarding the liberalisation of services of general interest, they include the possibility of choice of suppliers, better quality of services and affordable prices. But every choice involves risks. Since inhabitants were not used to it, there was certain disorientation at first, faced with different offers that came to them. Moreover, since at the time of the planned economy, the provision of these services had been ensured by state monopolies with several thousand employees, and since, with liberalisation, they were transformed into joint stock companies, either remaining 100% state owned or becoming private with the majority or minority participationof the state, the imperative of efficiency has led these companies to reduce their workforce in all cases. Thus, the elimination of jobs led to some difficult social consequences, even if they were not very different from liberalisation in other sectors of the economy.

RAILWAY TRANSPORT IN SLOVAKIA

The history of the sector

The history of Slovak rail transport began in 1846 with the construction of a horse-drawn wagon railway between Bratislava and Trnava (60 km), and in 1848 it continued with the completion of the Marchegg (at the Austrian border) - Bratislava line with Slovakia's first steam train. After the birth of the Czechoslovak Republic in 1918, it became clear that the existing rail network on the North-South axis, linking the southern territory of the country to Budapest, was not suitable for the needs of the new state and that it needed to be supplemented by East-West routes. Thus, several new lines had been built under the auspices of the state, with the objective of strengthening public transport, even if all railways were private at that time. After the Second World War and the communist coup of 1948, rail transport was nationalised and then, until 1989, it had been managed by the state-owned company Československé dráhy - ČSD (Czechoslovak Railways), whose subsidiary Východná dráha (Eastern Railway) managed the service on the Slovak territory.

The activities of ČSD were defined by the Law 51/1964 on railways, which was based on the approach that the provision of collective services constitutes a civil or economic relationship between, on the one hand, the transport company and, on another hand, the citizen or an organisation. Therefore, the core of the regulation of these relationships has been defined by the Civil Code in a single way for all modes of transport. Specific conditions to the different transport modes are distinctively regulated. The law 51/1964 did not contain any articles on international rail traffic, which was subject of the Law 4/1962 on international conventions. ČSD was under the supervision

of the Federal Ministry of Transport and Communications. In 1989 its organisation changed: the corporate governance was separated from that of the state and a central department of ČSD was created. A new law (68/1989) on the organisation of ČSD defined its position, legal conditions, object of activity and organisation chart. This organization remained unchanged until the division of Czechoslovakia.

Following the creation of the Independent Slovak Republic (RS) on 1 January 1993, the public company, ***Železnice Slovenskej Republiky*** - ŽSR (Slovak Republic Railways) was set up. The Law 258/1993 on ***ŽSR***, adopted in September 1993, defined it as public company under both public and commercial management mode. It also defined the conditions for foreign operators to enter the market. In 1994, Slovakia joined the Trans-European Transport Network (TEN-T) project on multimodal corridors. The Government Resolution 581/1994 approved the accession to the European Agreement on Main International Railway Lines (AGC) and the European Agreement on Main International Combined Transport Lines and Related Installations.

Government Resolution 499/1995 on the Programme for the Transformation and Development of Rail Transport until 2000 represented an important step in the future development of rail transport. This document transformed ŽSR into a commercial company. In 1996, another government resolution - 197/1996 - confirmed Slovakia's participation in the construction of the trans-European multimodal corridors, as well as the state's own participation in financing the work related to this project.

In 2002, another important step in the organisation of rail transport has been made, as the ŽSR was divided into two independent entities: *ŽSR*, a public company, whose purpose was to manage railway infrastructure, and *Železničná spoločnosť* (Rail Company). In the same year, *ŽSR* became a member of the European Rail Community. Since then, ŽSR has been the railway operator in Slovakia, which means that it manages and operates the railway infrastructure and provides services related to this operation. It is also responsible for the construction of new infrastructure and the maintenance of existing ones; it establishes and manages the rail, telecommunications and radio networks.

Current organisation and legislative framework

In 2005, ***Železničná spoločnosť*** was reorganised and divided in two public companies:

- ***Železničná spoločnosť Slovensko – ZSSK (Slovak Railway Company)*** that operates railway passengers;
- ***Cargo Slovakia*** (hereafter reffered to as ***Cargo)*** that is in charge of the transport of goods.

Today, several entities are active in the railway transport sector: the Ministry of Transport and Infrastructure, ***Dopravný úrad*** (***Transport Office)***, ***ŽSR***, ***ZSSK***, ***Cargo***, of which the last three directly participate to the operation of transport services. Some private enterprises have also entered in this sector.

ŽSR manages the railway lines (normal lines, as well as large and narrow lines), traction lines, railway tunnels and bridges, level crossings, railway stations. The Board of Directors is composed of five members from different sectors: transport, finances, economy and law, banking sector and a representative of employees. Its activities are defined by the Law 513/2009 on railway lines and other complementary laws.

ZSSK is a public limited company owned by the Slovak state. The shareholder's powers are exercised through the Ministry of Transport and Infrastructure. The company ensures the transport of passengers according to the Convention on general interest transport services concluded with the ministry on the basis of the Law 513/2009.

Cargo is also a public limited company owned by the state through the same Ministry. Its activity consists in the provision of reliable, sure, environmental friendly and affordable good transport services, as well as of services of location, maintenance and repair of rolling stock. All its activities are

defined by the laws 513/2009 and 514/2009.

As regards the private transport companies, currently there are 36 enterprises that own valid transport licence on the Slovak rail market, of which only 9 for the transport of passengers, 1 for the transport of passengers and goods and 26 for the transport of goods.

The regulator

Dopravný úrad - DÚ (***Transport Office)***, which succeeded the ***Office for the regulation of the railway transport*** in 2014, assumes the national function of price regulation on national and regional railways, as well as of investigation and safety of railways. Its main activities consist in:

- the ***regulation*** of prices (prices for the utilisation of lines and for passengers transport on the national network);
- the ***security*** – it delivers and revokes licences and safety certificates to private transporters;
- ***interoperability*** – it registers and authorises different types of rail vehicles, deliver licences for the exploitation of fix and mobile interoperability subsystems;
- the ***professional and technical supervision*** – it conducts aptitude tests and deliver safety certificates for dangerous goods transport, according to the ICTGR (International Convention on Transport of Goods by Rail).

The investigation authority, ***DÚ***, analyses the reasons and circumstances of railway accidents that provoked deaths of persons or material damages above 2 millions euros. On the basis of rail packages of the EU, the ***DÚ*** prepares, in cooperation with the EU Railway Agency, the implementation of the 4th package in Slovakia. It is also in charge of the implementation of projects for the Register of rail infrastructures and the Register of licences for conductors.

Market opening and competition

Even if several private companies are active on the railway transport market, the liberalisation did not led to the expected competition. Liberalisation has fist developed on the transport of goods market, following the enter into force of Directive 2004/51/CE of the second railway package, which totally liberalised this sector of transport in the EU starting with 1st January 2007.

During the same year, the third railway package has been implemented in Slovakia by the laws 513/2009 and 514/2009. Its purpose was to liberalise the international transport of passengers, to reinforce their rights and to put into place a single system of licences and certificates of aptitude for train conductors. According to these laws, ***ŽSR*** should ensure the access to the railway infrastructure for each undertaking that owns valid service licence and safety certificate. The ***DÚ*** issues, controls and revokes licences.

In 2011, ***Antimonopolný úrad (Anti-monopoly Office)*** of the Slovak Republic published a report[37] in which it confirmed that Slovak railway transport is completely liberalised: the transport of goods since 2007 and the transport of passengers since 2010. In 2010, 29 enterprises owned licence allowing them to operate on the railway network of ***ŽSR***, of which 25 were effectively active on the market: 2 passenger transport services and 23 goods transport services. The anti-monopoly authority presented in the report the key problems of competition on the railway market:

Inadequate barriers to enter the market (according to the ACCESS indicator, Slovakia occupied the fourteen position among the Member States). For instance, the access to rolling stock is very difficult. Railway infrastructures, which had been built in the 1970s, are not compatible with the contemporary electric locomotives. Consequently, the new transporters entering the market and wishing to use modern electric locomotives cannot obtain authorisation to operate. They can only

37. Problémy v sektore železničnej dopravy z hľadiska súťaže: https://www.antimon.gov.sk/data/att/367.pdf

use old electric locomotives that are exclusively owned by the state undertakings ***ZSSK*** and ***Cargo***. As in reality there is no market for location of electric locomotives, the new private transporters are obliged to use only power machines whose cost is much higher; moreover, the cost of operation of power machines on electrified lines implies a supplementary fees. Another difficulty concerns the provision of combustible. On the occasion of the creation of the three railway transport companies - ***ŽSR***, ***ZSSK***, ***Cargo*** – ***Cargo*** became the single owner of the equipment for refuelling and it refused the access of private transporters. Therefore, the later had to use mobile tankers to refuel. To that purpose, they had to go through heavy administrative and organisational procedures, as well as to support high transaction costs.

The regulation of fees for the access to railway lines, as these fees represent a high cost for the transporters active on the national market, which provokes unbalanced conditions of operation between rail and route transport. Even if the Directive 2001/14/EC recommends calculating the fees of utilisation of railways on the basis of the marginal cost, this recommendation was not applied in Slovakia. The fees applied in Slovakia contains both fixed and variable costs, and the fixed costs are particularly high as the country's railway network is one of the most dense in Europe (according to the statistics developed by the United Nations Economic Commission for Europe – UNECE – in 2016 Slovakia owned the 7th densest railway network in the EU). It was only from January 2011, after the entry into force of the ***DÚ***'s Regulation 3/2010 that the mode of calculation of these fees was amended, which provided a fixed ceiling cost for the access to the railway infrastructure. The objective of these modifications was to reduce the weight of these fees in the transport price.

The state's influence through the subventions conferred to some transporters, which generally led to higher fees for others – therefore, it is about the presence of a political aspect in this sector.

Inappropriate interoperability and quality of the railway infrastructure. The relatively week level of the railway infrastructure is linked to the preference of the public powers for the road network (higher public investments for highways). Therefore, railway infrastructure is technologically outdated and incompatible with the European system. Thus, in practice, foreign railway companies can only ensure the transport of goods until the Slovak frontier where the national transporters take them in charge by changing the locomotive and personnel and reciprocally.

The behaviour of the public transport undertakings that try to maintain their position on the market, which manifest through the fact that:

- the manager of the infrastructure – ***ŽSR***, which is owned by the state, favour public undertakings when it allocates infrastructure capacities;
- the reluctant attitude of the public company (dominant transport undertaking) towards other, new or existent, transport companies wishing to access its infrastructure;
- the fact that the dominant public undertaking can use pricing practices whose objective is either to eliminate competitors from the market or to block the enter into the market of other competitors.

The favourable position of public transport undertakings is also reinforced by the fact that general interest contracts are organised in the sector of passengers transport. The contracts concluded by the state with ***ŽSR***, ***ZSSK*** and ***Cargo*** do not contain mechanisms that would encourage them to reduce their costs and therefore to be more efficient. The sanctions applied by the competition authority ***(Antimonopolný úrad)*** to public transport undertakings for abusing of their dominant position in the market also prove the fact that their competitiveness is not as high as expected after the liberalisation. For instance, in 2012, ***Cargo*** paid a 2.49 millions euros of penalty for abuse of dominant position on the market and, in 2014, a 10,253 millions euros penalty for having limited the sell and location of electric locomotive to its private competitors. Despite the dominant position of ***Cargo***, the 2016 annual competition report observed the growing competition, in particular on the East-West and North-South lines. It seems that ***Cargo***'s performance is influenced by the situation

in Ukraine and the EU sanctions against Russia.

The financing

The adoption of the Law 513/2009 on railways provided important rules for the financing of the railway transport. The law fixed the principles of financing and, on that basis, ***ŽSR*** concluded a contract with the state. The contract provided that the state can grant to the public undertaking financial support to ensure the operation of railways for a period of at least 5 years and at maximum 15 years. State subventions can contribute to the fees of infrastructure to reinforce the performance of the undertaking or to compensate its losses. The concrete regulatory framework regarding the fees of use of the infrastructure and the service installations is defined by the Transport Office. Among them, the Measure 1/2017 of the Office actualised the system of fees regulation according to the EU regulation of the fourth railway package.

In 2017, the economic cost justified by ***ŽSR*** for the provision of infrastructure services was covered by the budget of the state in the amount of 250,000,000 euros, according to the contract into force for the period 2017-2021. This amount was the same in 2016.

In 2017, the total receipts of ***ŽSR*** were 376,723,000 euros, including the fees paid by railway undertakings for the use of its infrastructure, according to the regulation in force (105,045,000 euros). In comparison with 2016, they were higher by 1,581,000 euros, of which the part concerning the transport of passengers was 296,000 euros and the part of the transport of goods was 1,285,000 euros. The fees paid by ***ZSSK*** represented 105,045,000 euros that is 46.7%, those paid by ***Cargo*** 38.3% and those paid by other transporters 15%.

The quality in rail transport

The evaluation of the quality of railway services is based on the Regulation EC 1371/2007 on rail passengers' rights and obligations.

ZSSK uses an integrated management system (IMS) and it has been conferred a quality certificate ISO 9001. The IMS system covers several activities whose objective is to improve service quality. The company set up an internal conception for the evaluation of the satisfaction of its clients. Each year, it addresses a direct survey to 2,300 persons and an on line survey to 10,000 persons. Every 3 years, it requires to an independent external institution to realise a customer satisfaction survey.

Since 2010, on the basis of the mentioned EU Regulation, ***ZSSK*** elaborates reports on the quality of the provision of its services. Client satisfaction as regards service quality is measured through a marketing survey. Clients evaluate the quality of the service on a scale from 1 – excellent, to 5 – bad. In 2010, the results of the evaluation were the following:

- ✦ the punctuality of trains at national level – 2.24 for fast trains (IC) and 2.36 for the other,
- ✦ the cleanness of trains – 2.33 for the IC trains and 2.96 for the others.

In 2010, the global client satisfaction as regards national train services is between 2.2 and 2.4. The same survey was repeated in 2015. Clients expressed their satisfaction as regards the quality of services provided in the same category of national trains for an average note of 2.39, which represented almost the same situation. ***ZSSK*** has also planned to reduce by 10% the number of justified complaints of passengers but the real improvement only attaint 5.36%.

In 2016, ***ZSSK*** has evaluated the quality of its services according to 11 standards, of which 3 have not been met, 7 have been met and 1 has not been evaluated, as shown in the table 1.

TABLE 1 - EVALUATION QUALITY STANDARDS IN 2016

	Planned	Realized
On line tickets selling (% on total selling)	9%	7.98%
Profile of employee at first contact – part of employees meeting the profile	78%	79%
Meeting transport performance	99%	100.26%
Respect of timeline	93%	92.93%
Respect of timeline –international trains	93%	95.62%
Level of reliability of trains – passengers transport in general	99%	99.96%
Part of suppressed international trains (with departure from Slovakia)	1%	0.000128%
Implementation of performance plan as regards the cleaning of trains	91%	99.89%
Clients satisfaction – improving the average note by	0.01	non evaluated
Improving the quality of services – reducing the number of justified complaints by	10%	9.76%
Client satisfaction as regards assistance services	80%	97.59%

Source: Report of ***ZSSK*** on the activity from the point of view of the quality of services

An important indicator of client satisfaction in the railway transport regards the number of claims for compensation. Their treatment is defined by the Regulation 1371/2007 as well as by an internal norm of ***ZSSK*** STN EN 13816 ***Passengers Public Transport***. According to the evaluation of 2016; the total number of demands for compensation was 3,759, of which 1,676 justified demands representing 44.58%. In 2016, the company received 879 demands and the compensation level attained the level of 17,629 euros. Table 2 shows the evolution of this situation since 2010.

TABLE 2 – CLAIMS FOR COMPENSATION ACCORDING TO THE EC REGULATION 1371/2007

	2010	2014	2015	2016
Number of claims received	449	1,075	1,012	879
Level of indemnisation in €	6,026	15,835	19,011	17,629

Source: Annual reports of ***ZSSK***

Cargo, as well as ***ZSSK***, owns a certificate ISO 9001:2009 for the maintenance and repair of railway equipment, the acquisition, storage, as well as for the automobile transportation to storage facilities in the East of Slovakia, and also for the management of professional aptitudes and the training of employees. It also holds the certificate ISO 9001:2016 concerning goods railway transportation (logistic trains).

The accessibility of railway transport from the point of view of its price is closely related to the quality of services. Since 2005, the number of passengers of ***ZSSK*** has remained rather unchanged, as shown by the table 3.

TABLE 3 - TRANSPORT OF PASSENGERS BY ZSSK

	2005	2010	2013	2016
Transport in thousand of persons	49,054	45,004	44,287	65,606
Performance in thousand of persons by km	2,166	2,291	2,422	3,595

Source: 2016 Annual report of ***ZSSK***

Even if this aspect is not visible in the table, the most important diminution of performance in thousand of persons per km has been registered in 2012. This was due to the fact that the private undertaking ***Regio Jet*** (which operates with its own rolling equipment) entered the national market of passengers transport proposing a higher level of quality and more interesting prices an therefore ZSSK lost part of its clients. Though, during the last three years, the company saw the number of its passengers growing as a consequence of the fact that the Government Regulation of November 2014 that rendered free of charge rail transport for children from 0 to 15 years old, students until 26 years old and seniors over 62 years old. Thus, as shown in the table 3, despite more or less the same quality of services of the public undertaking, the free of charge transport has attracted more passengers.

Rail transport safety

The main condition of safety on this market concerns the safety certificate that ***Dopravný úrad – DÚ*** (Transport Office) delivers to operators according to Directive 2004/49/EC on safety on the Community's railway, the Law 513/2009 and the Regulation 1158/2010, as well as the Regulation 653/2007 of 13 June 2007 on the use of a common European safety certificate. ***DÚ*** also delivers safety permits to infrastructure managers in accordance to the Directive 2004/49/EC.

ŽSR plays an important role as regards the security and the protection of health at working place, according to the Law 124/2006 in force, by ensuring prevention activities aiming to ensure the respect of the safety of work processes. The undertaking also proceeds to complex examinations of the working environment, keeps statistical registers on accidents and their consequences, investigates their causes, with the aim of taking measures of prevention and thus improving the safety of the railway system.

In 2010, ***ZSSK*** became member of the international consortium of companies of safety under the direction of the Italian company ***Ansaldo ST***S. The consortium aims at creating an integrated system of safety technologies in the framework of a common project ***Partnership of the railway industry for the integrated safety of the railway transport PROTECTRAIL***.

Data on railway accidents show that, compared with the situation in 2015, the number of serious accidents has reduced by 27, the number of deaths by 25 and the number of blessed people by 3. The most important causes of accident are the non respect of the safety worning signs on the level crossing and non authorised movement of persons on rails.

TABLE 4 ACCIDENTS IN RAILWAY TRANSPORT IN 2016 (DATA FROM THE TRANSPORT OFFICE)

Serious accidents	60
Deaths	26
Serious harms	33

Source: 2016 Annual report on the security of railway transport in Slovakia

Technical and technological equipment

During the centralised planning and management period, Slovak economy has developed by extention. A high level of consumption of materials and energies led to growing cost production, including in the transport sector. A permanent pressure to ensure the growth of rail transportation performance has rapidly exhausted the available resources of Slovak railways. The tension between transport exigencies and technical capacities to meet them became critical. During the 1980s, while these problems were rather visible on the sector of transport of goods, the transport of passengers was an important instrument of the social policy of the paternalist state, with incentive train schedules at very low price. The objective of the basic universal social policy was based on the maintenance of social peace and on the guarantee of the satisfaction of basic needs of the population. At that time, very few inhabitants owned cars to go to work, to the doctor or elsewhere. Therefore, the role of both rail and road public transport was essential. At the same time, poor investment, a high rate of amortization, weak performances, as well as obsolete technical equipment were more than obvious.

From the point of view of the technical progress, the 1980s represented the end of the period of steam traction in Slovakia. Motor-driven traction only represented 37% and electric traction 63%. Even if the electrification with alternative power system had started in the 1960s, currently it is still not completed.

After the connexion of Slovakia to the project of transeuropean multimodal corridors in 1994, the modernisation of railway lines has become a necessity. The Government approved through its resolution 197/1996 the long term national railway development plans, as well as the projects of investment of lines in the international corridors IV, Va, VI.

During the 1994-1995, the transport by clocked fast trains between Bratislava and Košice has been implemented with a complex system of service to clients and, a little later, a single system of transfer of ***ŽSR*** data according to the international standard X.25.

Nowadays (according to its annual 2017 report), ***ŽSR*** manages 13,626 km of lines, which represents 6,898 km of ordinary, large and narrow track rail, 1,588 electrified lines, 4,970 km of traction lines and 94 power supply and switching stations. The undertaking also manages 8,814 bridges, 76 tunnels with a length of 45,007 km, 2,301 bridges with a length of 51,216 km, as well as 2,102 railway crossings, of which 1,160 secured. The ***ŽSR***'s network also contains 297 rail stations and 22 frontalier stations.

The accessibility of the railway transport is closely linked to technological equipments and the density of the railway network. The Slovak network is not large but the geographical position of the country is a factor of attractivity given that European rail corridor cross it both on the East-West direction and on the North-South direction. In 2009, the density of the network was more important in Bratislava region (112.284 km/1,000 km2) and the weakest in the Prešov region (only 46.799 km/1000 km2). Out of the eight regions of the country, four have a density of railway lines higher than national average.

According to the 2015 ***E-Rail Traffic Census***[38], the use of the entire Slovak railway network was as follows:

- the part of the passengers transport in train/kilometer represented 72%,
- the part of the transport of goods represented 26%,
- other transports 2%.

38. E-Rail Traffic Census: Spočítanie v železničnej doprave 2015: https://www.mindop.sk/statistiky-15/doprava

The employment in the rail transport

At the end of 2017, the biggest transport undertakings (***ZSSK*** and ***Cargo***) accounted 11,584 employees.

Out of this total number of human resources, ZSSK has 5,952 employees, of which 64% men and 36% women. The average wage is 1,038.24 euros. The middle age of employees is 45.68 years old. Most employees (3,852) hold a secondary diploma, 923 holds higher education diploma and 49 only accomplished primary education.

At the same date, ***Cargo*** had 5,632 employees, of which 75% men and 25% women. Their average age was 47.41 years. Most employees (3,141) have completed secondary education, 702 higher education and 65 primary education. The average wage is 954 euros. In 2017, the undertaking obtained the certificate ISO 9001 for the training of employees.

The liberalisation of railway transport achieved in 2011 had an impact on employment. Since 2011, Cargo's workforce has reduced, according to the measures of revitalisation and restructuration adopted by the Government. The evolution of company's workforce has been marked by the competition in freight transport, where beyond the public transporter there are more than twenty private companies. The impact of the liberalisation is less evident on the employment of the public company ***ZSSK***, which has a single private competitor in passenger transport.

TABLE 5 – EMPLOYMENT EVOLUTION IN THE THREE BIGEST RAILWAY COMPANIES

Total workforce/Year	2011	2015	2016	2017
CARGO	8,054	6,027	5,794	5,632
men	1,771	1,469	1,454	1,402
women	6,283	4,558	4,340	4,230
ZSSK	4,792	5,949	5,924	5,952
men	2,930	3,881	3,830	3,835
women	1,862	2,068	2,094	2,117
ŽSR	14,998	14,066	13,939	13,781

Source: Annual Report *CARGO* and *ZSSK*: 2011, 2015 – 2017

ELECTRICITY IN SLOVAKIA

The origins and the evolution of the sector until 1989

The first use of electricity power on the current territory of Slovakia dates back to the end of the 19th century. The Austro-Hungarian Empire did not support the electricification of this territory and thus, when it disintegrated in 1918, hardly 14% of the population, mostly in cities, had access to electricity. After the creation of the first Tchechoslovak Republic, the situation has progressively changed as state's investments for electrification mainly concerned Slovakia.

The Vienna Agreement of 1938 changed the geographical frontiers and Slovakia lost a part of its electric companies in favour of Hungary. Remaining companies have merged in June 1942 thus

creating a single undertaking ***Slovenské elektrárne (Electricity of Slovakia)***. The later started to develop electrical transport system at 100 kV and the Slovak state started the construction of several major hydraulic power plants.

After the Second World War, all energy companies were nationalised by decree of the President of the Slovak Republic. Then, in the 1950s, energy sector knew several organisational changes, including the setting up of a single system of electrification. The electrification of Slovak communes had been accomplished in the 1960s. In 1969, on the basis of the constitutional law of the Tchecoslovak Federation, the ***Slovenské energetické podniky – SEP (Slovak Energy Company)***, konzern Bratislava, was created as the single company of energy, which existed until June 1988. It was submitted to the centralized management of production of Prague and contained 4 production undertakings, 3 distribution undertakings, 1 construction and assembling undertaking and 2 collective purpose organisations. Until the privatisation of the 1990s, the state had subsidized the production of the ***SEP*** (electricity, gas, heating), which represented an important advantage for the consumer as these products were inexpensive. In turn, there was a negative side of this situation – consumers were not motivated to save energy. The privatisation has fundamentally changed the situation.

The transformation period from 1990 onwards

In 1990, at the beginning of the process of transformation of the planned economy in market economy, on the one hand, and, of the decentralisation process, on the other hand, the ***SEP*** was separated in three energetic companies that became independent public undertakings: Západoslovenská energetika - ZSE (Western Slovak Energy), Stredoslovenská energetika - SSE (Centre Slovak Energy) and Východoslovenská energetika - VSS (Eastern Slovak Energy).

In 2002, the Government decided the transformation of ZSE, SSE and VSE in public limited companies. The state remained the majority shareholder (51%) and the remaining shares were sold to foreign shareholders: the German company ***E.ON*** aquired shares in ***ZSE***, ***Electricité de France*** in ***SSE*** and the German group ***RWE*** in ***VSE***. Other transformations concerning the private shareholders intervened since then.

In November 1994, a new operator was created to succeed ***SEP***: ***Slovenské elektrárne – SE (Slovak Power Plants***), as public undertaking. Several years later, on the occasion of the preparation of its privatisation, the Slovak Government decided by the Resolution 758/2000 of September 2000 the restructuration of ***SE***, which led to the creation of 3 independent companies in January 2002: ***Slovenské elektrárne – SE (Slovak Power Plants)*** – productor of electricity, ***Slovenská elektrizačná prenosová sústava – SEPS (Slovak Electricity Transmission System***) – single manager of the transmission system on the Slovak territory, and ***Tepláreň Košice – TEKO (Thermal Power Plant of Košice)***, producer of heat and electricity. All became public limited companies. The owners of the ***SE*** are the Slovak state (34%) and SPH - Slovenský priemyslový holding (66%). SEPS is in the ownership of the state at 100% and it is also the case of ***TEKO***, which is one of the biggest undertakings of heating in the country. During the same period, the privatisation of the companies of distribution of electricity was prepared.

The preparation of the accession of Slovakia to the EU has led to negotiations with Russia in view of the cancellation of long term contracts for the supply of oil and gas at dumping prices, which has gradually led to higher prices for energy consumption.

Current organisation and legal framework

Before reaching the final consumer, electricity passes through several categories of companies, depending on the supply of their products and services – these are production, transport, distribution and marketing (supply –sale).

Electric power generation in Slovakia is carried out in all type of power plants, the majority of which

are produced by the 2 nuclear power plants. ***SE*** remains the dominant player on the market, although it is not the only one. Therefore, the real competition on this market is more likely to exist among producers that are complementary to SE.

According to 2017 data[39], ***SE*** is the largest producer of electricity (69%) from nuclear (79.7%), thermal (10.6%) and hydraulic power plants (9.7%). Its majority shareholder SPH (66%) is half owned by ***ENEL*** and ***EP Slovakia BV***. In 2009, its subsidiary ***SE Predaj*** (SE Sale) entered the Slovak market as electricity supplier to companies. ***SE*** itself does not operate on the electricity transmission and distribution market. Several dozen other agents produce electricity in Slovakia; the two with the highest market shares are ***Slovenský plynárenský priemysel – SPP (Slovak Gas Industry)*** with about 7% and ***Slovakia Energy*** with 5 to 6%.

Electricity transmission is based on lines (from 400 kV to 220 kV) that transport large energy volumes, as well as on the interconnexion of the national grid with the networks of neighboring countries belonging to ***ENTSOE (European Network of Transmission System Operators for Electricity)***. These tranmission lines transport production from large power plants, particularly nuclear and thermal power plants, to large companies. ***SEPS*** is the only operator to manage the electricity transmission network in Slovakia.

The next step consists of distribution (lines at 110 kV, 22 kV and 0.4 kV). On the one hand, distribution companies use the production of small power plants and, on the other hand, they connect different consumers, including households. It is at this level that Slovak market knew the most significant liberalisation. Until the beginning of the new millennium, only three companies – ***ZSE***, ***SSE*** and ***VSE*** - distributed and also supplied (sold) electricity. They therefore carried out all the tasks related to the connexion to the networks, their construction and maintenance, as well as the supply of electricity to the final consumer.

Slovak electricity market is part of the ***CENTREL*** region, which also includes the markets of Poland, Hungary and the Czech Republic, that is the countries of the Visegrad Group. ***SE*** represents only 8% of the installed capacity in this region and its annual supplies are 7%.

As regards the legislative framework on the energy sector, the law 656/2004 on energy was the first Slovak law that fully integrated European regulations. The current normative framework consists of two key laws, which entered into force on 1st September 2012:

Law 251/2012 on energy, with the following objectives: transposition of the 3rd energy package, support for competition, transparency of the market, increasing the quality of services, improving consumer rights and protection. The law also introduces a new regime of possibilities for the separation of production and distribution activities – ***unbundling***.

The Law 250/2012 on the regulation of network industries.

According to the Ministry of Economy (Dubnička, 2012)40, the ambition of these two laws consists in creating and ensuring a stable and transparent business environment in the energy sector, with the objective of maintaining the competitiveness of industry and employment in Slovakia. Their priority is based on the economic interests of the country, and aims to satisfy the final consumer, to protect vulnerable customer, as well as to combat energy poverty.

The liberalisation in the sector after the country's accession to the EU

Within the legal framework defined by Directive 2003/55, which was transposed in the Slovak legislation by Energy Law 656/2004, which entered into force in July 2007, the distribution of electricity

39. 2017 SE Annual Report.

40. Dubnička, M. Liberalizácia na vnútornom trhu s energiou. Presented at Horný Smokovec on 29 – 30 October 2012.

is a regulated activity, separated from its selling that, on the contrary, is subject to free market. To this end, Slovak Government applied a ***legal unbundling***, requiring the three companies of distribution and selling to separate their commercial activities from the distribution of electricity. As a result, each of them was split in two:

ZSE was split in ***ZSE-Distribúcia***, today ***ZSE Distribučná*** (distribution company) and ***Západoslovenská energetika Energia – ZSE Energia*** (sales company, i.e. supply company); this has also led to the creation of the ***ZSE Group***;

SSE has been divided in ***SSE-Distribúcia***, today ***SSE Distribučná*** (distribution) and ***Stredoslovenská energetika – SSE*** (sale);

VSE gave birth to the ***VSE Distribučná*** (distribution) and ***Východoslovenská energetika*** – ***VSE*** (sale).

The actual state of the unbundling realised in 2007 is such that the three distribution companies do not sell electricity to final consumers but practically sell electricity to final sellers (***ZSE Energia***, ***SSE*** and ***VSE***), that is to suppliers who sell it and invoice consumers. As a result, final consumers can already choose among the three providers to purchase electricity. Gradually, other companies entered on the market and therefore the choice of consumers is much wider. In 2018, there were a total of 37 electricity providers authorised by ***Úrad pre reguláciu sieťových odvetví – URSO (Office for the Regulation of Network Industries)*** to buy and sell electricity.

Therefore, Slovak consumers can choose their electricity supplier. Their key criteria should be based on the quality of the service, energy advice related to delivery, and, of course, price. In reality, choice is quite limited. Consumer signs two contracts: one for connexion to the grid with a distribution company, the other for electricity supply with a seller. The invoice he pays to the latter includes the price of electricity itself as well as that of its distribution, and then the seller pays this second component of the price (transmission of electricity by lines) to the distribution company. This cannot be choosen by the final consumer because it depends on the geographical location of his residence – the West, the Center or the East of Slovakia ***(ZSE Distribučná, SSE Distribučná, VSE Distribučná)***. To resume, the sellers (suppliers) of electricity buy electricity from producers and resell it, with a certain margin, to final consumers. The final price of electricity depends on the conditions that suppliers are able to negotiate on the market.

Table 6 shows the data on the volume of electricity supplies of the three most important players. Since the total number of delivery points in Slovakia is about 2.3 million, those delivered by additional suppliers represent only about 7%.

TABLE 6 - VOLUME OF ELECTRICITY SUPPLIED

Electricity and points of supply	***ZSE Energia***	***SSE***	***VSE***
Volume supplied (in GWh)	6,253	3,885	3,057
Of which supplied to households (in GWh)	1,927	1,458	1,093
Number of delivery points	920,783	640,220	582,753

Source: Annual Report 2017 of ZSE Energia and Evaluation quality norms 2017 of SSE and VSE

However, as shown in table 7, while in 2012 the share of the three "traditional" suppliers was about 71%, in 2016 it only represented 56%. In the household sector, their share represented 96% in 2012 and decreased by almost 10% in 2016 in favour of alternative suppliers. The impact of this increased competition on the electricity price trends is less obvious.

TABLE 7 – ELECTRICITY SUPPLIERS AND THEIR SHARE ON THE MARKET IN %

	2012	2013	2014	2015	2016
ZSE Energia	35.59	32.11	30.29	27.79	26.43
SSE	21.73	21.73	20.07	17.51	17.18
VSE	13.83	12.69	12.82	12.91	12.60
SE Predaj	13.20	14.92	14.80	14.40	15.26
CEZ Slovensko	11.43	10.20	10.65	12.84	11.71
Magna E. A.	0.00	2.80	3.11	3.08	3.53
Others	4.22	5.55	8.26	11.47	13.29
Total	100	100	100	100	100

Source: URSO – Evaluation of the period of regulation 2012 – 2016

To assess the effects of market liberalisation, ***URSO*** monitors the evolution of sales prices using the switching coefficient that expresses the ratio between the number of delivery points where there has been a change of supplier and the total number of delivery points in the year under consideration. The table 8 shows the evolution of this indicator.

TABLE 8 - EVOLUTION OF *SWITCHING*

	Switching				
Category of client	2012	2013	2014	2015	2016
Points of delivery – households	3.53	3.59	2.58	2.75	2.74
Points of delivery – others	3.73	6.93	4.17	3.56	4.24
Total	3.55	3.99	2.77	2.84	2.92

Source: URSO – Evaluation of the regulation period 2012 – 2016

This coefficient increased only very slightly or not at all in the years under consideration. These little changes are the result of several factors: mainly, the very small differences in supplier prices, the fact that contracts between suppliers and their clients are signed in a much longer term, as well as certain market saturation. Elements that gradually take on as much or even more importance as price, in particular as regards the choice of supplier by households, are based on the quality of supplier's website, the transparency of its commercial conditions, as well as its capacity to provide complet energy service.

As production and wholesale of elecricity was liberalised in Slovakia in 2005, there is no other regulation at this level. The prices of imported or exported electricity are set by bilateral contracts between the customer and its supplier. Since the same year, the volumes of electricity to be supplied outside the Slovak transmission system have no longer been limited.

The regulator

As regards the legislative framework for regulation in the electricity sector, it is carried out in ac-

cordance with the Law 250/2012 on the regulation of network industries. It was adopted with the objective of:

- ✦ transpose European directives,
- ✦ harmonise national legal provisions with the EU regulations,
- ✦ apply the Regulation 1227/2011 on wholesale energy market integrity and transparency,
- ✦ reinforce the independance and powers of the regulatory authority.

The regulatory authority ***Úrad pre reguláciu sieťových odvetví – URSO (Office of regulation of network industries)*** was created in 2001 to control and regulate monopoly industries and thus to seek a balance between the interests of investors and consumers. It carries out its mission in accordance with the Law 250/2012. In March 2016, a new regulatory policy for the period 2017-2021 was adopted, which applies in the electricity, gas, heating and water management sectors. In the field of electricity, ***URSO*** confirmed, on the basis of relevant articles in the preambles of EU directives 2009/72 and 2009/73, the need to continue to regulate the prices of electricity supplied to clients considered vulnerable, i.e. households and small enterprises, to protect them against a possible excessive price increase that would transform electricity into a luxurious good for some categories of population. The year 2012 has proven this: the regulation of energy energy for small business has been stopped and they have risen uncontrollably.

According to the representatives of ***URSO***[41], it took a lot of effort, discussion and explanation from the European Commission bodies to get an objective picture of the practical implementation of regulatory policy. Recently, the fact that the representatives of DG ENER of the European Commission noted that regulation in Slovakia is carried out in accordance with European rules and that ***URSO*** only applies standard and transparent procedures, has been received with a certain satisfaction. They equally appreciated the method of maximum electricity and gas price that maintained the appropriate conditions for the composition of the price by the free competition of suppliers. ***URSO*** prefers this method to direct interventions on the market. The maximum energy prices it fixes do not limit competition as these prices take into account costs and average average profit. Each supplier is free to lower its price. However, so far, no regulated supplier has ever done so with vulnerable customers, even in cases where energy prices on the markets have fallen.

Quality, safety, technologies and environment

The level of electricity distribution and supply in Slovakia is rather satisfactory, both in terms of security of supplies and their quality through the whole country, with relatively balanced prices between different regions. For some years now, electricity suppliers have been chasing customers, which is undoubtedly one of the positive effects of market liberalisation. Slovaks mainly use electricity for lighting household appliances, but less for heating and hot water. It is estimated that about a third of rural households (municipalities with less than 5,000 inhabitants) heat their houses or apartments with electricity, but for most of them are used as a form of supplementary heating.[42]

Since 2009, ***URSO*** has been assessing and reporting on the compliance of regulated operators (producers, distributors and suppliers) with the quality standards they present or are required to present. Table 9 summarises the selected data from these evaluations, which shows some irregularities.

41. URSO: *Regulačná politika na regulačné obdobie* 2017 - 2021, March 2016.
42. https://hnonline.sk/expert/

TABLE 9 – THE RESULTS OF THE EVALUATION OF THE QUALITY STANDARDS DURING 2015 - 2017

Year	Regulated activity in the electricity sector	Number of agents who should have submitted the evaluation	Number of agents who submitted the evaluation	Percentage
2015	Transmission	1	1	100
	Distribution	144	136	94.44
	Supply	239	170	71.13
	Total	***384***	***307***	***79.95***
2016	Transmission	1	1	100
	Distribution	147	132	89.80
	Supply	239	163	68.20
	Total	***386***	***296***	***76.49***
2017	Transmission	1	1	100
	Distribution	142	124	87.32
	Supply	246	176	71.54
	Total	***389***	***301***	***77.38***

Source: Reports on the evaluation of the quality standards, URSO, 2017

It can be seen that some of the regulated companies, which are required to submit their annual evaluation of quality standards, do not do so. However, ***URSO***'s reports do not mention any sanction, despite Decree 236/2016 that imposes the obligation of operators to present this evaluation. On the other hand, companies are sanctioned for non-compliance with quality standards, in the form of compensation payments to market participants who have suffered some damage as a result of this non-compliance.

After the Fukushima accident, following the results of the load tests and the recommendations of the European Nuclear Safety Regulators Group ***(ENSREG)***, an ***Action Plan of Measures*** was elaborated and presented to ***Úrad jadrového dozoru SR – UJD (Office for Nuclear Supervision of SR)*** at the end of 2012. The later monitors the implementation of the measures provided in the ***Plan*** by its inspections. The measures include complex aspects, such as the ***Programme for managing the impact of severe accidents*** (SAM – Severe Accident Management), which has already been implemented in the two Slovak nuclear power plants. The focus of the largest electricity producer in Slovakia – ***SE*** – is primarly on the nuclear safety and the operational reliability of the two units of the Mochovce power plant and the completion of the other two units, as well as the progressive implementation of projects related to the future of the first power plant of Jaslovské Bohunice.

The objective of the Slovak energy policy is, on the one hand, to reduce cabon dioxide emissions and, on the other hand, to increase the share of renewable resources. The first part of this objective unequivocally leads to support nuclear energy, on which the activity of ***SE*** is based. For example, in 2017, almost 90% of its supplies were produced without carbon dioxide. The second part of the defined energy policy objective concerns renewable energies and corresponds to the commitment of Slovakia to Directive 2009/28 on the promotion of the use of energy from renewable sources. This commitment consists in increasing the share of these resources in the total production of ener-

gy to 14% in 2020, and in electricity to 24% (***National Action Plan of the Ministry of Economy)***. In 2016, the share of renewable resources in electricity production should, according to the ***Plan***, have already risen to 23.3% (energiaweb.sk), when, in reality, it represented only 11.16%. Therefore, it is unlikely that the commitment for 2020 will be met.

Electricity generation technologies in Slovakia are varied, as shown in table 10. The proportion of production sources does not correspond to its share of consumption. The largest share of electricity consumption, almost half (49.08%), is nuclear energy; in second place is electricity produced from fossil fuels and in third place hydraulic electricity. Several reasons explain this difference, in particular the price of the electricity to final consumers. This price is the result of three components: the price of electricity itself, the costs of transmission and distribution, and taxes. The price of electricity as energy is only determined by the market, the other two components being subjet to ***URSO*** regulation.

TABLE 10 – INSTALLED CAPACITY OF POWER PLANTS IN 2016

	Part en %
Water	32,33
Fossil fuels	31,55
Fissile core	24,72
Renewable resources	11,16
Other	0,24
Total	100

Source: Šimon, P., energieweb.sk

Since several years, technological developments in the distribution and sales of electricity have been reflected in the development of on line services to consumer, innovations in electromobility, as well as SMART solutions for households, cities and regions ***(SMART HOME, SMART CITY)***.

Users, their rights, services quality

The supply of Slovak households to electricity has been stable and reliable for a long time. As regards consumer satisfaction, no exhaustive study is available. The three largest suppliers of electricity - ***ZSE***, ***SSE*** and ***VSE*** – claim in some of their annual reports to verify the level of customer satisfaction through direct communication, either on their websites or in their premises' customer centres.

The emergence and development of competition in supplier market has given households a vast choice, where it is not always very easy to discern. That is why, in April 2018, ***URSO*** developed and published on its website a ***Guide for households – useful information for electricity and gas consumers***. This information concerns the procedure to be followed in the event of a change of supplier, energy prices, advanced payments, consumption measurement and final invoicing, as well as complaint procedures.

The accession of the country to the EU, competition and the liberalisation of energy prices have increased awareness among Slovak consumers. They have gradually sought opportunities to reduce their heating costs by rendering more energy efficient their houses and appartements, reducing their water consumtion, purchasing more efficient household appliances and lighting. For example, according to the Eurobarometer survey of September 2012, when inhabitants of 27 European countries have beed asked if they have replaced their household appliances with more modern

and energy efficient equipments, 54% of Europeans answered positively but, among Slovaks, this percentage has risen to 81%[43]. Table 11 shows the evolution of energy and electricity expenditure since the accession of the country to the EU. It shows that energy poverty in Slovakia, calculated as 15% of their resources devoted to energy, has significantly decreased in recent years (9% in 2017). This is explained by the progressive increase of their revenues, but also a greater sensitivity to their energy expenses.

TABLE 11 – SHARE OF ENERGY EXPENSES IN HOUSEHOLDS RESOURCES

Year	2004	2010	2015	2016	2017
Total net receipts (€/month and person)	241,62	348,95	422,83	440,91	455,83
Total energy expenses (€/month and person)	36,61	42,10	41,55	40,45	38,90
Of which, electricity expenses	12,79	14,92	14,42	14,42	13,75

Source: Statistics Office of Slovakia

The "material burden" is a user rights issue that persists in Slovakia since the former totalitarian regime. Legally, this term expresses a restriction on the right of ownership of an individual or agent (more precisely the right to use his or her property) in the name of the public interest. In the energetic sector, this covers three categories of restrictions: the entry of a company's employees into private premises, the right to eliminate trees or other vegetations on private land, and the right to build certain equipement necessary for the operation of energy transmission or distribution networks. For example, if the distribution company decides to instal a transformer in a household's garden, it does not need its consent. Under the current law (251/2012), the person who suffers damage is entitled to financial compensation, however, it is not automatic and the law does not even specify its amount. This means that the person concerned must first claim his right and then negotiate his compensation with the company concerned.

The employment in the sector

The number of employees in the energy sector (economic activities D and E according to NACE 2 classification)[44] was 48 200 in 2015, 54 000 in 2016 and 57 100 in 2017, which represents less than 3% of all Slovak employees. In 2008, the year that can be considered as the beginning of the post-liberalisation period, the number of employees stood at 62 500. Therefore, the decrease between 2008 and 2017 is less than 9%. So, in 10 years, the liberalisation has not led to a dramatic reduction in employment in this sector. Their level has been maintained by the entry into the market of other companies that have created their own employment.

SE, the largest electricity producer in Slovakia, has 3,684 employees (annual report 2017), including 3,126 men and 558 women. It is a stable long-term employer, as shown by the average number of years worked at SE per employée – 20.13 years. On one hand, this shows a low fluctuation rate and, on the other hand, the good level of professional skills of employees. To maintain a permanent motivation, in addition to several social benefits beyond those prescribed by law, the compagny has recently adopted a new value model based on the idea of 'thinking differently', which should led to a new firm, consumer-oriented oriented firm culture.

43. SIEA - Slovenská Inovačná a Energetická Agentúra, https://www.siea.sk/letaky/c-4499/ako-znizit-spotrebu-elektriny-v-domacnosti/, on 13 October 2018.

44. Slovenský štatistický úrad *(Office des Statistiques Slovaque)* : http://datacube.statistics.sk

The Groupe ZSE is the largest company of distribution and sale of electricity in Slovakia. In 2017, the number of its employees reached 1,811, including 1,322 men and 482 women. Almost 35% of these employees have a degree in 1st or 2nd cycle of higher education. The retention of employees is based on several advantages that the Groupe guarantees them: a contribution from the Social Fund to workforce regeneration, a preventive medical examination, a contribution to the retirement savings, five additional days of leave and the opportunity for continuing training. Among the continuing training activities, the emphasis is on talents development (annual report 2017).

To conclude, attention should be drawn to the absence of any kind of energy strategy on the part of the regional authorities in Slovakia. ***Vyššie územné celky – VÚC*** (Regional councils) have no material, human or financial means to participate to the coherent energetic development of their regions. There is almost no mention of this type of activity in their programmes of economic and social development. The absence of references to energy in the regional development plans contrasts with long chapters on culture, sport or leisure for the inhabitants. Some initiatives are being developed in the framework of the Covenant of Mayors for Energy and Climate, which, since 2008, has represented a movement of thousands of local authorities affirming their willingness to participate in the achievement of the EU's climate and energy objectives. ***VÚC*** councilors in Prešov in North-Eastern Slovakia voted for the accession of their region to the ***Convention*** and the president of ***VÚC*** signet it on 27 February 2012. The motivation of councilors aimed at the development of renewabe resources, green technologies and energy efficiency. At the same time, they perceive a potential for the development of their region that could lead to more jobs in the local economy, better energy security and, therefore, an improvement in the quality of electricity, gas and water service delivery. This initiative of the ***VÚC*** de Prešov could mobilise the municipalities of the region for their sustainable development and other ***VÚC*** may become actors in the energy strategies of their regions through their own initiatives.

POSTAL SERVICES IN SLOVAKIA

The evolution of the sector, its current organisation and legislative framework

In the 1980s, Slovakia was part of Czechoslovakia and postal services were provided by the public company ***Československá pošta*** (Czechoslovak Post) in accordance with the Law 151/1949 on ***Československá pošta***.

The company collected, transported and delivered postal items through postal offices, and it also printed and sold postal stamps and other objects of value. Since the second half of the 1950s, postal offices had also been selling lottery tickets from Sazka and Sportka (two public companies). According to the legislation in force the state owned all telegraphic and telecommunications equipment connected to or using the postal network. In 1988, the communication and transport sectors merged and in July 1989 the public company ***Správa pôšt a telekomunikácií*** (Post and Telecommunications Administration***)*** was created with its headquarters in Prague.

In the 1980s, due to the political and economic activity based on the centralisation of decision-making power, competition existed in no sector, including in postal services. Even if these services were provided throughout Slovakia, the lack of competitive pressure did not encourage any improvement in the quality and diversity of services. There was a network of 1,553 postal offices and 193 postal centres, many of which were located in old unadapted premises. As the public company also managed telecommunications, problems concerning the demand for these services gradually

emerged. At the end of the 1980s and the beginning of the 1990s, the company was unable to meet the demand for new telephone lines from a growing number of households, in particular in urban areas, where this demand largely over exceeded supply, because the obsolete telephone equipment was not adapted to modern requirements.

Following the establishment of a democratic regime at the end of the 1990s, and after reforms that gradually led to the denationalisation of the majority of public companies and favourable conditions for the development of a market economy, the provision of postal service remained principally provided by the public company ***Správa pôšt a telekomunikácií***.

The division of Czechoslovakia and the birth of the independent Slovak Republic on 1st January 1993 resulted in organisational and institutional changes in all sectors. The Ministry of Transport, Post and Telecommunication decided to create the public company Slovenská pošta (***Slovak Post***). Thus, not only did the postal services become independent, but two other public companies were created in place of ***Správa pôšt a telekomunikácií*** – ***Slovenské telekomunikácie*** (Slovak Telecommunications***)*** and ***Poštová novinová služba*** (***Newspaper Postal Service***). In 1996, the headquarters of Slovenská pošta was moved from Bratislava to Banská Bystrica.

During the preparatory process for Slovakia's accession to the EU, the new Law 507/2001 on postal services was adopted, several provisions of which entered into force on 1st January 2004. In addition, Law 15/2004 amended the previous one (507/2001) to include all legal provisions in his field. Then, on 1st October 2004, Law 349/2004 on the transformation of Slovenská pošta converted it into a joint-stock company owned by the state.

The current organisation of the legislative framework

Today, Slovenská pošta's activities are defined by the following legal provisions:

Law 324/2011 of 14 September 2011 on postal activities;

Law 402/2013 on the ***Office of regulation of electronic communications and postal services*** and on the ***Office of transport*** and the amendment of certain laws. Since 15 January 2013, Slovenská pošta operates according to the rules adopted in the field of national and international transport;

Directive 2002/39/EC of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services

Directive 2008/6/EC of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services.

Following Slovakia's accession to the EU, the functioning of the postal services market has changed in line with European rules. During the liberalisation process, private companies began to participate in the provision of these services, which led to the emergence and development of competition. Since 2008, an amendment to the Law on postal services has guaranteed Slovenská pošta exclusivity in the delivery of postal services of less than 50 g, which gave it a monopoly situation concerning the distribution of so-called hybrid mail[45]. In 2012, a new law on postal services came into force which, on the bases of the European Directive 2008/6, abolished this exclusivity and thus established a total liberalisation of the market. At the same time, the conditions of access to the public postal network of potential hybrid mail providers have been defined. At the end of 2012, there were 21 companies providing other postal services on the market outside ***Slovenská pošta***, 7 of which were hybrid mail service providers. Today, there are 25 national and international private companies on the market, including 6 hybrid mail services[46], although Slovenská pošta remains the sole provider of the universal postal service and thus has a dominant position in mail delivery.

45. Combination of physical and electronic means.

46. https://www.teleoff.gov.sk/zoznam-podnikov/

The financing

Since 2013, due to the liberalisation of postal services, the mode of financing of Slovenská pošta has been changed by the creation of a ***Compensation Fund***. This fund finances the universal service through a special account in the Treasury, which has been created and is managed by the ***Regulatory Office***. Slovenská pošta, as universal service provider, is entitled to compensation from this ***Fund*** if it has to bear a net financial cost that represents an 'excessive' financial burden for it. The ***Regulatory Office*** is in charge to asses the existence of an excessive cost. For each postal company providing interchangeable services, it determines the obligations to contribute to the ***Compensation Fund***. The contribution shall not exceed 3% of the turnover of the undertaking concerned. The method of calculating the net cost of the universal service, as well as the contribution to the ***Compensation Fund*** is set out in the Decree of the ***Regulatory Office*** of February 2012. For example, for the year 2016, the ***Office*** determined, on the basis of data provided by Slovenská pošta, the net cost of the universal service at the level of 12.2 millions euros, and its 'excessive' cost, which can be reimbursed by the Compensation Fund, at the level of 9.2 millions euros.

TABLE 12 – THE PROFIT OF SLOVENSKÁ POŠTA

Year	2011	2012	2013	2014	2015	2016
Results in millions €	-9,1	-2,7	4,3	6,1	4	3,8

Source: Slovenská pošta annual reports 2011 – 2016

Since 2013, the changes in the financing of Slovenská pošta have been positively manifested in its economic results. After years of looses, the company has started to realise profits, as shown in table 12. Thus, despite the fact that the competition on the market has risen, the introduction of the ***Compensation Fund*** to finance the universal service has improved its economic situation. This is mainly due to its revenues coming from national and international postal services, including the revenues from the universal service that are the most important.

The regulatory authority

In 2001, the Law 507/2001 was adopted as the first legislative act for postal services and reflecting a harmonisation of Slovak legislation with the EU law. This law set up the regulatory authority, which was called ***Poštový úrad (Postal Office)*** until 2004, then replaced by ***Poštový regulačný úrad*** (***Office of postal regulation***), wich retained the same powers as its predecessor. Law 402/2013, which entered into force in January 2014, merged ***Poštový regulačný úrad (Office for postal regulation)*** and ***Telekomunikačný úrad*** (***Telecommunications Office)*** by setting up ***Úrad pre reguláciu elektronických komunikácií a poštových služieb (Office for the regulation of electronic communications and postal services)*** – below in the text referred to as ***Úrad pre reguláciu (Regulatory Office)***. The role of this authority consists of:

- the regulation of postal services and of the postal payment system; ***Úrad pre reguláciu*** grants licences and thus, outside the universal service, regulates all postal services, including those of private providers. It is also the price regulator of ***Slovenská pošta***.
- the state control over the (public and private) provision of postal services and the postal payment system;
- a cooperation with the regulatory authorities of other countries;
- the function of a reporting body in terms of regulation, in relation to the bodies of the EU and EZVO member countries.

Úrad pre reguláciu granted to Slovenská pošta the postal licence for the period 2013-2020 that concerns both national and international postal service.

The quality of postal services

The quality is assessed according to several criteria based on international standards in force in European countries. Directive 2008/6 requires for transfrontier postal services that:

- 85% of the fastest category of postal mail is delivered within 3 days of being sent;
- 97% of ordinary mail is delivered within 5 days after it is sent.

According to the Directive, countries must adapt quality standards to their national postal system, according to the standards in force in the EU. ***Slovenská pošta*** has had its quality management system certified ISO 9001:2008 since 2008. It obtained it in 2016, after the audit carried out by the external company QSCert s. r. l.

In Slovakia, the quality criteria for the universal postal service are set out in the annex to the postal licence. They are defined by ***Úrad pre reguláciu***. These include the reliability, regularity, accessibility and delivery times of the postal item. Below are the results from the last ***Úrad pre reguláciu*** Report, concerning the indicator ***Rapidity of delivery*** (L + days):

- 2017: L+1 – letters of 1st class: 94.99% (standard: 94%),
- 2017: L+2 – letters of 2nd class: 94.06% (standard: 94%),
- 2016: L+2 – package of 1st class: 96.62% (standard: 93%),
- 2013: L+3 – package of 2nd class: 99.17% (standard: 93%),
- 2016: L+2 – postal vouchers: 95.2% (standard: 93%).

According to this Report and other studies carried out between 2013 and 2016, ***Slovenská pošta*** can be found to meet quality standards in terms of speed of delivery. The improvement in this indicator is mainly due to market liberalisation, which has allowed several private providers with faster postal services to enter the market and forced Slovenská pošta to face it.

As for the accessibility of postal services, this can be assessed on the basis of customer satisfaction studies. In 2017, ***Úrad pre reguláciu*** carried out a study on a sample of 1,200 respondents, some of whose results are presented below, compared to those of 2011 (in percentage of satisfied customers):

TABLE 13 – CUSTOMER SATISFACTION

Indicator	2017	2011
Adequacy of letter and parcel charges	75.5	65
Accessibility and availability of post offices	90	81.9
Public opening hours range: morning afternoon	 94 92	 83.6 75.8
Handling of complaints	84	81.5
Possibility for the client to collect the notified postal item	85	74.7
Wainting time at the counter	75	64.4
Global satisfaction	79	76

Source: Annual reports of the Regulatory authority

As shown in Table 13, one of the decisive factors influencing customer satisfaction with postal services is their price. Based on statistical indicators, it can be seen that in the context of the gradual liberalisation of services market, the price level of some services decreased, others increased. Price increases concern mainly the delivery of letters because their quantity is decreasing due to electronic communications, which results in an increase in the average cost of this service. Since 2013, the price of 1st and 2nd class letters has increased by 5 cents; however, parcel prices have decreased by 10 cents. In addition, thanks to competition, ***Slovenská pošta*** has been led to increase the quality of its services (e.g. automatic postal terminals, post office equipment), which has also contributed to customer satisfaction.

The latter can also be considered in terms of the cost that postal services represent for households. During the period 2004-2014, according to data from ***Slovenský štatistický úrad*** (Slovak Statistical Office), postal services expenditure ranged from 0.17€ to 0.23€ per month and person. While in 2004, postal services accounted for 0.04% of total household expenditure, in the following years, this proportion decreased to 0.02%. For retired households, this expenditure gradually decreased from 0.6% of total household expenditure in 2004 to 0.037% in 2014. According to the latest data available in 2016, monthly expenditure on postal services represented €0.14 per person, and the share of this expenditure in total household expenditure was 0.02%. For retired households, it was 0.034%. In 2017, according to a survey by ***Úrad pre reguláciu***, customer satisfaction with the cost of letters and parcels was 75.5% of respondents.

In addition to the ***Úrad pre reguláciu study***, the University of Žilina also conducted a survey on the quality of postal services in 2016. The report presents an assessment of the most important aspects of the postal service, which, according to the customers who responded the survey, are as follows: accessibility, price and quality of the services provided:

- accessibility is defined as the average waiting time at the counter during peak hours, which should not exceed 12 minutes. According to measurements and calculations during the survey, the average waiting time in postal offices, with the numbered customer call system, was less than 6 minutes;
- satisfaction with the quality of universal postal services reached 78.6%;
- respondents were most satisfied with the approach of postal employees and postmans. Annual growth in satisfaction has been evident in terms of courier services, speed of delivery and simplicity of postal products.

The increase in customer satisfaction with postal accessibility can be explained by the better economic situation of ***Slovenská pošta***, which has enabled it to rebuild post offices and set up new offices where necessary.

As regards the accessibility of postal services, it can be characterised by the following available data. There are 2,927 municipalities in Slovakia, including the districts of the two major cities - Bratislava and Kosice. According to the 2017 ***Úrad pre reguláciu*** Report, the country had 1,539 posts, including 173 collection posts and 1,366 delivery posts, 73 postal centres, 5 mobile posts, 15 places with only contractual delivery and 40 partner posts (individual agents providing the postal service on a contractual basis with ***Slovenská pošta***). Throughout the country, ***Slovenská pošta*** has 4,764 mailboxes, 1,656 vehicles, 106 motorcycles and 1,863 bicycles. The collection of postal items is carried out every working day at the access and contact points. Similarly, delivery is made every working day throughout the country. There are 4,736 delivery areas, 1,957 habitable places without delivery, 751 places with limited delivery and 290 with irregular delivery.

In accordance with the Postal Services Act, ***Úrad pre reguláciu*** has authorized exceptions to the accessibility requirement for delivery to places where the safety of employees would be threatened, or where access is difficult or sparsely populated and too far from inhabited areas. Since 2017, one of the criteria for service quality has been defined as the distance from the post office closest to

home, which should not exceed 10 km. Every municipality with more than 2,500 inhabitants and every catchment area with a population above 3,500 inhabitants is required to have a post office. If the municipality has more than 20,000 inhabitants, for every additional 20,000 inhabitants, it must create another post office. The number of posts on Slovak territory remained relatively stable: 1,539 in 2018 and 2013 with negligible decreases and increases over the period considered.

The possibility and modality for clients to exercise and claim their rights is closely linked to the quality of services. An important step was taken in this area in 2015 when ***Slovenská pošta*** established the Ombudsman Institute as an instrument for improving the quality of products and services. ***Slovenská pošta's*** complaint procedure states that a customer who is not satisfied with the way his complaint or suggestion has been handled has the right to contact the postal ombudsman. Its office is located in the premises of the Slovak Post Office in Banska Bystrica.

One year after the creation of the Ombudsman, his activities were assessed as positive and contributing to the satisfaction of customer needs. The fact that no complaints led to litigation during the period under review also confirms the usefulness and legitimacy of the Ombudsman Institute.

Technic and technological equipment

The quality of service delivery increasingly depends on technologies that have been evolving at a sustained pace in recent years. In terms of postal services, this concerned the automatisation of operations, introduced in the 202 most efficient post offices in 1997, which contributed to a more modern and faster service. At the end of the millennium, the technological priorities were to automate the postal network and to guarantee postal security. In 2015, ***Slovenská pošta*** has been certified for its information security management system according to ISO/IEC 27001: 2013. In 2016, an audit carried out by QSCert, s.r.l. confirmed this certification.

Since 1st January 2003, Slovakia has been a member of the CEN (European Committee for Standardization) for postal services. It is represented by its ***Úrad pre normalizáciu, metrológiu a skúšobníctvo*** (Bureau of Standardization, Metrology and Testing). Under the authority of the latter, ***Úrad pre reguláciu*** shall ensure cooperation with the CEN and the resulting tasks. The standards for the quality of postal services EN 1385 are part of the set of European standards and Slovakia must comply with them. It shall introduce the CEN documents into its system within six months of their issue. A list of all relevant documents is available online[47].

Before 2010, the postal sector succeeded to:

implement the tracking of postal items (track and trace service);

complete the automatisation of operations in all postal offices and connect them to the IT network;

implement hybrid mail services;

expand the range of banking services offered by taking advantage of postal offices automatisation.

Slovenská pošta has 4 large mail processing centres (HSS – Slovak acronyme) with automatic sorting lines, the most recent of which is in Žilina (a parcel sorting line with 3 infeed drawers and and 43 outfeed drawers, which makes the sorting process much faster), and 2 international exchange centres.

In 2016, notification by e-mail or SMS (of registered, insured and official mailings) was introduced, as well as the possibility of paying postal charges by credit card. Similarly, automated parcel delivery terminals service has been set up (parcel boxes). A monitoring of vehicles and postmen exists, and since 2017, the electronic system for calling customers at the counter has been gradually installed, with the aim of increasing their satisfaction rate.

47. https://www.teleoff.gov.sk/schvalene-a-publikovane-en-a-ostatne-dokumenty-centc-331-postove-sluzby/

In terms of technical and technological equipment, ***Slovenská pošta's*** tasks in the field of environmental protection should be highlighted. Since 2008, it has been certified under the ISO 14001: 2004 environmental management system. This is the result of competitive pressure, a better economic situation of ***Slovenská pošta***, as well as its willingness to develop its social responsibility and reputation.

The employment in the postal services

In 2017, according to Eurostat databases, 25,300 employees worked in postal services, including 19,700 women and 5,600 men. Most of them are employed in ***Slovenská pošta***. The average number of employees in the latter, recalculated in 2016, was 13,446, 82.5% of whom were women. In comparison, the number of women employed averages 45%. The average salary was 711.85 €, while the national average salary reached 954 €. Table 14 illustrates the evolution of the number of workers in the postal services sector since 2008.

TABLE 14 - EVOLUTION OF EMPLOYMENT IN POSTAL SERVICES

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Staff in thousands	21.7	22.0	20.7	21.2	20.8	21.7	19.0	20.2	23.2	25.3
Of which ***Slovenská pošta***	15.3	15.1	14.6	14.2	13.7	13.7	13.7	13.6	13.5	-

Source: Eurostat and annual reports of Slovenská pošta

In 2008 Slovenská pošta was awarded the ***HR Gold Award for Human Resources Management and Development***, for innovations in human resources planning. Its workforce planning system is based on the application of a unified process to all changes in work organisation and the determination of workforce requirements. In the effort to rationalise and optimise its activities, including the outsourcing of certain secondary activities, ***Slovenská pošta***'s number of jobs has decreased since 2008: during the first four years from 1.5 to 3.5%, after which it has become more or less stable. On the contrary, the total number of workers in the sector is increasing, due to the arrival of private postal service providers.

Since 1st July 2016, on the basis of a ***Memorandum of Cooperation between the social partners*** on employment, remuneration and social policy issues of ***Slovenská pošta***, its remuneration system has been modified: 5% of the variable salary has been included in the basic salary level, and the minimum basic salary has been set at €490. The employer's social programme aims to improve working conditions, the quality of life of employees and their personal development. Motivational factors include a contribution to employee catering, bonuses for jubilees, non-repayable social assistance and a contribution to their transportation costs. ***Slovenská pošta*** organises summer camps, sports games for employees' children, and provides a financial contribution to parents at the beginning of the schooling of their first child. It also finances the "Senior" project. It develops the training plan for its employees, which addresses the need to improve their qualifications in connection with the unification and innovation of the portfolio of postal services and products, as well as the communication skills of those who are in direct contact with customers. The training is also intended to develop the managerial skills of managers. The evolution of ***Slovenská pošta***'s workforce shows the continuing interest in working in the field of postal services. It must be stressed, however, that this is for the most part in the interest of the female population. It is probably because of relatively low wages that the share of men in this sector is not increasing. On the contrary, in recent years, it has tended to decline, particularly in response to the strong demand for labour in the automotive industry.

Synthesis

As we pointed out in the Introduction, the liberalisation of services of general economic interest in Slovakia only started almost at the end of the first decade of the new millennium. There was therefore a 'catch-up' to be made in relation to the 'old' European countries. However, it is understandable that the process of liberalisation in these sectors, which have long retained a monopoly character, has been gradual and can probably never reach the level of market opening for industrial goods.

However, liberalisation has undeniable beneficial effects in Slovakia on several levels, but there is still room for improvement in the markets concerned, by removing the obstacles to their effectiveness maintained mainly by the dominant companies, the former monopolies.

In passenger rail transport, for example, even if there are only two private operators, they have contributed to the quality of passenger transport and have created pressure for lower prices. The situation of private companies in freight transport is more complicated, as we have shown in the corresponding chapter. Their situation could be improved by removing certain barriers to competition and this could undoubtedly have positive effects for users. Companies in which the state is the sole shareholder are not concerned by the liberalisation process, as, on the one hand, there is a political control that influences their functioning, with top managers being appointed by the government, and, on the other hand, these companies are not motivated to become more efficient because of certain barriers to competition. Thus, ***Antimonopolný úrad*** (Anti-monopoly Office) has several times sanctioned Cargo for various offences. In passenger transport, the entry into the market of a private company has had positive effects in terms of transport prices and quality, but the anti-competitive measure taken by the state, making rail transport by the sole public carrier ***ZSSK*** free of charge for children, students and seniors, has virtually eliminated these effects. ***ZSSK's*** performance has increased, but the level of its services has decreased; by deciding on this free transport without the operator's lost revenue being compensated by the public authorities, ***ZSSK*** loses financial resources that it could use to upgrade its trains and their equipment.

Market liberalisation is progressing thanks to European legislation in young market economies in Central and Eastern Europe such as Slovakia, but it depends in many respects on the capacities and competences of the national state, the government, its willingness to eliminate existing legislative deficiencies, inconsistencies in the legal system, such as a weak reference to the law, as well as efforts to vigorously fight corruption through effective control mechanisms.

Emphasis should also be placed on strategic management of the public sector, in particular through transparent rules on public-private sector cooperation, through a real professionalisation of civil servants, in order to avoid incompetent decisions or failures of the government itself. For example, an inconsistency of the Slovak state in the process of liberalising postal services became apparent in April 2008, when ***Úrad pre reguláciu*** (Regulatory Office) granted ***Slovenská pošta*** the exclusive right to provide the hybrid service. The European Commission has warned state bodies that the company has become a monopoly and that competition rules have been violated. ***Slovenská pošta*** had then offered an appeal to the EU Court of First Instance. However, the latter dismissed and confirmed the violation of competition law by this exclusive right. This case refers to doubts about the independence of the Regulatory Office. Indeed, in accordance with the legislation in force, the President of this Office is elected by the National Council of the Slovak Republic on a proposal from the Government. In addition, the latter directly appoints the Vice-Chairman of the Office and may dismiss him, if the Minister of Transport and Construction so proposes. The same problem exists in the energy sector: it is the government that proposes the candidate for the presidency of the Regulatory Office - URSO and the President of the Republic appoints him to this position. The latter does not have effective mechanisms in place to reject it.

To summarise the current state of liberalisation of services of general economic interest in Slovakia, the rail infrastructure has remained in state ownership. Among the carriers, there are two dominant

public (state) companies and about thirty private companies. In the electricity sector, former state-owned enterprises have been transformed into joint-stock companies in which the state has the majority or minority of the capital; the remaining part of the capital is private, mainly foreign capital. Market liberalization has gradually made it possible for private companies to enter the market, but their market share, even if they are competitive with each other, does not really allow them to compete with large state-owned co-ownership companies. In the field of postal services, there is a traditional dominant undertaking owned by the state, and who is the only one authorised to provide the universal service, but for the other services in the sector competition has indeed developed.

GERMANY

KOMPETENZZENTRUM
Öffentliche Wirtschaft, Infrastruktur und Daseinsvorsorge e. V.

LIBERALISATION IN EUROPE: REPORT FOR THE RAIL, ELECTRICITY AND POSTAL SECTORS

GERMANY

KOMPETENZZENTRUM FÜR ÖFFENTLICHE WIRTSCHAFT, INFRASTRUKTUR UND DASEINSVORSORGE E.V.
DR. OLIVER ROTTMANN
KRISTINA TYUFEKCHIEVA, LL.M
CHRISTIAN BENDER

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LIST OF ABREVATIONS

AG	Aktiengesellschaft (joint-stock company)
ARegV	Anreizregulierungsverordnung (Incentive Regulation Ordinance)
Art.	Article
B2B	Business to Business
BGBI	Bundesgesetzblatt (Federal Law Gazette)
BMU	Bundesministerium für Umwelt und nukleare Sicherheit (Federal Ministry for Nature Conservation and Nuclear Safety)
BMWI	Bundesministerium für Wirtschaft und Energie (Federal Ministry for Economic Affairs and Energy)
BSWAG	Bundesschienenwegeausbaugesetz (Federal Railways Development Act)
CEP	Courier-, express- and parcel services
CO^2	Carbon Dioxide
DBAG	Deutsche Bahn AG
DIN	Deutsches Institut für Normierung (German Institute for Standardisation)
Diss.	Dissertation
DPAG	Deutsche Post AG
EC	European Community
EEC	European Economic Community
EEG	Erneuerbare-Energien-Gesetz (Renewable Energies Act)
EnWG	Gesetz zur Neuregelung des Energiewirtschaftsrechts (Energy Act)
EU	European Union
FRG	Federal Republic of Germany
GDR	German Democratic Republic
Ibid.	Ibidem
ICE	Intercity-Express
KfW	Kreditanstalt für Wiederaufbau
Km	Kilometres
Km/h	Kilometres per hour
n.d.	no date given
o.O.	ohne Ort (no place given)
OECD	Organization for Economic Cooperation and Development
PUDLV	Post-Universaldienstleistungsverordnung (Postal Universal Service Ordinance)
S.	Seite
SOP Transport)	Schlichtstelle für den öffentlichen Personenverkehr e.V. (Concillation Body for Public

1. INTRODUCTION

The purpose of this meta-study is to outline the liberalisation effects in the railway, electricity and postal sectors and to outline the effects of opening up the markets in various segments. Among other aspects, data from the fields of "Legal and Regulatory Framework", "Technological Characteristics", "Organisation of the Sector", "User Preferences", "Quality", "Environmental Protection" and also "Financing" is analysed and integrated into the overall analysis. This also contributes to the overall view of the transformation process of the reforms in the relevant sectors.

The beginnings of liberalisation in the postal, railway and electricity sectors began in an almost comparable fashion: while the first two sectors were characterised by a state monopoly in the 1980s, the electricity sector was dominated by private undertakings, but still in the form of an oligopoly. Furthermore, due to the reunification of Germany, all three sectors where characterized by integrational processes of the former GDR segments into the existing structures of the FRG. This structural break led to substantial adjustment processes, hallmarked by socio-economic factors which are being discussed in the next sections. This raises the question of which adjustment processes have taken place in the individual sectors and, assuming that the initial situation is approximately comparable, what differences have emerged in the course of the liberalisation efforts. In particular, the railway and postal sectors were characterised by a state-organised public service until the beginning of the 90s. This resulted in a transformation process, which still continues today. This also applies to the electricity market, which was also opened up to competition, yet is subject to a constant adjustment process due to the increasing market-economy organisation and the focus on renewable energies, corresponding to a low degree of planning reliability for the players in the energy market.

The following results show that liberalisation has a complex impact. As various stakeholder groups influence the sector, efforts to open up the market are affected in a number of ways, which in practice do not always provide the expected theoretical results. This is particularly evident in the fact that all three sectors are dominated by one supplier - in the case of the electricity market by four suppliers - although all areas are open to third parties as part of various reforms. Therefore it seems appropriate to not only look at liberalisation, but also investigate its structure, in order to draw conclusions for future developments.

The following analysis is structured as follows: After this brief introduction, Chapter 2 looks at the railway sector. Chapter 3 follows with the analysis of the electricity market. Chapter 4 analyses the liberalisation of the postal market. Final considerations are made in Chapter 5.

2. THE RAILWAY SECTOR: LIBERALISATION DE JURE VERSUS DE FACTO

Until the 1980s, the ***legal and regulatory framework*** of the rail sector was shaped by a state-owned company which represented a legally dependent part of federal assets.[48] This changed in 1993 with the Law on the Reorganisation of the Railway System[49], in which Deutsche Bahn AG was

48. Bleicher (1981), 523.

49. Gesetz zur Neuordnung des Eisenbahnwesens (ENeuOG).

established as a privately organised railway undertaking of the federal government.[50] In addition, private railway undertakings were granted open access to the railway lines and the responsibility for rail passenger transport was transferred from the federal to the state level.[51] The EC Directive 91/440/EEC also resolved to separate the operation of the railway infrastructure and the provision of transport services by the undertakings, which at the same time results in an organisational and institutional separation (unbundling).[52] In addition, the directive allowed for a financial restructuring with the help of the member states if this seemed to be necessary.[53] In case of the Federal Republic of Germany, a debt relief was necessary for the establishment of a private law organization. Therefore, the liabilities of the two public railway companies where merged which accumulated to 70 billion DM.[54] Those liabilities where outsourced into a state owned fund (Bundeseisenbahnvermögen), with the task to manage and redeem the obligations.[55] There are currently more than 400 railway companies, which compared to DB AG, have a market share of less than one percent in the trunk line passenger service sector.[56] Those are mainly regional railway companies, which operate on a limited geographical area. In opposition to that, the share of the competitors in the freight service sector account for 43% in 2016 and is therefore higher as in the passenger service sector.[57] However, the freight service sector faces two challenging developments. First, the overall production of goods such as coal, petroleum and chemical products declines, which puts this sector under pressure.[58] Second, special factors, such as increasing challenging weather conditions also leads to a shift of transportation.[59] Furthermore, a separation between the regional and the trunk line has to be made. DB regio, the regional branch of the DB enterprise, had a market share in terms of driven kilometres of 70.7% in 2015 and developed until 2017 to 66,8%.[60] Therefore, one could argue, that competition rather materializes on the regional level and decreases with increasing distance. However, the market share of DB regio compared to other competitors is high, which also indicates the market power of the DB enterprise in general.

With regard to the ***technological characteristics*** of the sector, until the privatisation of the German Federal Railway the federal government constantly invested in fixed assets, therefore increasing the level of infrastructure.[61] This led inter alia to the introduction of the Intercity Express (ICE) in 1991, which reached a speed of up to 208 km/h. The ICE 3 can reach a maximum speed of 330 km/h.[62]

As digitalisation progresses, it is also possible to purchase tickets online and to use Wi-Fi on the train. However, a study by the consulting firm A.T. Kearney shows that, particularly in the area of local train services, mobile internet has not been established with a coverage of 60%, despite the infrastructural focus being on local train services with two billion journeys per annum, compared to long-distance train services with 130 million passengers per annum.[63] In order to adequately equip all trains for digitalisation by 2025, the number of vehicles to be retrofitted annually must

50. Article 2 of the Law on the Reorganisation of the Railway System.
51. Ibid.
52. Art. 1 of the EC Directive 91/440/EEC.
53. Art. 9 of the EC Directive 91/440/EEC.
54. Berndt / Kunz (2003), 154.
55. Ibid.
56. Deutscher Bundestag (2018), 4.
57. Allianz pro Schiene (2017) (27.08.2018).
58. Deutsche Bahn (2017a) (26.09.2018).
59. Ibid.
60. Ibid.
61. Kunert / Link (2013), 38.
62. Deutsche Bahn (n.d.) (15.06.2018).
63. Welt (2015) (15.06.2018).

increase tenfold.[64] The rail network now covers a length of 44,500 km with 6,300 train stops.[65] This factor is also reflected in the needs and preferences of the customers. While initial progress has been achieved through networked mobility (Call-a-Bike-System) punctuality (PlanStart) and online purchases (DB Navigator), important quality dimensions such as cost, speed, travel comfort, protection against the weather, cleanliness and simple information acquisition must also be taken into consideration.[66] Considering the GDR, until 1990, only 30% of its railway system was electrified, with bridges, tracs and switches which partly weren't restructured for over a century.[67] In 1985, 16% where electrified, whereas this development was considered as important in order to reduce the dependence of foreign oil exports.[68]

As already stated, the German Federal Railway was a state monopoly until the end of the 1980s. There was no competition in the sector itself, but the aggregated transport sector was characterised by intermodal competition. In particular, due to the competition with cars, planes and shipping, the railway has never held a traffic monopoly.[69]

The ***organisation of the sector*** changed in the mid-nineties as part of the railway reform. On 01.01.1994 the railway infrastructure was opened to third party providers and on 01.01.1996 the buyer principle was introduced, which involved ordering services from train operators, so that from a competition policy perspective a partial opening of the market was created.[70]

From a current perspective, the competitive dynamic is extremely low, as the direct competitors to DB AG generally operate niche products.[71] The number of passengers of the DB AG amounted in 2005 up to 1,785 million and rose to 2,564 million in 2017.[72] During the same time span, the volume of sales rose from 25,055 million Euro (2005) to 42,693 million Euro in 2017.[73] The market share of DB AG - measured in terms of traffic volume - is over 99% in the long distance traffic.[74] This is the case because the market entrance barriers are high. Potential competitors must acquire trains, which are costly. A market for used trains doesn't exist.[75] If there is an opportunity, a financing scheme has to be at hand at the same time as well as a long-term access to the railway.[76] Furthermore, high trail fees impede a potential competitor from entering the market.[77] DB AG's "Strategy 2020" aims to implement an improvement in customer and market orientation, counterbalance shortages of specialists, and ensure the long-term establishment of transparency.[78] This shows that the former state-owned company has recognised its deficits in the areas of technological characteristics and customer needs.

However, the ***quality of the sector*** is determined in a more superordinate sense by punctuality. Since March 2016, the punctuality rate has been consecutively over 90% (punctual arrival time plus

64. Ibid.
65. Neumann / Krippendorf (2016), 100-101.
66. Brenck / Mitusch / Dams (2008), 7.
67. Bundesstiftung Aufarbeitung (n.d.) (26.09.2018).
68. Hopf (2013), 115.
69. Zohlnhöfer (2013), 315.
70. Schwilling / Bunge (2013) 153-154.
71. Forschungsinformationssystem (2016) (15.06.2018).
72. Statista (2018a) (27.08.2018).
73. Statista (2018b) (28.08.2018).
74. Ibid.
75. Welt (2016) (28.08.2018).
76. Ibid.
77. Ibid.
78. Schwilling / Bunge (2013), 144.

a maximum of 5.59 minutes).[79] In the case of the GDR, even low consumer prices couldn't dampen the decrease of passengers due to an increase in individual mobility, delays, inferior railway systems and cancellations.[80]

Alongside quality, ***safety*** is given high priority. Since 30.06.2012 railway manufacturers have been subject to the statutory provisions of Article 4 of the General Railway Act[81], as required by European law.[82] The transposition into national law took place on 05.07.2007. In Germany, travelling by car is statistically 63 times more dangerous than a train journey.[83] Throughout Europe, since the introduction of DIN 15227, increased safety requirements apply, such as structural measures to secure the interior for train drivers and passengers.[84]

In terms of disposable household income, transport expenditure fell from 21.9% in 1980 to 13.0% in 2012, symbolising improved ***affordability*** of railway travel for middle and lower income groups.[85] Among other reasons, this can be attributed to the founding of DB AG, which resulted in basic economic principles becoming part of the former state-owned company. For example, between 1997 and 2013, the annual federal burden fell by 17%, adjusted for inflation by 38%.[86] Concerning the GDR, the number of people who used the public railway system decreased over the years, even with a highly subsidized price for inner city transportation. With yearly subsidies of three billion Mark, prices for consumer of 0.2 Mark could be realized.[87]

In the area of ***equal treatment for equivalent situations***, progress has also been made. The new version of the 1999 Railway Traffic Regulation[88] allows consumers to call in a conciliation body to settle disputes.[89] In addition, DB AG is currently focused on enabling accessible travel for people with disabilities throughout the Federal Republic of Germany in order to provide people with a means of transport where they can enjoy equal rights regardless of their physical condition.[90]

As part of ***universal access***, the EC Regulation 1893/91 intensified the competitive pressure on the German Federal Railway in the 1980s, which at the same time strengthened the demand for non-discriminatory access to the German railway network for European competitors.[91] In addition, the Rail Regulation Act of 2016 was enacted, which prohibits the arbitrary imposition of track access charges by their owners.[92] Although, as already described, unbundling was implemented in rail traffic, in a 2015 report, the Monopolies Commission came to the conclusion that there had to be a separation of financial flows between the group divisions in order to limit the influence of the Group holding company and its transport undertakings on the decisions of the infrastructure companies and therefore ensure universal access.[93] In The GDR, public transport was ideologically preferred, what resulted in low prices for customers. Therefore, it was possible even with low income to use the railway system as a citizen.

79. Statista (2018c) (15.06.2018).
80. Hopf (2013), 122.
81. Allgemeines Eisenbahngesetz (AEG).
82. BMVI (2018) (15.06.2018).
83. Ibid.
84. Allianz pro Schiene (2016) (15.06.2018).
85. Statistisches Bundesamt (2017b), 29.
86. Statistisches Bundesamt (2017a), 133-134.
87. Hopf (2013), 122.
88. Eisenbahn-Verkehrsordnung (EVO).
89. Article 37 of the Railway Traffic Regulation.
90. Deutsche Bahn (2018a) (15.06.2018).
91. Zohlnhöfer (2013), 316.
92. Article 24 of the law on strengthening competition conditions within the railway sector.
93. Monopolkommission (2015), 25-26.

In 2004, ***customer rights*** were established in a Customer Charter, which defines not only quality promises but also compensation in case of delay: in the event of a delay of more than 60 minutes, 20% of the travel price is reimbursed.[94] A conciliation board, created in 2009, also settles disputes through a conciliation proposal.[95] The number of customers applying for a refund reached an all-time high of 1.3 million customers in 2014.[96] The total compensation amount reached 40 million Euros, with a dispute board having to mediate in 3,500 cases.[97]

In contrast with the incipient social change in consciousness from the end of the 1970s, environmental issues and ***environmental protection*** did not play a central role for the German Federal Railway.[98] However significant reforms were achieved: it was possible to reduce CO2 emissions, the share of renewable energies in the energy mix increased and noise pollution was reduced. The latter was achieved by the introduction of a noise-related train path pricing system and the retrofitting of freight wagons with noise-reduced brake pads.[99] In passenger transport, CO2 emissions were reduced by 16% between 1994 and 2012 and the share of renewable energies in the traction power mix increased from 8.3% in 1990 to 24% in 2012.[100] In 1985, the Federal Railways employed around 295,000 employees, while the number of ***employees*** increased significantly due to the merger of the German Federal Railway (FRG) and the Reichsbahn (GDR).[101] DB AG had a total of 299,347 employees in 2012 and 323,381 employees in 2017.[102]

Since the mid-1980s, there has been a shift in transport behaviour towards individual transport, which further increases ***economic, social and territorial cohesion***. An important reform is the project VDE 8.1, which aims to improve the connections between the main centres of Nuremberg-Erfurt-Leipzig-Halle-Berlin with the aid of a high-speed line for local and international passenger and freight traffic.[103] However, territorial disintegration is increasing, especially in rural areas. ICE trains do not or only rarely stop at rural stations, for example, as these routes prove to be unprofitable.[104]

Deregulation attempts in the 1980s failed due to the monopoly position of the German Federal Railway. It was not until the mid-1990s that noticeable changes could be established through a railway reform.[105] An outstanding element of the railway reform is the regionalisation of rail passenger transport and the Railways Regulation Act. This has improved the framework conditions for competition. In addition, the law defines the structure of railways, access to railway facilities and the levying of charges for the access to railway facilities.[106]

An increased ***regulation*** of the railway sector is currently the focus of demands made against DB AG. The object of the regulation includes, among other aspects, the individual components of the pricing systems which are used and the terms of use.[107] However, one criticism is that this makes

94. Deutsche Bahn (2004), 5.
95. Söp (2018) (15.06.2018).
96. Siedenbiedel (2014), 1.
97. Ibid.
98. Schwilling / Bunge (2013), 99.
99. Ibid.
100. Ibid., 100.
101. Ibid., 101.
102. Deutsche Bahn (2018b) (15.06.2018).
103. European Commission (2011) (15.06.2018).
104. Lobenstein (2016), 1-2.
105. Gall (1999), 366.
106. The law on strengthening competition conditions within the railway sector; Gesetz zur Stärkung des Wettbewerbs im Eisenbahnbereich (ERegG).
107. Deutsche Bahn (2017b) (15.06.2018).

entrepreneurial management more difficult and therefore negatively influences the financing structure.[108]

Respect for the principle of subsidiarity cannot be considered as being fulfilled in the 1980s. As a special asset of the federal government, the German Federal Railway was not affiliated to the German States as the next smaller administrative unit, but rather to the federal government, which was less able to assess regional needs and whether the subsidies were sufficient. Regionalisation in 1996 established that ensuring adequate public transport services was a public service objective.

Therefore on the one hand regionalisation resources were made available and, on the other hand, the planning, organisation and financing responsibilities were brought together.[109] Through the regulation of DB AG by the federal government by the Federal Network Agency (Bundesnetzagentur), market economy principles are not fully implemented, which does not take into account the principle of subsidiarity. This intersectoral regulatory agency has the task to examine the terms of use of the railway sector as well as the amount and structure of rewards for the use of the railway infrastructure and linked attainments.[110] Furthermore, it has to ensure a non-discriminatory access to railway infrastructure.[111] It operates independently and is in charge for the electricity-, telecommunication-, postal- as well as the railway-sector and is institutionally located in the federal ministry of economy and energy.[112]

From the point of view of public services of general interest, the dynamism of regional resources has also been considered insufficient by the German states.[113]

In the area of ***financing***, in the 1970s and 1980s, both railways increasingly became a budgetary risk.[114] The reasons for this are:

- the high personnel costs,
- the weak operating results,
- the high level of debt,
- the enormous investment needs of the Reichsbahn and
- the de facto commercial insolvency of both state railways.[115]

As a result of the debt, the interest burden was added to the accumulated liabilities, which at the end of the sixties amounted to DM 700 million and therefore exceeded the losses from ongoing operations.[116] Until 1982, the interest burden increased to DM 2.9 billion.[117] Both railway companies had high labour costs which, besides rationalization measures, couldn't be lowered to an economically justifiable level.[118] Furthermore, because of the increasing annual shortfalls, the indebtedness of the Bundesbahn rose.[119]

Since 2009, the financing of the existing network has been regulated in the Performance and Fi-

108. Ibid.
109. Laaser (1994), 2.
110. Bundesnetzagentur (2018d) (15.09.2018).
111. Ibid.
112. Bundesnetzagentur (2018e) (15.09.2018).
113. Laaser (1994), 2.
114. Schwilling / Bunge (2013), 40-41.
115. Ibid., 40-41.
116. Ibid.
117. Ibid.
118. Ibid., 41.
119. Ibid., 41.

nancing Agreement, concluded between the German federal government, DB AG and the Railway Infrastructure Undertakings of DB AG.[120] The latter receives a total of € 2.5 billion a year for replacement investments in existing facilities to meet defined quality indicators and to provide a minimum investment amount (at least € 500 million per year) and maintenance (at least € 1 billion per year).[121] The federal government has to finance new expansion and replacement investments of railways in accordance with Article 8 of the Federal Railways Development Act[122],[123]. The total volume amounted to € 17.3 billion in 2014.[124] The federal states and the EU are also involved in the financing. The transport infrastructure plan also indirectly invests funds.[125] Those can be applied by state owned and non-state-owned railway companies, which are granted by the Federal Office for Railways.[126] The companies apply for subsidies at the Federal Office for Railways, which are examined. Afterwards, a recommendation is sent to the federal ministry for traffic and digital communication, which then concludes an agreement with the respective company in case of a positive reply.[127]

3. THE ENERGY SECTOR: AN OLIGOPOLY IN TRANSITION

In the 1980s, the ***legal and regulatory framework*** of the energy sector included regional supply monopolies which concluded concession contracts with municipalities for a concession fee. In addition, demarcation agreements between utility companies spatially regulated the supply areas.[128]

From 1998, comprehensive liberalisation reforms were initiated. The Law Updating the Legislation on Energy Supply (Energy Act)[129] created association agreements, which made network access possible for third parties.[130] In 2003, the Directive 2003/54/EC concerning common rules for the internal market in electricity allowed business and private customers to choose their supplier at their own discretion.[131] In 2005, the Second Energy Act was adopted, the aim of which was to ensure effective competition in the supply of electricity.[132] In 2009, the Incentive Regulation Ordinance[133] came into force, which means network charges are determined through incentive regulation.[134] This was followed in 2014 by the Renewable Energies Act (EEG) amendment, which specifies differentiated expansion corridors for renewable energies.[135] Finally, in 2017, the next EEG amendment came into

120. Ibid., 112.
121. Ibid.
122. Bundesschienenwegeausbaugesetz (BSWAG).
123. Neumann / Krippendorf (2016), 68-69.
124. Ibid., 68-69.
125. Ibid., 68-69.
126. Eisenbahn-Bundesamt (2018) (13.10.2018).
127. Ibid.
128. Borgmann (2004), 36.
129. Gesetz zur Neuregelung des Energiewirtschaftsrechts (EnWG).
130. Erdmann (2008), 1-2.
131. European Parliament (2017) (15.06.2018).
132. Article 1 of the Energy Act.
133. Anreizregulierungsverordnung (ARegV).
134. Article 1 of the ARegV.
135. Bundesregierung (2014) (15.06.2018).

force, bringing an end to the state compensation rule.[136] Today's electricity market is characterised by the following three superordinate segments:

- ***Transport and networks*** : The amendment of the Incentive Regulation Ordinance optimises the investment conditions by directly recognising the investment costs of the grid operators. Efficiency incentives are introduced and transparency is strengthened by additional publication requirements.[137] In addition, the Act on Modernising the Network Fee Structure[138] aims for a nationwide harmonisation of the transmission network charges.[139]
- ***Production*** : On the side of the producers there is an oligopoly of the four companies E.On, RWE, Vattenfall and EnBW, plus numerous municipal utilities.[140] The "Big Four" generated 76.2% of the electricity consumed in Germany in 2015.[141] Here it becomes clear that at least as far as the producers are concerned, (full) competition does not exist.
- ***Sales :*** In almost 83% of all network areas, more than 50 providers were active in 2015, which provides the opportunity for electricity customers to choose between a large number of suppliers.[142] In the area of wholesale trade, liquidity in 2015 remained stable at a high level. While there was a significant increase in the volume of futures trading, the trading volumes brokered through broker platforms declined.[143]

The ***technological characteristics*** of the sector were characterised by the expansion of nuclear energy in the 1980s. The share of nuclear power in the overall German electricity mix was 17.3% in 1982, and the proportion of hard coal and lignite was 58.7%.[144] The phase-out of nuclear energy and the associated energy transition led to the expansion of renewable energies. The share of renewables in the electricity mix rose from 6.2% (2000) to 31.5% (2015).[145] Although the share of renewable energies is high, no technology currently exists to store electricity in large quantities and over a long period of time.[146] Electricity production and consumption therefore run in parallel. In the GDR, Coal produced 83.7% of the existing electricity in 1960, which increased in 1970 (84.9%) and then sharply declined in 1980 (76.1%) and 1984 (81.1%).[147] Meanwhile, the share of electricity generated from uranium increased from 0.7% in 1970 to 10.3% in 1984 which represented the desire of the central government to foster its autarky efforts.[148]

Until the 1980s, the ***user preference*** for a low-cost electricity supply dominated. However, due to the oil price crisis of 1973, and in particular the Chernobyl accident in 1986, this objective was increasingly accompanied by the environmental protection and the security of the supply.[149] The EEG from the year 2000 focused on renewable energies as the energy source of the future. According to a survey conducted by Infratest Dimap in 2008, 73% of all municipal utility customers were satisfied

136. BMWi (2018a) (15.06.2018).
137. BMWi (2018b) (15.06.2018).
138. Gesetz zur Modernisierung der Netzentgeltstruktur (NEMoG).
139. Ibid.
140. Bundesnetzagentur (2016a), 36.
141. Ibid., 36-37.
142. Ibid., 185.
143. Ibid., 161-162.
144. Bundesregierung (1984), 8.
145. Umweltbundesamt (2016), 5.
146. Falthauser (2016), 54.
147. Jänicke et. al. (1987), 18.
148. Ibid.
149. Fischer et. al. (2009), 4.

that the power supply is provided by a municipal company.[150] In the direct comparison, 58% preferred the supply by the municipal utilities, whereas 11% preferred the supply by a private company.[151]

With closed supply areas, the ***organisation of the sector*** in the 1980s was characterised by regional monopolies with a supply obligation to local customers.[152] The Energy Act (1998) gradually opened the market.[153] In addition, the Federal Network Agency was created by the Second Energy Act (2005), which detects and reduces monopolisation tendencies.[154] The reforms broke up the monopolies, creating more than 4,000 companies trading on the stock exchanges with energy wholesale products.[155] Since 2012, the proportion of investment companies who sell their electricity independently on the wholesale market has also steadily increased, as the EEG in 2012 increased the incentive to operate facilities independently in a market-oriented manner. The result of this is the hybrid form is called presuming. Prosumer households operate their systems in an independent and decentral manner in order to meet their own electricity needs.[156] First they create electricity, i.e. with photovoltaic facilities. Afterwards, they have two possible opportunities. On the one hand, they can consume the whole produced amount of electricity by themselves or feed the power into the public grid and consume just a fraction of it.

The energy districts in the GDR was the defined state monopoly in order to produce and distribute electricity, which existed until the end of the GDR. A market opening of the former GDR territories resulted only after the transfer of the energy districts into the federal trust.[157]

With the amendments to the EEG 2014 and 2017, the synchronisation of grid expansion and renewable energy expansion was also established in order to further improve the ***quality of the sector***.[158] The quality of the power supply is at a consistently high level: in 2016, the average outage time was 12.8 minutes; in 2006, the total was 21.53 minutes.[159]

In the context of the ***security of the sector***, the monitoring reports in accordance with Article 51 of the Energy Act provide information about the security of supply and, in addition, provide forecasts about the extent to which supply security can be maintained in the future.[160] According to the forecast, the probability that electricity demand can be met at any time by 2025 is close to 100%.[161]

The electricity price was at an unweighted average of DM 0.237, which corresponds to a price of 46 ct / kWh with a conversion factor of 1.95583.[162] Added to this was the collection of the coal penny to cushion structural adjustment processes in the coal sector.[163] In this regard there was also the capital-intensive construction of nuclear power plants, which also contributed to the rise in prices.[164] The EEG levy of 2014 sets guidelines for expansion corridors, the focus on low-cost technologies, the abolition of overproduction and the limitation of the expansion of comparatively expensive bio-

150. Strom-Magazin (2008) (15.06.2018).
151. Ibid.
152. Eberhard (2004), 36.
153. Erdmann (2008), 1-2.
154. Article 56 of the EnWG.
155. Bundesnetzagentur (2017a) (15.06.2018).
156. Gährs et. al. (2016), 3.
157. Jänicke et. al. (1987), 98.
158. Bundesnetzagentur (2017b) (15.06.2018).
159. Bundesnetzagentur (2017c) (15.06.2018).
160. BMWi (2016a), 3-4.
161. Ibid., 12-13.
162. Was war wann? (2017) (18.06.2018).
163. Wolfram (2000), 65.
164. Ibid., 65.

mass.[165] In addition, the EEG levy of 2017 stipulates a modified tendering procedure, which aims to promote competition.[166]

The share of energy expenditure in the average net income for a four person household as a measure of affordability was 29.11 ct / kWh in 2015, or 6.9%, which represents a decrease of 0.4 percentage points compared to 2014.[167] Assuming that the household lives on the defined poverty line (60% of the average income), the share for energy increased by 11.5% in 2015.[168] This also intensifies the debate around energy poverty, which means that through increasing energy prices, households are unable to meet their energy needs because of a lack of access to the respective resources. Another indication is, that in 2014, 352,00 households where cut off at least party from the electricity grid.[169] Because there are no official data, studies suggest that 14%-26% of all households experienced energy poverty in Germany.[170] There is, however, no direct link between the ongoing liberalization process and electricity poverty.

The monopoly structure made it impossible in the 1980s, to enter the market as an additional provider, so ***equality*** did not exist. The regional municipal utilities alone were responsible for the sales and distribution networks. The Amendment of the Electricity Network Access Regulation[171] stipulated the creation of a uniform electricity supply zone, which created the same conditions for grid access, electricity generation and electricity procurement throughout Germany.[172] Currently, producers of renewable energies have priority when feeding electricity into the grid. This is justified by the lower marginal costs compared to conventional energy generation[173], but due to the high volatility of renewable energies, it leads to new specific challenges for grid stability. Concerning the GRD, the prices for electricity remained on its initial price level with the founding of the DDR with 8 Pfennig per kWh.[174] The average production costs where much higher, nevertheless with a subsidization effort of nearly one billion Mark every year, stable prices where maintained by the central government.[175]

Universal Access has been significantly reformed by the Energy Act. This included association agreements, which made network access possible for third parties.[176] However, there are three problems with the reform:

1. At the time of the opening of the market, there was overcapacity, which limited incentives for new suppliers.
2. The Federal Government promotes renewable energies to such a degree that it reduces incentives for the supply of conventional energy.
3. The feed-in priority of renewable energies leads to an additional burden on the supply network.[177]

165. BMWi (n.d.) (18.06.2018).
166. Ibid.
167. BMWi (2016b), S. 82.
168. Ibid.
169. Strünck (2017), 17
170. Ibid.
171. Stromnetzzungangsverordnung (StromNZV).
172. BMWi (2018c) (18.06.2018).
173. SMARD (2018) (18.06.2018).
174. Jänicke et. al. (1987), 96.
175. Ibid.
176. Erdmann (2008), 1-2.
177. OECD (2004), 146.

Today, the four transmission system operators ensure safe operation, extend the power lines, and provide dealers and suppliers with non-discriminatory access to these networks.[178] These are controlled by the Federal Network Agency.

Since 2005, the Energy Act has provided for unbundling measures for vertically integrated companies in the following areas: legal, operational, informative and accounting.[179] With the amendment of the Energy Act in 2011, these regulations were again significantly tightened for transport network operators. If an energy supplier is at the same time also a network operator, they have the opportunity to transfer their energy more cheaply. However, for competing companies this would result in competitive disadvantages. For example, this may include information advantages about spare capacities or customers potentially switching suppliers. This is where the reformed unbundling rules come in. Their aim is to prevent discrimination, cross-subsidisation and other distortions of competition and therefore create equal conditions of competition for all market participants.[180] A free choice of energy providers did not exist in the 1980s due to monopolisation. As a result of the obligation to supply, the electricity had to be accepted, which meant that withdrawal rights and the associated change of supplier were not possible.

User rights were therefore limited. The European Court of Justice ruled in 2014 that consumers who are supplied with electricity under the universal obligation to supply must be kept informed of the cause, conditions and extent at any time prior to the entry into force of a price increase.[181] According to the Federal Network Agency, every consumer has the right to:

- a connection to electricity,
- an uncomplicated change of energy supplier,
- a free choice of the energy supplier,
- clear information about the contract and the right of withdrawal,
- accurate information about actual consumption,
- complaint handling,
- information about energy efficiency,
- an energy performance certificate and
- a central national contact point.[182]

The reform objective of the new EEG of 2017 is transition to tenders and the continued funding of renewable energy, in line with the Guidelines on State Aid for Environmental Protection and Energy 2014-2020, which has triggered an important reform in the area of ***environmental protection***.[183] In 2016, the share of renewable energies in gross electricity consumption was 31.6%, rising to 36.2% within a year.[184] In the GDR, environmental protection hasn't played a crucial role in domestic politics. This can be explained by the fact, that the need to cover energy demands, the GDR had to rely mostly on domestic energy resources, which was generally coal.[185] The GDR was therefore until 1987 the world biggest coal producer.[186]

The transition to renewable energies in the FRG will change the ***employment structure*** massively.

178. BMWI (2018d) (18.06.2018).
179. Bundesnetzagentur (2018a) (18.06.2018).
180. Hochschule Schmalkalden (2018) (18.06.2018).
181. Gerichtshof der Europäischen Union (2014), 1-2.
182. Bundesnetzagentur (2018b) (18.06.2018).
183. Gawel / Purks (2016), 910-911.
184. Umweltbundesamt (2018) (18.06.2018).
185. Jänicke et. al. (1987), 9.
186. Ibid.

In the conventional energy supply, 117,000 people were employed in 2015 and 330,000 in the area of the renewable energies.[187]

Reforms of the national ***economic, social and territorial cohesion*** policy exist in the National Reform Programme (2006), as well as the National Strategic Framework Plan (2007) of the Federal Ministry for Economic Affairs and Energy.[188] The spatial provision for the expansion of renewable energies has advanced through the definition of area types in spatial plans. Rural areas are comparatively poorly connected, but this will change in the near future due to the space potential for renewable energies.[189]

As part of the ***regulation***, municipalities and federal states sold their holdings in energy companies in order to improve their budgetary position at the end of the 1980s.[190] Therefore the traditional consensus between state, producers and consumers began to disintegrate. With the significant increase in national and European competition, a low energy price has become a priority for the industry.[191] Two major regulatory reforms were initiated. Firstly, the amendment to the Incentive Regulation Ordinance has created an efficiency comparison of the network operators, which rewards the efficient network operators with a bonus, therefore providing an incentive to use innovative and efficient technologies.[192] Secondly, there is the reform of the network fee structure, which will gradually standardise transmission network charges.[193] From the current perspective, an essential element of incentive regulation is the duration and structure of the regulatory periods of five years. The Federal Network Agency and the competent state regulatory authorities each determine, before the start of a regulatory period, which revenues will be available to the network operator each year during the regulatory period.[194] For this purpose, first of all the costs of operation of the network operator have to be checked. These costs are included in an efficiency comparison and are the starting point for determining the appropriate revenue.[195] With the approved revenues, the company can then fulfil its responsibilities as a network operator. As the revenues are fixed before the regulatory period, the actual costs incurred and the revenues of the network operator are decoupled for the duration of the regulatory period. This provides an incentive for the network operator to increase productivity and reduce costs.[196]

Directive 2009/28/EC on the promotion of energy from renewable sources meets the requirements of ***the principle of subsidiarity***. The EU member states have to present a national plan of action for renewable energies based on a predetermined model, in which the planned measures as well as instruments and policies of the Federal Government are set out.[197] A specific reference value is issued which must be achieved by the member country.

In terms of ***financing***, the EEG reform in 2014 set the target of noticeably slowing down further cost increases, systematically steering expansion and bringing renewable energies to the market.[198] The levy finances the promotion of facilities in Germany. The total annual amount is calculated from the

187. BMWi (2016b), 132.
188. BMU (2011), 58.
189. Bundesinstitut für Bau-, Stadt- und Raumforschung (2012), 38-39.
190. Kleinwächter (2007), 71.
191. Ibid., 71-72.
192. BMWi (2018b) (18.06.2018).
193. Ibid.
194. Bundesnetzagentur (2018c) (18.06.2018).
195. Ibid.
196. Ibid.
197. BMWi (2018e) (18.06.2018).
198. BMWi (n.d.) (18.06.2018).

difference between the expenditure on remuneration and bonus payments and the income from the marketing revenues of the network operators.[199] This amount is then allocated to electricity customers in the form of a levy.[200] In 2018, the EEG levy will be 6.792 cents / kWh, which will be slightly less than the previous year's amount by around 0.1 cents.[201] In addition, price components are the concession fee, the Article 2 of the Electricity NEV levy, the offshore liability levy, the AbLaV levy, the EEG levy and the KWKG levy.[202]

4. POSTAL SERVICES: THE UNIVERSAL SERVICE AS A MONOPOLY GUARANTOR

As was the case with the electricity and rail sectors, the German postal sector was subject to far-reaching monopolisation. The legal basis as part of the ***legislative and regulatory framework*** in the 1980s, was the Postal Administration Act of 1953.[203]

Through the first postal reform in 1989, the German Federal Post Office was divided into three public companies (Postbank, Postal Service and Telekom).[204] This was followed by the second postal reform in 1994, which resulted in the privatisation of the three companies, establishing the creation of Deutsche Post AG (DP AG), Postbank AG and Telekom AG. [205] As a result of the privatisation, the Ministry of Post and Telecommunications was dissolved, creating the Federal Post and Telecommunications Agency, which was affiliated to the Federal Ministry of Finance.[206]

Due to the increase in parcel and mail deliveries in the 1980s, the overnight service developed as part of the ***technological characteristics*** of the sector.[207] Digitalisation in particular is fundamentally changing the market. Online shipment tracking and hybrid mail as bridging technology have paved the way to a largely digitalised postal market.[208] The increased use of 3D printing technology, especially in the B2B segment, is bringing about a lasting change to the market structures. The printing of spare parts on demand has two potential effects: On the one hand, shipment growth increases if the printing is centralised, and on the other hand it is reduced if the printing is decentralised.[209] This depends to a large extent on how the market will develop in the future and which focus the suppliers place on future technologies, in particular DP AG.

The ***user preferences*** in the 1980s coincided with the state administration of a nationwide universal service with postal services of uniform fees and uniform quality.[210] In the course of digitalisation, a

199. Ibid.
200. Ibid.
201. Ibid.
202. Praetorius / Lenck (2017), 52-53.
203. Postverwaltungsgesetz (PvwG).
204. Bundesrechnungshof (2009), 45-46.
205. Ibid., 46-47.
206. Ibid., S. 62-63.
207. Institut für angewandte Logistik (2017), 19.
208. Ibid., 88.
209. Ibid.
210. Deutscher Bundestag (2014), 35.

preference for electronic transmission forms is emerging. However, for bills and communications from state institutions traditional mailing continues to be preferred.[211] Universal services are the main focus here: post boxes must be accessible within a maximum distance of one kilometre (pick-up and delivery network), 95% of all letters must be delivered on the second working day after posting (letter delivery times) and there is home delivery for parcels and letters[212].

The ***organisation of the sector*** was structured as follows during the 1980s: there was never a monopoly in the Federal Republic in the area of packages and parcels weighing more than two kilograms, and since the 1970s, active competition has existed between the German postal service and private parcel service providers.[213] In the service area of mail, by contrast, there was a legal monopoly until 1998.

With the entry into force of the amended Postal Act[214] of 01.01.1998, the mail market was gradually liberalised. ***Initially***, from 1998 the Regulatory Authority for Telecommunications and Post (and from 2005 onwards the Federal Network Agency) granted licenses for the commercial transport of letters of less than 2 kg, provided the alternative providers undertook to offer what was known as higher quality services. A service of a higher quality is a transport service, which ensures a delivery on the same day or collection from the sender.[215] However, higher quality services are also associated with higher costs, making it more difficult for competitors to be economically successful. The latter market is ***de jure*** liberalised in Germany, but ***de facto*** there are obstacles to competition in favour of the established provider.[216] With a remaining market share of more than 80% for DP AG, there is only a limited degree of functioning competition.[217] In 2016, DP AG had a sales-related market share of more than 85 percent across all letter markets and about 84 percent of the postal volume-related market share. The sales in the letter segment rose from 9 billion Euro (2010) to 9.3 Billion Euro in 2017.[218] The DP AG, however, accumulated 8,1 Billion Euro in 2010 and up to 7,8 billion Euro in 2017.[219] With regards to the overall observation of the courier-, express and parcel (CEP) segment in 2016, nearly 83% of all transports are parcels, followed by a share of 10% for express services.[220] Concerning its evolution, the amount of parcels which were transported rose from 1,713 million (total CEP: 2,188 million) in 2010 to 2,522 million (total CEP: 3,033 million).[221] The competitors are almost exclusively active in the market for business customers. DP AG exclusively serves the market for private customers – with the exception of a few, primarily regionally active competitors.[222] As in the former two sectors, also the postal sector was state owned in the former GDR. The Ministry of Telecommunication and Post was responsible for the organization of the sector.[223] During the reunification, the state-owned post sector of the GDR was integrated into the FRD post sector, which also led to an increasing number of employed people. While there where 500,000 employees before the reunification, the number rose to 660,000 shortly after the integra-

211. Ibid., 11.
212. Ibid., 40.
213. Haucap (2018), 2.
214. Postgesetz (PostG).
215. Ibid., 3.
216. Ibid., 3-4.
217. Monopolkommission (2017), 14.
218. Bundesnetzagentur (2018), 93.
219. Ibid.
220. Ibid., 97.
221. Ibid.
222. Monopolkommission (2017), 14.
223. Bundesstiftung Aufarbeitung (2018) (27.09.2018).

tional procress.[224] However, this work force was decreased continuously in order to reduce costs.[225]

The ***quality*** of the sector decreased steadily during the 1980s, as the state authority was not geared towards economic efficiency criteria.[226] However, this was necessary in order to be able to better estimate the changing framework conditions. Through the reform of the Postal Directive from 1997 a common internal market for postal services was created at European level.[227] For example, it is important to mention regulations for the establishment of service quality standards for cross-border intra-community services.[228]

Today, at least 80% of all domestic letters on an annual average, in accordance with the Postal Universal Service Ordinance[229], must be delivered within one working day and 95% within two working days.[230] Since the public network in the GDR was overstrained and unreliable, it was attractive for other actors to take control over postal resources which could be achieved with regards to the state security.[231] By doing so, the sector became further fragmentated, which led to an additional performance deficit.

The ***security*** of the service was given a high priority by the Federal Postal Office. The fiscal objective was to ensure economic viability and was managed in accordance with the principles of transport, economic, financial and social policy.[232] The Postal Charges Order[233] secured the financial basis of the regulated entity after privatisation and provided financial leeway to address economic challenges such as digitalisation.[234] To this day, the federal government remains responsible for sovereign tasks in the postal service. This includes sufficiently and adequately ensuring nationwide universal service in accordance with Art. 87 of the Federal Constitution.[235]

The provision of the universal service by DP AG is 18% above the cross-subsidised prices of the former federal postal service.[236] In addition, the quality of the universal service alongside ***affordability*** is partly below that of the former German Federal Post Office.[237] The Income and Consumer Survey also shows the following burden for Post and Telecommunications for 2013:

- for income recipients with a monthly household income of € 900 to € 1300: 3.7%,
- for income recipients with a monthly household income of € 1300 to € 2000: 3.4%,
- for income recipients with a monthly household income of € 2,000 to € 2,600: 3.8%,
- for income recipients with a monthly household income of € 2600 to € 3600: 3.5%.[238]

224. Bundesrechnungshof (2009), 86.
225. Ibid.
226. Wertmann (2004), 15.
227. Bundesrechnungshof (2009), 36-37.
228. Ibid., 36.
229. Post-Universaldienstleistungsverordnung (PUDLV).
230. Bundesnetzagentur (2017d), 76.
231. Robinschon (1998), 65
232. Bundesrechnungshof (2009), 21.
233. Post-Entgeltregulierungsverordnung.
234. Deutscher Bundestag (2016), 18.
235. MORO (2008), 12.
236. Bundesrechnungshof (2009), 101.
237. Ibid.
238. Statistisches Bundesamt (DESTATIS) (2015), 34.

TAX DIFFERENTIAL TREATMENT; IN ACCORDANCE WITH HAUCAP (2018), 21; OWN REPRESENTATION.

Description	DP AG	Competitors
Net price for the advance service	€ 1.00	€ 1.00
VAT for the advance service	€ 0.19	€ 0.19
Added value	€ 2.00	€ 2.00
Net price for VAT liable customers	€ 3.19	€ 3.00
Net price for non-VAT liable customers	€ 3.19	€ 3.57

Equal treatment of different providers was not able to take place due to the lack of competition in the 1980s. However, as a result of the universal service, consumers had a comprehensive network of postal services at their disposal, which made it possible to provide non-discriminatory access for the households. Through the Postal Act of 1997, the legislator prepared the transition to a competitive market. It was fully opened in 2008.[239] However, there are differences in tax treatment, which are listed in Figure 4.1. Following a court ruling by the Fiscal Court of Cologne in March 2015, the lawsuits against DP AG were rejected as these companies did not offer universal services.[240]

Universal access for providers did not exist, as already described above. The German Federal Post Office as a supply authority exercised both entrepreneurial and sovereign functions.[241] The European Directive 2002/39/EC allowed member states to exclude letter post as services for universal service providers. From 1 January 2006, letters up to 50 grams can be excluded, the price of which is less than two and a half times the standard tariff (this corresponds to an additional opening of the market of around 7%).[242] On the other hand, all outbound cross-border mail was opened up to competition, accounting for an average of 3% of total postal service revenue.[243] However, exceptions are possible, if required to maintain the universal service.[244]

As a result of the decisions of the government agency in the year 2000, customers as well as private postal companies - the latter, however, only outside the scope of the statutory exclusive licence - were granted access to the network.[245] There are two levels to be distinguished: access to outgoing letter centres and access to destination letter centres. For standard shipping (this includes postcards, standard, compact, large and maxi letters) access to both listed network levels is open.[246] For advertising mail ("Infopost") discounts are only possible for access to destination letter centres. Access to the delivery bases does not currently exist. With the restriction to specific access situations, the Postal Act does not focus on general non-discriminatory network access and is therefore more limited in terms of regulatory instruments than, for example, in the energy sector (see Article 20 of the Energy Act).[247]

In terms of ***user rights***, postal items are subject to postal and telecommunication secrecy, whereby

239. Bundesrechnungshof (2009), 51.
240. Haucap (2018), 21.
241. Bildhäuser (1999), 35.
242. Bundesrechnungshof (2009), 36-37.
243. Ibid., 36.
244. Ibid.
245. wik-Consult (2005), 7.
246. Ibid.
247. Bundesrechnungshof (2009), 43.

Article 41 of the Postal Act contains provisions stipulated by the Regulation on Data Protection[248] and supplemented by the Federal Data Protection Act.[249] Through the European General Data Protection Regulation the sole responsibility for monitoring compliance with data protection provisions is granted to the federal commissioners for data protection and freedom of information and the German state commissioner for data protection.[250] Similar to the conciliation body in the railway sector, the Post Conciliation Body at the Federal Network Agency can be called to resolve disputes in order to reach an amicable settlement and to consolidate and enforce user rights.[251]

In the wake of growing ***environmental awareness*** in the 1980s, environmental and energy commissioners were appointed, whose tasks included monitoring environmental policy and coordinating future environmental protection tasks.[252] Go Green 2008 by DP AG aims to improve the CO2 balance by 30% by 2020.[253]

As an ***employer***, the Federal Post Office was one of the largest employers in the Federal Republic of Germany during the 1980s with around 500,000 employees.[254] With regard to the privatisation and founding of DP AG, based on the full-time equivalent there are fewer jobs today than at the time of the state monopoly.[255] With regard to the employment structure, there are differences between DP AG and its competitors. Just under 63% of employees work full-time at DP AG, while with its competitors the total is 18% on average, and 60% are marginally employed persons.[256] However, DP AG employs around 1,800 subcontractors, who are also likely to work with a high number of marginal employees.[257] Overall, the employment volume decreased by 10% between 1999 and 2004 measured in full-time equivalents.[258] While there were still 29,000 post offices in 1983 in the territory of the former FRG, there are 13,000 private post offices today.[259] In the former GDR, there were 130,000 people employed in the postal service until the sector was merged with the FRG postal service sector.[260]

Concerning the situation in the FRG in the area of ***economic, social and territorial cohesion***, we can speak of a step backwards. However, the Postal Universal Service Ordinance continues to ensure the nationwide provision of postal services. The infrastructure of DP AG in the letter sector - branches, agencies, post boxes - has been largely optimised. Network density continues to meet universal service requirements.[261] This requirements include that there have to be at least 12.000 service centres where customers can sign postal contracts, mail boxes should have a maximal distance of 1000 meters, letters have to be delivered in 80% of all cases on the next day and that the delivery to domicile is secured.[262]

248. Verordnung über den Datenschutz bei der geschäftsmäßigen Erbringung von Postdiensten (Postdienste-Datenschutzverordnung - PDSV).
249. Deutscher Bundestag (2017), 91.
250. Ibid.
251. Bundesnetzagentur (n.d.) (18.06.2018).
252. Hauptmann (1989), 520.
253. Deutsche Post (2013), 18.
254. Bundesrechnungshof (2009), 86.
255. Ibid., 98.
256. Brandt et. al. (2007), 269.
257. Ibid.
258. Ibid., 269-270.
259. Engartner (2014), 87.
260. Bundesstiftung Aufarbeitung (2018) (27.09.2018).
261. Bundesnetzagentur (2014), 3.
262. Article 2 Postuniversaldienstleistungsverordnung (PUDLV).

With regard to ***regulation***, there was a legal monopoly until 1998, which was gradually liberalised as outlined above. The Federal Network Agency regulates the fees of the market-dominant provider, DP AG, for network access and is in charge of abuse control.[263] The Federal Ministry of Post and Telecommunications was the supreme authority of the German Federal Post Office. In a three-tiered administrative structure, the tasks of the postal and telecommunications services at the highest level of administration were carried out by the ministry, at the middle level by the upper postal directorates as well as at local level by the Post and Telecommunications Offices.[264]

The multi-level administrative structure attempted to take account of the ***principle of subsidiarity***. Through the second postal reform, the Federal Post Office, which was previously divided into three companies, was privatised. Before the initial public offering in 2000 took place, the federal government transferred 50% of the prior privatized capital stock to the public bank Kreditanstalt für Wiederaufbau (KfW) and the remaining half was furthermore transferred to the KfW during the next years.[265] The reason for this was the closeness of the federal bank group to the capital market and therefore its ability to include its knowledge into the privatization process.[266] Although the federal government has to ensure adequate and sufficient services nationwide, they can - unlike in the past – be provided in the private-sector.[267] In the course of the reform, the Federal Agency for Post and Telecommunications was also established in the legal form of a federal institution under public law. It carries out tasks relating to the companies, which have emerged from the special asset German Federal Post Office in accordance with the Act on the Establishment of a Federal Agency for Postal and Telecommunications [268].[269]

As a state-owned company, the Federal Post Office ***was funded*** by the federal state in the 1980s. In 1980 it received DM 1,938 million in subsidies, and in 1987 it received DM 2,597 million.[270] The Ordinance amending the Postal Charges Order states that efficient provision of services should be the benchmark for the determination of approvable fees.[271] As a result of the new ordinance, the Federal Network Agency granted a price increase margin of 2.5% per year, or a total of 7.5%.[272] DP AG is also cross-subsidised: this is made possible by the fact that it is exclusively exempted from VAT and through the price cap, which allows it to enforce partially significant postage increases for individual products in the mail sector.[273]

263. Bundesnetzagentur (2016b) (18.06.2018).
264. Bundesrechnungshof (2009), 46.
265. Bundesfinanzministerium (2018) (28.08.2018).
266. Ibid.
267. Ibid., 47.
268. Gesetz über die Errichtung einer Bundesanstalt für Post und Telekommunikation Deutsche Bundespost (Bundesanstalt-Post-Gesetz).
269. Ibid., 62.
270. Rosenschon (1991), 81-87.
271. Haucap / Kehder (2016), 15.
272. Ibid.
273. Ibid., 25.

5. SYNTHESIS

The ***railway sector*** is liberalised de jure, but is dominated de facto by DB AG. According to a present-day assessment, the former German Federal Railway has an investment requirement of 500,000 million euros.[274] Especially in local train services which are used by the majority of rail passengers, comprehensive mobile internet coverage does not exist. However, as a former state monopoly, the German Federal Railway has always been exposed to intermodal competition. Due to the constant competition with other means of transportation, i.e. cars or aircraft, neither the German Federal Railway nor DB AG ever possessed a monopoly in the transportation sector. While the liberalisation of the rail sector led to an increase in the number of competitors in the German rail market, the competitors only operate in niche products as a result of which the market share of DB AG is 99% today.[275] This shows that the efforts of liberalisation led to an actual opening of the market, but the market entry barriers prevent active competition with DB AG. This is also shown by the fact non-discriminatory market access has been legally granted (cf. EG 1893/91). Although one of the core elements of liberalisation, namely the creation of competition, was achieved in an insufficient way, costs for households as a proportion of total income declined from 21.9% in 1980 to 13.0% in 2012.[276] This can be explained by price pressure being put on DG AG through intermodal competition even though actual competition did not exist in the market. However, liberalization efforts led for example to an improvement in the regional railway sector, as explained previously. Therefore, the overall performance of liberalization in this sector is ambivalent. Competition depends on the type of the provision of service. Nonetheless, it is important to mention, that the current effects of the liberalization seem to have room for improvement. The Bundesnetzagentur can therefore be considered as a crucial actor in the implementation of further reforms, i.e. in the reduction of market entrance barriers.

The ***electricity sector*** was characterised by regional supply monopolies during the 1980s. Grid access for third parties was enabled by a reform of the Energy Industry Act which created the first steps towards a liberalised German electricity market through association agreements between energy producers and consumers. Through a second revision of the act, competition was finally incorporated. The question of whether competition could prevail in the energy market must be answered with regard to the respective segment. With regard to the transmission grid, competition is limited, as the market is dominated by four big competitors. This is also the case for energy production, where four competitors have also divided up the market between themselves and the large number of municipal utilities is not able to compensate for this.[277] Functioning competition of supply and demand could therefore not be established. With regard to the last segment, sales, competition can be assumed as discussed above. However, this clearly shows that the electricity market is a complex market due to this trichotomy. This induces, that the liberalization also have to be analysed in a differentiated way. However, the institutional structure shows that the general framework for effective competition must be strengthened further, if the objective of liberalisation is the implementation of a functioning market mechanism. Alongside the described transformation process, it is important to mention the development of renewable energies, which also has an effect on the energy market. Through the lack of technology for the long-term storage of electricity, the market still has the problem of having to balance supply and demand in the short term in order to ensure an optimal power supply.

274. Welt (2015) (15.06.2018).
275. Forschungsinformationssystem (2016) (15.06.2018).
276. Statistisches Bundesamt (2017b), 29.
277. Bundesnetzagentur (2016a), 36.

The existing oligopoly structures can provide this mechanism, but they differ from the market result. This conglomerate is undermined insofar as the continuing transformation process will lead to a reformulation of market structures. The changing customer preferences towards regional and sustainably produced energy are revealing themselves increasingly in the changing organisational structures. For example, prosuming, which involves households consuming and producing electricity and selling their surplus to the market.[278] The costs for the customers having been falling since 1980, as explained previously, despite the EEG levy which means that households have to pay less for electricity in the time comparison. Therefore, the main argument of falling prices through liberalisation was achieved without a functioning market mechanism. However it remains to be seen, whether the concentrated market power leads to economic upheaval and welfare losses, as these enterprises can increase their surpluses beyond the market result.

Alongside this theoretical rationale, three practical issues arise which will have to be overcome by the German electricity market in the future. A lack of incentives arises first of all due to overcapacity when the market was opened and through the funding of renewable energies at the expense of conventional energy sources.[279] The feed-in priority resulting from the Renewable Energy Law also leads to an additional burden on the supply networks, which through a lack of storage technology raises an additional coordination problem. Liberalization efforts therefore have to be intensified, if the oligopoly structure should be transformed a market structure. While falling prices were achieved without a functioning market mechanism, further room for price adjustments can be used if reform efforts are intensified. Especially a fostered technological process concerning the long-term storage of electricity can help to implement and increase the liberalization effects as well as their effects on the consumer in a positive way. Therefore, current developments out of the existing reforms can be interpreted as a transformational process, which crucially depends on the future liberalization and overall reform proposals as well as technological progress. Both aspects influence one another and can lead self-reinforcing effects, if reforms foster research and development.

As part of the ***Postal Reform*** I and II, the German Federal Post Office was split into three public companies and subsequently privatised which led to the state monopoly ending in 1998.[280] The resulting Deutsche Post AG still has a market share of 80% today.[281]

The ***postal service sector*** is now the only sector where universal service is of vital importance. The guideline for competitors of DP AG is the provision of higher quality services, which are associated with higher costs. This leads to a competitive advantage for DP AG, as the higher quality services are a market entry barrier, which is also reflected in the market share of DP AG. In addition, the market is characterised by two further obstacles to competition. On the one hand, competition exceptions can be enforced, if they have the objective of upholding the universal service.[282] Therefore, it is not always apparent for competitors whether the chosen business-model, which is in competition with DP AG, complies with this criterion. Consequently, this constitutes additional uncertainty with regard to future revenue.

DP AG continues to enjoy fiscal advantages, which are justified through the provision of universal services.[283] This leads to a cross-subsidisation of DP AG by the government, which also maintains a competitive advantage. All of this ultimately leads to a consolidation of the status quo, which means the prevention of the implementation of real competition. Deutsche Post AG is also faced with increasing costs. While the prices have risen by 18%, the quality of the service provided is

278. Gährs et. al. (2016), 3.
279. OECD (2004), 146.
280. Bundesrechnungshof (2009), 64-65.
281. Monopolcommission (2017), 14.
282. Bundesrechnungshof (2009), 36-37.
283. Haucap (2018), 21.

below that of the former state monopoly.[284] This means that liberalisation as such is not a guarantor of a functioning market in view of falling prices and rising quality. Instead, the decisive factor is how the organisation of the reforms for the opening of the market is carried out and liberalization effects are pronounced. While non-discriminatory market entry for the producers does not exist, consumers have the possibility to enter the market as end consumers. As guidelines for service provision are provided through the universal service, for example via a delivery rate of 95% on the second working day after posting, non-discriminatory access for households still exists.[285] Through the decision of the amendment to the Postal and Telecommunications Rates Regulation Ordinance the efficient provision of service is the benchmark for approvable fees.[286] Under the new ordinance the Federal Network Agency has approved a price increase margin of 2.5% per year.[287] This shows, that reform and liberalization effects can be manifold. Not only is a reduction of universal services requirements a possible solution. Rather, reforms can decrease cross-subsidiarization in order to strengthen the position of competitors in the postal-services market. Therefore, existing market disadvantages have to be decreased in order to establish a full-fledged market system and finally asses the effects of the existing liberalization.

284. Bundesrechnungshof (2009), 101.
285. Deutscher Bundestag (2014),. 40.
286. Haucap / Kehder (2016), 15.
287. Ibid.

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SPAIN

SPAIN
THE EFFECT OF LIBERALISATION IN PUBLIC SERVICES

THE CASE OF THE SERVICES OF GENERAL ECONOMIC INTEREST IN SPAIN

JOSĒ RUANO DE LA FUENTE
PROFESSOR OF POLITICAL AND ADMINISTRATIVE SCIENCES,
COMPLUTENSE UNIVERSITY OF MADRID

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1. INTRODUCTION

The implementation of liberalisation policies in Spain since the 1980s is based on the change of category of certain sectors of "public services" into activities of "general economic interest" or "essential services" that can be developed without the direct participation of the State. The traditional notion of public service has been replaced by the guarantee of supply for all consumers who request service on the national territory. Public administration can act with or without the participation of private entities or directly and exclusively through private companies. In this sense, some authors (De la Cuétara: 1997) suggested to replace the traditional concept of public service, understood as an activity reserved to public intervention, by a concept that would refer to activities subject to public intervention, that is, activities of public interest. Thus, sectors such as telecommunications, postal services, gas and electricity are no longer regarded as genuine public services in Spain because these activities can be done without the active participation of the State, even if they are regarded as "activities of general interest" (Article 2.2 of the Hydrocarbons Act 34/1998), "essential services" (Article 2.2 of Law 54/1997 on electricity) or "services of general interest" (Telecommunications Act No. 32/2003). In this sense, the traditional concept of "public service" has been gradually abandoned and replaced by the security of consumer's supply. Some services may not be provided by the State through public entities in the sense that their functions may be performed by private companies.

The transition in Spain from traditional public service criteria to the new concept of "activities of general interest", "essential services" or "services of general interest" operates in different sectors (energy, telecommunications, rail, waste, water, etc.). Within these services, it is possible to distinguish three groups of activities subject to administrative intervention:

1. Services provided by the network industries: telecommunications, postal services, gas, electricity and transport. In these areas, the administration plays a key role as a regulator to ensure compliance with market access conditions, pricing for the use of infrastructure, control of interconnection systems or the general organisation of the universal service. The incumbent operators, who originally owned the network, have an advantage in the market that they can use at the expense of competition. In any case, however, there must be a separation between the network ownership and the service provision through the network, which is besides subject to competition principles. The consumer, for his part, is entitled to the guarantee of the provision of services of general interest, which must be ensured by introducing the universal public service obligations entrusted to state-owned companies such as Correos in the postal sector or RENFE in the railway sector, but these activities could be handled to private companies.
2. Other services of general economic interest: waste management and treatment, gas pipelines or radio or television broadcasting.
3. Services based on solidarity mechanisms such as education, healthcare or social security.

This whole process of market liberalisation has been justified because of the need to transpose EU directives, as evidenced by the reproduction of the same rules for the dismantling of former public monopolies and the opening of their markets to competition. Generally speaking, in the process of liberalisation, although initiated in the 1980s, there are still many obstacles to guarantee free competition (railways or postal services are good examples where the former state-owned monopoly dominates the market).

On the other hand, talking about postal services, electricity and transportation is referring to networked services that have their own features. In fact, network infrastructures occupy a central place in the configuration of markets of general interest. Without this structure, it is not possible

to provide a range of supply, transportation and communication services. In addition, networks are the element by which the various parties involved in the organisation of these services of general economic interest come into contact.

Network owners play a central role in the process and become network managers. The infrastructure network system consists of a formally public or private property, but where, because of its value for the development of certain activities which are essential to society, the holder has limited powers of use and is obliged to share it by giving access and interconnection to other competitors, that is it has the obligation to extend its network to consumers who request it under certain conditions, and can not impose the conditions of use of the infrastructures because these conditions are set by the administration.

It should not be ignored, however, that beyond the formal aspects that rule the system, although the network owners are reduced to being managers, the production and service companies need to go through the infrastructure to get to the final market which means that they are not independent of each other. As a result, market dominance remains associated with network mastery. Although gas, electricity or communication businesses are open to competitors without own networks, the entity that owns the transmission and distribution infrastructure has the market keys or at least an advantageous starting position that is not easy to limit despite the technical instruments that exist (interconnection rights, fees, etc.). The certain thing is that in Spain, in certain sectors (telecommunications), technological advances facilitate competition; in others (electricity and gas), essential infrastructure has been left to private enterprises; while in others (railways, airports, water), public monopolies prevail.

Hereinafter, we will show the evolution of the essential services that are the object of the study since the end of the general Franco's regime to the present days. Next, the functions of the agency responsible for ensuring competition in the markets will be analysed. Finally, we will focus on the specific situation of the postal, rail and electricity market.

2. PRIVATISATION OF PUBLIC ASSETS AS A TOOL FOR LIBERALISATION

The existence of a network of state-owned companies in Spain dates back to the period of the dictatorship of Miguel Primo de Rivera (1923-1930), although general Francos' dictatorship (1939-1975) consolidated a highly interventionist economic model, a protectionist economic system spotted with dominant public companies in mature sectors (iron and steel, naval sector) and other companies providing essential services under a monopoly regime (energy, telecommunications). In 1941, during the period of the Franco regime's international isolation and its pretended economic self-sufficiency, the National Institute of Industry (INI) was set up as a public holding that, once the transition to democracy began after the death of the dictator in 1975, was the main Spanish industrial group. The severe economic crisis of the time, which coincided with the years of the democratic transition and had a strong destabilising element in the political sphere, made the INI to work as a « hospital » of companies in trouble, specially between 1976 and 1983 (Bel and Costas: 2001, 106).

Since the days of general Franco's regime, state-owned companies have been a central element of industrial policy. In the early 1980s, these companies accounted for two-thirds of the overall value of the country's industries and employed more than 300,000 people. Thus, the economic protectionism of the Franco regime, the strong intervention of the State in the economy and a policy of accelerated industrialisation were factors favoring the creation of public monopolies in several sectors of the economy. This situation, however, contrasts with the electricity sector, in which pri-

vate companies were able to integrate their transport networks into a single network in the 1940s without public intervention and regulated themselves during the following years, by implementing a defensive approach faced with the threat of the State intervention. The explanation for this unique situation can be found in a sort of "reciprocal instrumentalisation" agreement whereby companies accepted State intervention and increased their supply capacity in exchange for guarantees of economic security and social appeasement (Pueyo: nd).

The economic crisis of the late 1970s and the early 1980s plus the access of Spain to the European Communities in 1986, which involved engaging in the process of market liberalisation, were factors that led to the reorganisation of the Spanish industrial sector and ended up favoring the implementation of sustained privatisation policies by the mainstream political parties, although justified for different reasons. Thus, in the process of selling public companies, two periods can be distinguished:

The first one (1984-1996) began in the mid-1980s under the government of the Spanish Socialist Workers Party (PSOE), which sold most of the big state monopolies like Endesa, Repsol and Telefonica and sold off the assets of small and medium companies such as Seat or Marsans. In total, from 1984 to 1996, the State earned 13,200 million euros for these sales transactions. The institutions in charge of these operations were the three existing commercial state-owned groups in Spain: Instituto Nacional de Industria (INI), Instituto Nacional de Hidrocarburos (INH) and the Patrimonio del Estado Group.

Partial or total privatisations were used to cover the losses of other companies and to self-finance the growth of other privatised companies as well as to reduce the public deficit and meet the European convergence criteria. These privatisations of profitable and consolidated companies were decided on a case-by-case basis, reducing the weight of the state-owned companies, while maintaining a presence of the State in listed companies, sometimes holding a minority of the shares, but enough to keep their control. At that time, the privatisation policy was therefore instrumental and justified by the political authorities because of the need to reduce public spending and to adapt the old industrial sector to a new competitive environment.

During the second period (1996-2018), most of sales were made under the "Public Sector Modernisation Programme" developed by the People's Party Government (1996-2004). During this period, about 50 companies came out of the public sphere, including leading companies in sectors of big importance to the Spanish economy, such as electricity, gas, oil, air and road transport, telecommunications, aerospace, iron and steel, etc. Most of these privatisations were carried out by the holding company SEPI. Revenues generated by privatisations since 1996 amounted to 38,409 million euros, of which more than 22,000 million correspond to transactions made through public offers of sale. In this second period, the privatisation policy lost its instrumental nature, was at the heart of the economic policy of the moment and was implemented without complex, reflecting the presumed superiority of private management over public management (Bel and Costas, 2001).

From 2004 onwards, few companies were sold, most of them with general interest objectives and others affected by restructuring plans. As a result, privatisation ceased to be a priority, with the exception of the privatisation in 2015 of 49% of the shares of AENA, the company that manages the Spanish airports.

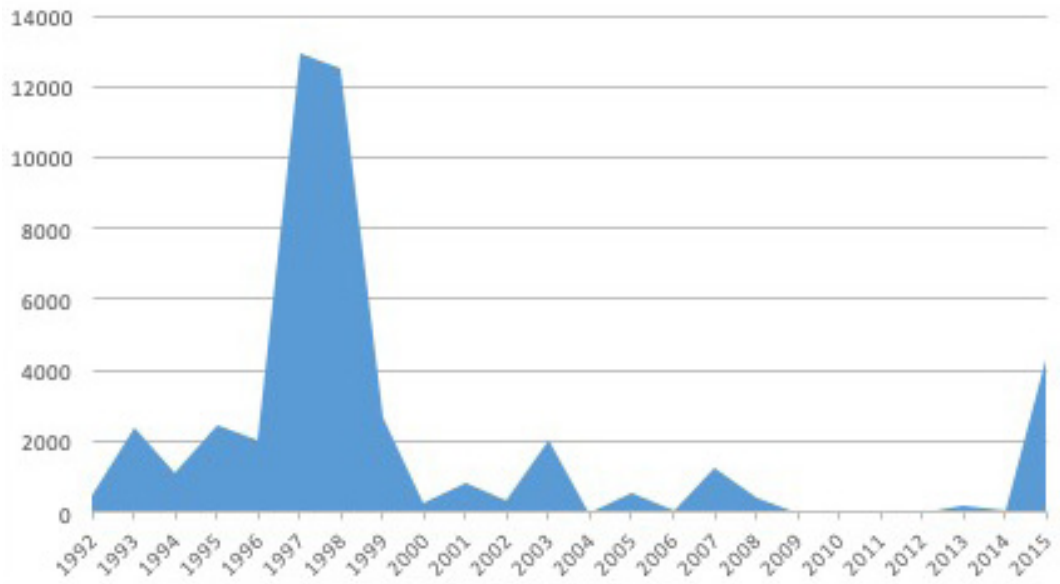
In any case, most of the revenue got from privatisation processes came mainly from the energy, transport and telecommunication sectors (Figure 2).

Currently, there are 413 state-owned Spanish companies, most of them joined up into three major groups:

- SEPI Group (State Company of Industrial Participations), created in 1995; its scope of activity includes 15 companies in which it holds a direct and majority stake. It has a workforce of more than 74,000 workers, is a shareholder of the Spanish Public Broadcasting (RTVE), has its own

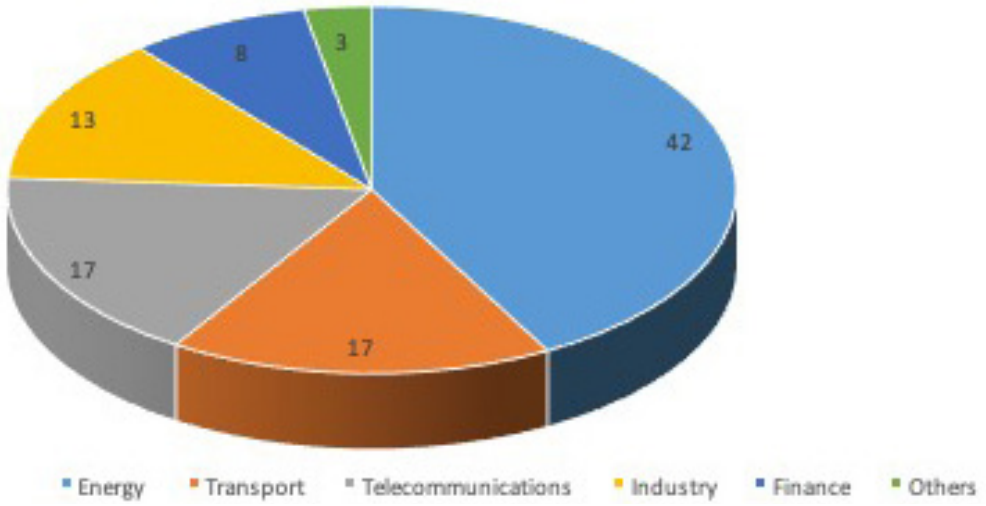
Foundation and has direct and secondary assets in more than 100 companies from different economic sectors, from aviation to food or energy. The benchmark company in the postal sector is Correos Group, which includes Correos, a state-owned company and its subsidiaries Correos Express, Nexea and Correos Telecom. In the electricity sector, Red Eléctrica Española (REE) is the company responsible for the management of the electricity grid and is organised as a monopoly, although the State holds just 20% of the capital of the company and is held by the law to keep at least 10%.

FIGURE 1. PRIVATISATION INCOMES IN MILLIONS OF EUROS (1992-2015)



Source : Consejo Consultivo de Privatizaciones 2016.

FIGURE 2. INCOMES FROM PRIVATISATIONS BY ECONOMIC SECTOR IN % (1995-2015)



Source : Consejo Consultivo de Privatizaciones 2016.

- The other group of non-industrial corporations is under the State branch of the Ministry of Finance. The "Grupo Patrimonio" employs more than 6,100 workers in sectors such as culture, lottery, tourism and infrastructure, among others.
- The third group of state-owned companies is kept under control of the Ministry of Development and is linked to the housing and transport sectors and to land, sea and air security. The main institutions of the Development Group are ADIF (rail infrastructure), RENFE (rail operator), Puertos del Estado (port management) and AENA (airport management).

To all these state-owned companies, it should be added the 1,253 public entities belonging to the Autonomous Communities and the 2,017 owned by the local authorities (Ministry of Finance).

3. THE ROLE OF THE REGULATORY AUTHORITY

The creation of regulatory authorities aims at setting up specialised entities acting in a neutral way in the defense of the market and the competition, without being guided by political considerations or by pressure from established public or private operators. Its objective is not to replace the market, but to correct its failures via a specialised and technical activity.

The activity of public regulation evolves in several directions:

1. provide a sector with effective standards so that it can work as a real market, in which there is competition and free pricing;
2. supervise the proper formation of the market to detect practices or situations that distort competition, concentration assumptions that endanger the market and control the levels of quality of the services provided to citizens;
3. to arbitrate impartially in the event of conflicts between market agents;
4. punish those who do not comply with the rules of the market;
5. advise the administration to best guide its regulatory activity.

In the Spanish case, moreover, the regulatory functions pose different problems: on the one hand, the regulatory powers of the Autonomous Communities have been subordinated to an essentially State conception of the liberalisation process. In addition, municipalities, like the regions, can also be considered as regulatory administrations insofar as they lay down rules that determine the layout of the networks in their territory. On the other hand, the creation of independent authorities did not prevent the co-existence of entities of general competence (National Commission for Competition, created in 2007) with specialised entities (National Energy Commission -1998 -, Telecommunications Market Commission -2003-, Railway Regulation Committee -2003-, National Postal Service Commission -2010-, Airport Economic Regulation Commission -2011- and State Council for Media -2010-), until 'the unification of regulatory bodies in the National Commission for Markets and Competition (CNMC) by Law 3/2013[288].

It is therefore clear that the effectiveness of the work of regulatory bodies depends on their degree of autonomy, professionalism and independence, both of political power and of corporate power. However, in the Spanish case, the responsibility for the appointment of the main posts of these authorities rests with the existing government or, at best, has been divided among the mainstream political parties. Thus, the lack of transparency in the debates of these organisations and their "capture" by the political power (often linked to the entrepreneurial power) led to their delegitimation.

288. It does not include the National Commission of the Stock Market (CNMV)

The CNMC Council is the collegial decision-making body and is organised in two chambers: one dedicated to competition issues and the other to oversight of regulated sectors. It is composed of ten members appointed by the central government for a period of six years. The functions of the CNMC also cover the supervision and control as well as conflict resolution:

1. Enforcement of Spanish and European competition rules: restrictive behavior, merger control and public support.
2. Promotion of competition: research and sectoral reports, as well as an advisory body to promote effective competition.
3. Market unit.
4. Resolution of conflicts between economic operators.
5. Supervision and control of economic sectors: gas and electricity, electronic and audiovisual communications, railways and airports, postal market.

According to the 2018 Action Plan (CNMC e), in the railway sector CNMC conducted a sanction procedure in 2017 for anti-competitive behavior against RENFE Operadora (S/DC/0511/14) and approved three resolutions on rail charges to try to adapt them to the actual costs in a context of real competition. In the postal sector, the CNMC recognises that one of its main lines of action is the establishment of transparent and non-discriminatory conditions for access to Correos' postal network, as well as the revision of postal service prices provided in compliance with the public service obligations and the quality control of the universal postal service. On the other hand, in the electricity sector, the performance of marketing companies is a matter of concern, especially when they go to customers' homes; the existence of similar brand images between distributors and marketers creates confusion for the consumer and makes competition difficult; this involves the determination of a fair method of establishing the fees and charges that users pay for the right of access to the electricity grid.

4. THE POSTAL SECTOR

1. GENERAL FEATURES

The postal market is divided into two main parts: the "traditional postal sector", which includes the sending of letters and parcels of reduced weight, and the higher value-added industrial and commercial postal sector, representing nearly 80% of the market value. Part of the traditional postal sector is subject to public service obligations entrusted to a designated operator. It consists of basic postal services (letters and parcels up to a certain size) with quality requirements: shipping and delivery throughout the country, with frecuency times, at affordable and uniform prices and through a network of points of access.

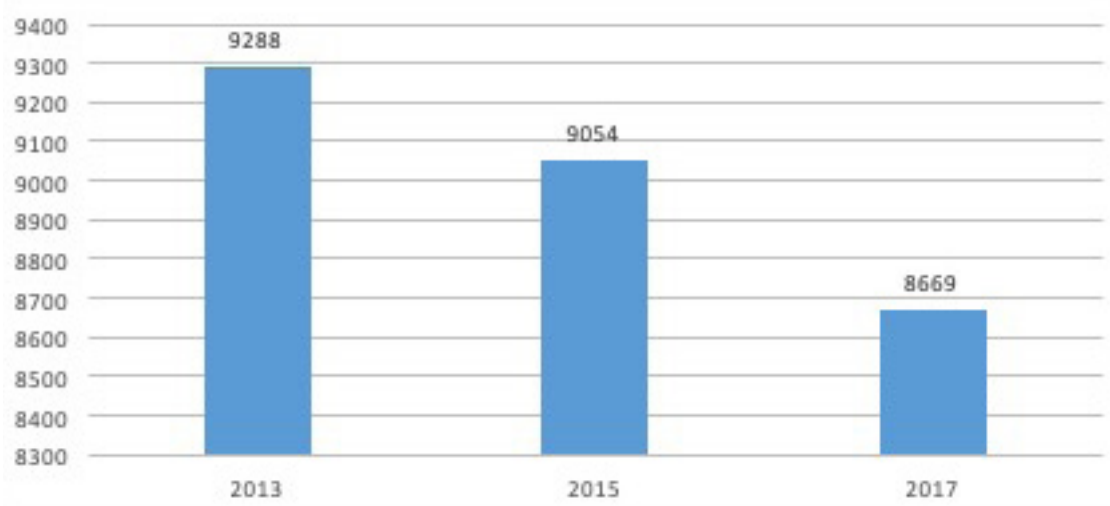
The commercial and industrial part is open to competition, with a rather fragmented market of small and medium-sized companies operating in local market environments. Some foreign state-owned and semi-public operators are present in this sector: Deutsche Post controls the company DHL, Guipuzcoana and part of Unipost; La Poste (French) controls a part of Seur, and CTT Correios Portugal owns Tourline.

In Spain the holder of the postal public service obligations is Correos, the state-owned company which has moved from a Directorate-General within the Ministry of Development to an independent agency (1992), a commercial company (1997) and a public limited company (2001). At present, Correos Group consists of four companies (Sociedad Estatal Correos, Correos Express, Nexea Gestión

Documental and Correos Telecom). The shares of the group are controlled by the holding company SEPI. Sociedad Estatal Correos has been designated in the Postal Law (Law 43/2010) to provide universal postal service since 1 January 2011 for a period of 15 years.

According to the group's annual report, Correos makes 11 million deliveries a day to 18 million households and 3.2 million companies (Grupo Correos 2017). These data demonstrate a wide coverage and territorial presence. According to the same Correos Group report, it has 8,700 access points in 2017, of which 8,669 belong to Sociedad Estatal Correos and 6,273 are located in rural areas, although the number of access points shows a certain downward trend.

FIGURA 3. EVOLUTION OF THE NUMBER OF ACCESS POINTS



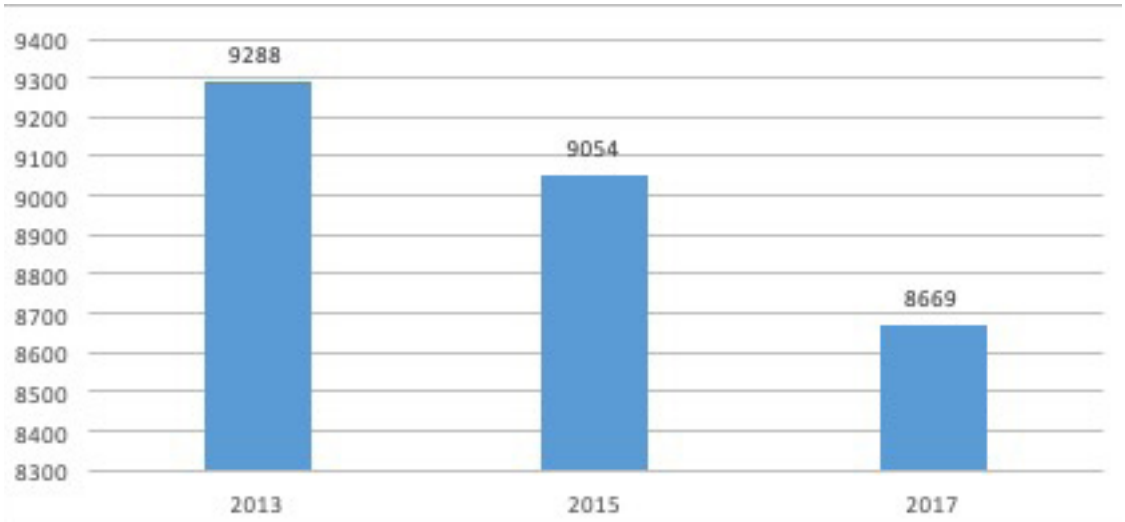
Source : CNMC 2016 y Grupo Correos 2017

The same trend can be observed in the number of Correos employees (about 64% of whom are mail carriers), although their decrease is less pronounced.

The National Commission for Markets and Competition is the institution responsible for monitoring and measuring the quality of the service. According to its data (CNMC 2016), in 2015, 92.97% of ordinary letters were delivered in three days or less, which is roughly equivalent to Eurostat's 2016 comparative data.

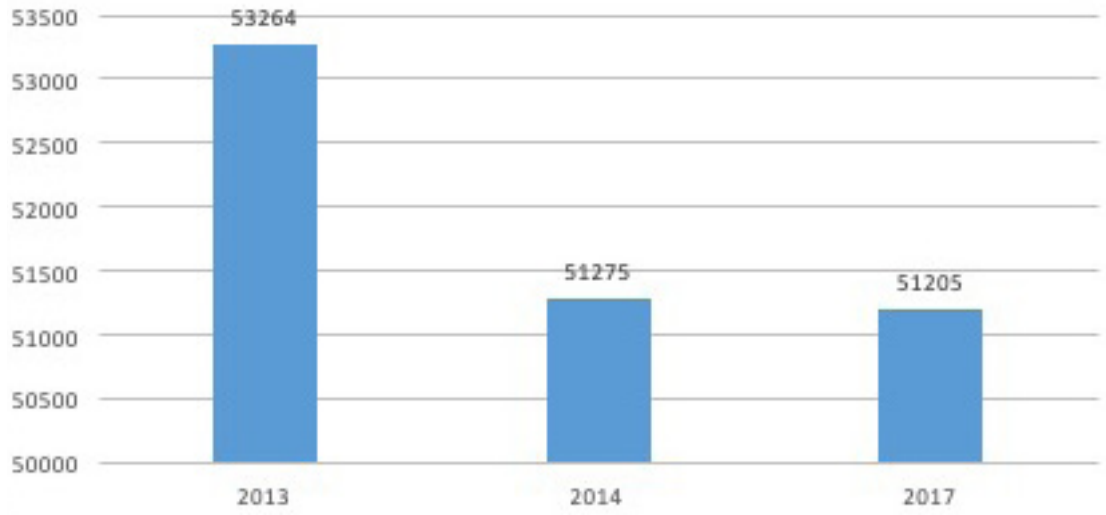
In addition, the CNMC also provides quality indicators. According to them, the average time spent by users in postal offices in 2005 is between 7 and 11 minutes, although the number of complaints received in 2015 was 97,188, up 24% from the previous year.

FIGURE 4. EVOLUTION OF CORREOS STAFF



Source : CNMC 2016 y Grupo Correos 2017

FIGURE 5. PERCENTAGE OF LETTERS DELIVERED ON TIME



Source : Eurostat

2. THE OPERATORS

In the traditional postal sector, the only private network competing with Correos throughout the country was Unipost. This company was created in 2001 by the merger of small postal operators. According to its own data, it covered 70% of the population, but disappeared due to economic trouble in May 2018. Another regional company is Akropost, which operates in the Basque Country. To this it should be added the small postal companies that operate locally, with modest turnover.

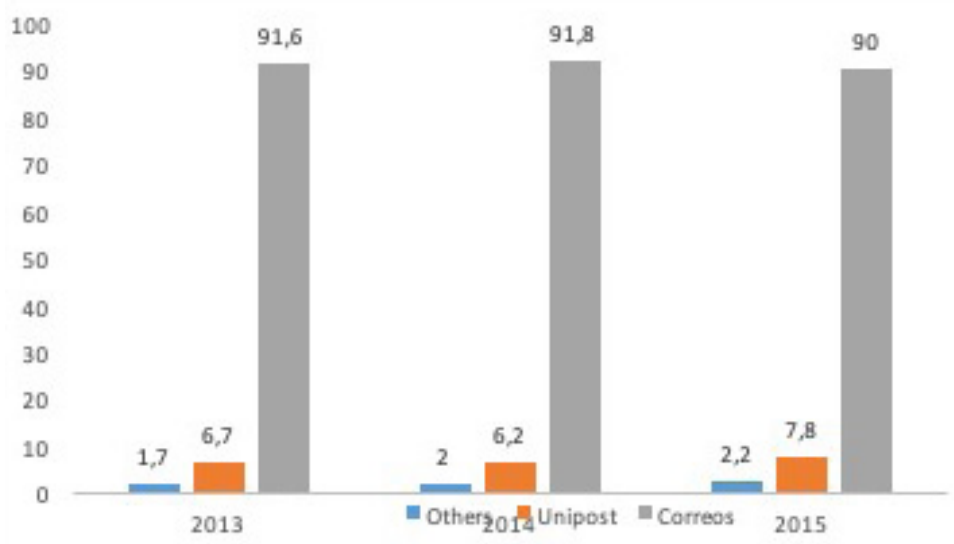
According to the CNMC, in 2015, the sector saw a 2% decrease in its turnover (1,332 million euros) and 4% of shipments (3,512 million shipments) mainly affecting Correos because private operators experienced a 19% increase, both in billing and shipments, which means some reduction in the

traditional operator's market share, whether measured by revenue or number of shipments .

Unlike the traditional postal sector, postal services in the urgent and industrial sector are more heterogeneous. In Spain, there are four large international companies operating (DHL, TNT, UPS and Fedex), with a 5.9% increase in turnover between 2013 and 2015 (CNMC 2016

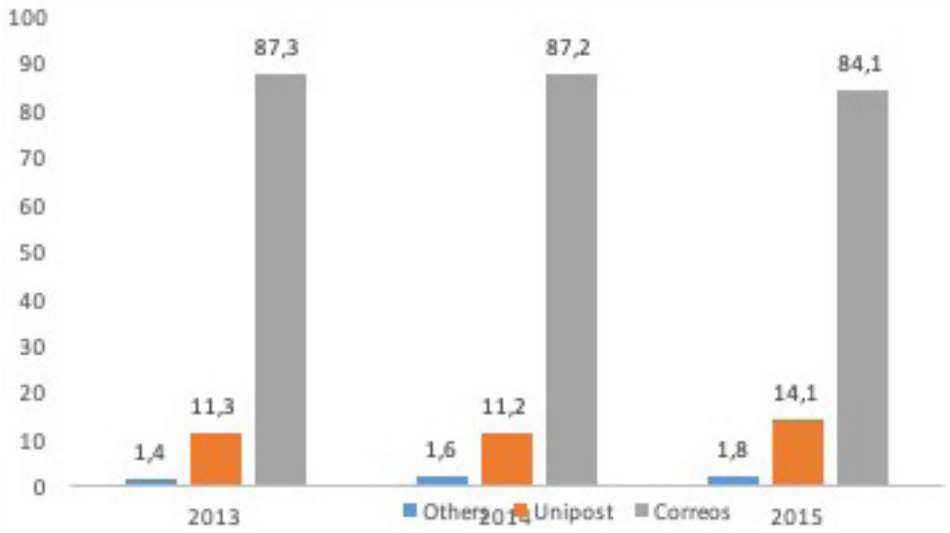
In the country-wide express delivery segment, several Spanish-owned companies (MRW, Nacex, TIPSA, Envialia, Halcourier, Zeleris, Sending and Redyser) and other Portuguese (Tourline) and Swiss (ASM) operate. The company Seur is a reference in the sector (created in 1942), which maintains its traditional brand although being the property of Geopost, belonging to the French state-owned operator La Poste.

FIGURE 6. MARKET SHARE BY INCOME IN THE TRADITIONAL POSTAL SECTOR (2013-2015)



Source: CNMC 2016

FIGURE 7. MARKET SHARE BY SHIPMENTS IN THE TRADITIONAL POSTAL SECTOR (2013-2015)



Source: CNMC 2016

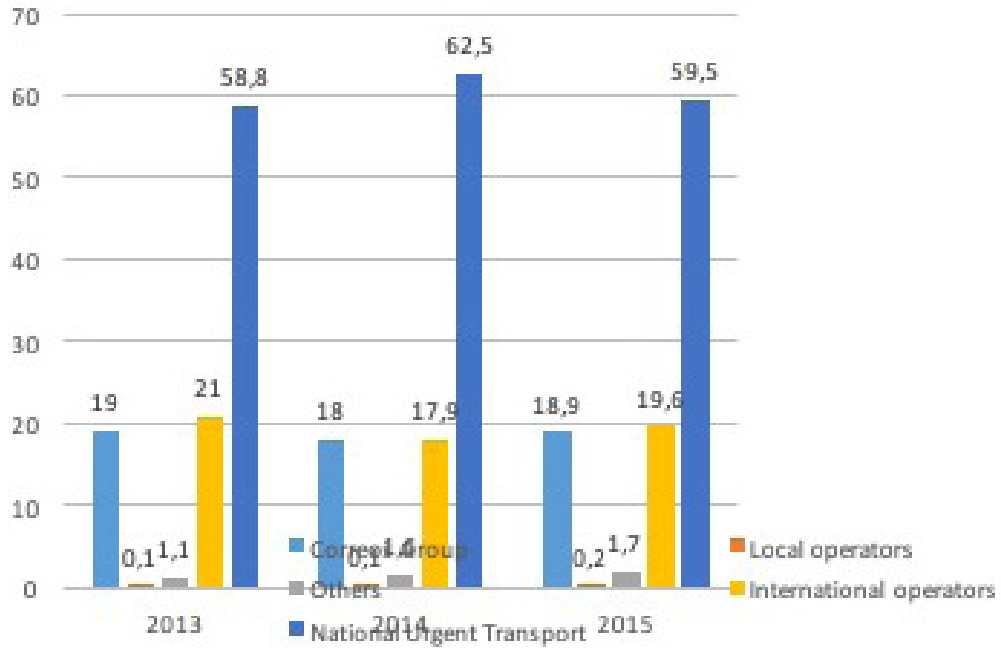
This group of companies has also experienced a rise in turnover in recent years, with an increase of more than 15% in some cases (CNMC 2016, 45). For its part, Correos Group is also present in this sector with Correos Express (whose delivery time is less than 24 hours) and Sociedad Estatal Correos for fast delivery beyond 24 hours, although, as shown in Figure 8, its market share is around 19%.

There are also other international independent operators with a reduced presence in Spain (General Logistics Systems Spain, a subsidiary of Royal Mail) and other companies operating locally preferably (ICS, General Courier, Rapid Express Courier, FLR or May Courier). In 2015, the turnover of these companies totaled 55.1 million euros, of which 64% corresponded to General Logistics Systems.

Lastly, it is worth refering to the industrial companies specialised in the transport of goods weighing more than 75 kg, that represent a global turnover of about 462 million euros (CNMC 2016, 48).

The use of ICTs (Information and Communication Technologies) and e-commerce is rapidly changing the urgent transport segment with the emergence of new businesses offerings in this sector of industrial transport companies and the expansion of new markets. The total number of shipments was 336 million, which represents an increase of 20.9% between 2014 and 2015, much higher than the rate of increase in revenues (8.7%), according to CNMC data (2016). Added to this is the fact that e-commerce transactions increased by 23% over the same period, exceeding 297 million.

FIGURE 8. MARKET SHARE ACCORDING TO SHIPMENTS IN THE URGENT POSTAL SECTOR (2013-2015)



Source : CNMC 2016

This change in behavior is reflected in the CNMC household panel data, based on the 2016 surveys. According to this barometer, 67% of Spaniards have not received any letters from an individual and 62% nor have sent them. In addition, about 30% did not receive business letters and almost 50% did not receive notifications from the government. This is consistent with the gradual replacement of paper invoices by e-invoicing service providers (53% of respondents say they receive e-invoices from their telephone company).

3. THE LIBERALISATION OF POSTAL SERVICES

The "Law 43/2010 of the universal postal service, user rights and the postal market" has tried to adapt the Spanish regulatory framework to the needs of a liberalised market. This law provided that 15 years after 2011, several companies could be designated as universal public service providers. However, the National Competition Commission (CNC), now integrated into the National Commission for Markets and Competition (CNMC) published in 2012 a report entitled "The new regulatory framework of the traditional postal sector in Spain" where it is said that the law contains elements that hinder the development of competition, tends to favor the dominant position of the state-owned company Correos and does not pay attention to the needs and preferences of current consumers in a context of increasing recourse to ICT, electronic billing and e-commerce methods. The main objections contained in the CNC's report and which remain current are the following:

- The direct designation of Correos as a universal postal service provider was not very transparent and did not respect the principles of periodic review and maintenance of the competitive pressure of the European standards.
- The expansion of the UPS (Universal Postal Service) obligations is not reasonably justified, such as the extension to shipments of 10 to 20 kg, which is understood as a concession to the dominant company.
- The calculation of the financial compensation for the UPS is complex and does not take into account the intangible and reasonable benefits of the operator, the efficiency of the provision of the service or the compatibility with the European rules on aid public. It is understood that, as a supplier of the UPS, a state-owned enterprise runs a risk of conflict of interest in the design of the financing methodology, which is a factor of distortion of the competition, aggravated by the imposition of a direct and indirect tax burden on small operators.
- The existence of "countervailing duties" is openly criticised, such as the big tax exemption for Correos and the relations of the UPS supplier with the public administrations. Regarding the payment of taxes, it is said that the law does not respect the European requirements by extending the exemption to all taxes levied on the activities of the UPS, with the exception of the corporation tax. In this regard, the European Commission concluded in 2018 that Correos had received an excessive compensation from the State of € 166 million between 2004 and 2010, including over one million tax exemptions. Nor does it seem justified to grant Correos the presumption of veracity and reliability of the notifications of the organs of the public administration.
- The exclusive attribution to Correos of the term "Spain" and the occupation of public spaces for the development of its postal network are also criticised, included airports, ports and railway stations.
- The postal law does not introduce changes in the structure and method of calculating postal rates and the uniformity of rates is maintained throughout the national territory, whatever the destination (high cost in rural areas and low urban cost) and the characteristics of the shipment. Moreover, since stamp prices are about 25% lower than in the United Kingdom and 40% lower than those in France, Germany and Italy (despite the dispersion of the population and the low number of shipments), the entry into the market is difficult for potential competitors[289].
- Also under discussion is the administrative authorisation to operate on the traditional postal market as this may be an additional burden for smallholders, but it is emphasised that they should be subject to compliance with quality requirements.
- It is doubtful whether access to the postal network is appropriate, as it is likely that the licensee will decide to restrict access to its network to competitors at the risk of network duplication or market closure. Therefore, the CNC recommends price conditions and requirements

289. Rates are differentiated for Ceuta, Melilla, the Balearic Islands and the Canary Islands.

that do not distort competition between operators and at the same time ensure the long-term viability of the postal network.

Given the criticisms provided by the regulatory authority, it appears that Correos's relationship with the Ministry of Development has provided a series of tax, symbolic and financial benefits to the universal postal service without the subsidy criteria being sufficiently clear. On the other hand, the monopoly of Correos for decades has favored it in the development of its postal network, the occupation of the public space and the maintenance of privileged relations with public administrations.

5. THE RAILWAY SECTOR

1. GENERAL FEATURES

The liberalisation of the railway sector has been gradual and has been the output of the European railway packages. In 2003, the Rail Sector Law 30/2003 liberalised the transport of goods at the end of 2005. Then, in 2010, international passenger transport was liberalised and in 2013 was implemented the liberalisation of the railway transport whose main objective was tourism. Later on, the Law 38/2015 deepened the liberalisation of the sector and tried to improve the transparency of the financing system of the railway sector.

As in other countries, rail transport was organised in Spain around the public monopoly Renfe (Red Nacional de los Ferrocarriles Españoles), founded in 1941. Since the 1980s, this conveyance has lost market share measured in passengers or goods, which barely exceed 5% (Campos 2015, 29), for all lines that have a low level of productivity and cost coverage, except for long distance and high speed lines (which are the most profitable and have more modern infrastructures).

In 1994, RENFE was reorganised into two functionally specialised units (transport and infrastructure), which facilitated the creation in 1997 of the "Gestor de Infraestructuras Ferroviarias (GIF)", a state-owned organisation responsible for building and maintaining the infrastructure and financed by the fees paid by the operators, and which will be transformed from 2005 (via the Law 30/2003) in "Administrador de Infraestructuras Ferroviarias (ADIF") assuming the competences of the GIF for the construction and maintenance of the railway network of general interest (RFIG), traffic management and allocation of network capacity between operators. ADIF is a dependent entity of the Ministry of Development which is financed by contributions from the national budget and the payment by the operators of the access fees to the network, to reserve trips (reservation of capacities), to use the reservation (circulation expenses) , for infrastructure traffic (traffic charges) and the use of railway stations and infrastructure.

In 2013 ADIF Alta Velocidad was set up for the management and construction of high-speed infrastructures, which now represent 15% of the total network with a UIC width of 1435 mm, while the ADIF managed only the network of Iberian standards (1.668 mm) and narrow gauge railways, that are not economically profitable.

As far as operators are concerned, the Railway Act created Renfe Operadora as a state-owned service-oriented company. In addition, in the north of Spain has worked "Ferrocarriles de Vía Estrecha (FEVE)", absorbed in 2013, and there are also regional and metropolitan companies that perform the transport of passengers outside the network of general interest but as monopolies subsidised by local and regional governments, with the authorisation of the European Union.

Renfe Operadora inherited most of the assets of the former RENFE, while about 40% of the debts were assumed by the State. Since 2014, RENFE Group consists of four companies: RENFE Viajeros

(passengers), RENFE Mercancías (goods), RENFE Fabricación y Mantenimiento (manufacture and maintenance) and RENFE Alquiler of Material Ferroviario (railway equipment rental).

In addition to the division of the former monopoly into network management organisations (ADIF and ADIF Alta Velocidad) and service delivery (RENFE Group), the Railway Sector Act also created a specialised regulatory authority under the Ministry of Development, the Railway Regulation Committee (CRF), in order to ensure competition in the market and as the referee of the system. This organisation had major budget and functional shortcomings and was integrated in 2013 into the general regulatory institution called the National Commission for Markets and Competition (CNMC).

Thus, since the adoption of the Law 30/2003, the Spanish railway sector was ready to open officially to the competition for any operator having a valid license and using the network managed by ADIF or by ADIF Alta Velocidad, under the supervision of a regulatory authority.

This model was updated by the Railway Act 38/2015, which aimed to modernise the previous law and transposed Directive 2012/34 on the Single European Space. These main novelties are:

- The possibility for private companies and port authorities to be managers of infrastructure in the facilities inside the ports.
- The regulation of public service obligations under the exclusivity regime, upon prior declaration to the government.
- The reform of the royalty system: abolition of the access fee; creation of a "railway line charge", which replaced traffic charges; calculating the "capacity reservation fee" (now called the "capacity allocation fee") based on the actual traffic managed; and the creation of a "fee for the use of electrical energy transformation and distribution facilities".

2. LIBERALISATION OF THE RAILWAY SECTOR

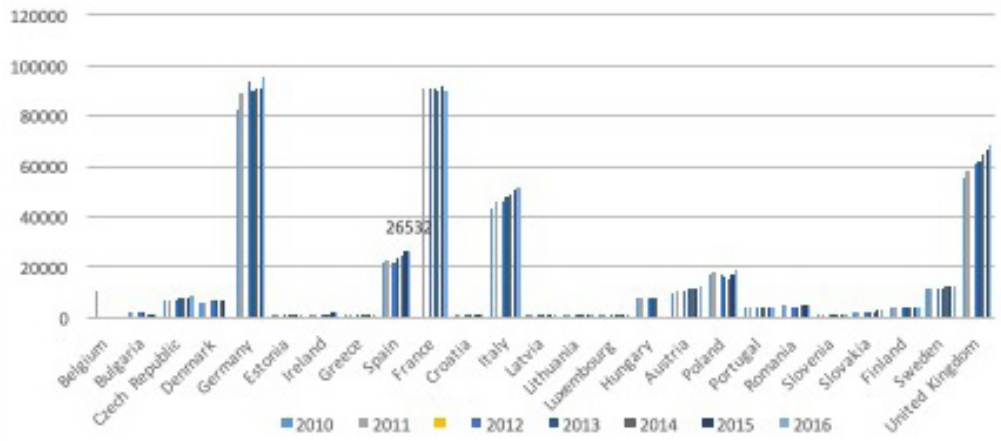
Despite these regulatory changes, the CNMC has criticised some of these aspects for not being adapted to the needs of liberalisation of the sector or to the faithful implementation of the Directive 2012/34 (CNMC 2018). The main criticisms of the design of the Spanish railway sector are:

- The fact that the Ministry of Development itself, and not the regulatory authority, has the ability to deny access to an operator if it jeopardizes the "economic equilibrium of a public service contract", which suggests a risk of conflict of interest (the Ministry itself defines and finances the services subject to public service obligations and also establishes the assumptions of danger for the economic equilibrium) and brings a source of uncertainty for potential operators.
- The direct transfer to the RENFE Group companies of rolling stock and maintenance facilities belonging to the former monopoly, so that it benefits from an advantage that the competitors do not possess and constitutes a major obstacle to the entry of future competitors, who must commit to strong investments and operate in the medium term with their own fleet.
- The direct allocation of railway services subject to public service obligations where the annual cost is less than EUR 1 million, where there are not enough services or in the case of services of "high density and volume of traffic in metropolitan areas".
- The uncertainty caused by the change in the royalty system, which can represent up to 40% of the costs of providing services.
- The lack of independence of the network managers to ensure equal treatment in the access to the facilities and services they offer.

Given the criticisms made by the CNMC, which are justified by the privileged links of RENFE with the State administration and with the new entity owning the network (ADIF), and given the poor results, it can be said that the liberalisation of the sector has been slow, insufficient and incomplete compared to other European countries. On the other hand, rail freight has not been able to cope

with the competition of road transport, while passenger transport is also far from the levels of the main European countries, as shown in Figure 9. Road investment has been favored by the public authorities to the detriment of rail investments in intermodality improvements and links with ports and the French border.

FIGURE 9. PASSENGERS TRANSPORT IN PASSENGERS/KM



Source: Eurostat

Besides, the separation between the management of the network and the transport provision has been clearly insufficient to favor the access into the market of RENFE's competitors. Many factors limiting competition and others favoring the former State monopoly contributed to this, as will be seen below. In any case, it is difficult to reconcile the contradictory interests: those of RENFE, which seeks to perpetuate its domination on the market; those of ADIF, under the auspices of the Ministry of Development, which seeks to set high fees as a source of funding; and those of the Ministry itself, which should engage in the process of liberalisation. In addition, the Law 38/2015 itself opted for a slow model (the pace proposed by the EU) of opening the passenger transport system allowing public offers that temporarily give exclusive rights to use the lines until the entry of new operators into the market. It goes without saying that only RENFE Viajeros is able to assume the provision of these services.

Thus, the risk is the consolidation in the future of a two-tier market: a profitable sector (net of infrastructure costs) at high speed to UIC standards that could interest some operators, coexisting with a sector of medium and long distance that only RENFE Operadora could garantee by fulfilling the public service obligations and with the support of the public budget.

An example of the first hypothesis is the interest of some companies in exploiting economically profitable lines. Thus, on 13 September 2018, the CNMC approved the application of ILSA (owned by the main shareholders of the airline company Air Nostrum) to provide a service between the cities of Madrid and Montpellier. However, this is a "disguised" international service initiative to take the lead against potential competitors in the domestic passenger market, as this line can only be economically viable connecting the city of Madrid with Zaragoza and Barcelona. In any case, this initiative promises to triple the current frequencies between Madrid and Montpellier and increase them by 50% between Madrid and Barcelona, and is bound to respect the technical specifications of the CNMC, in particular that 20% of the route is carried out on the French territory and that 30% of the passengers have their origin or their destination out of Spain. In the same vein, Deustche Bahn intends to operate a railway line via its Spanish subsidiary Arriva Cars between the cities of

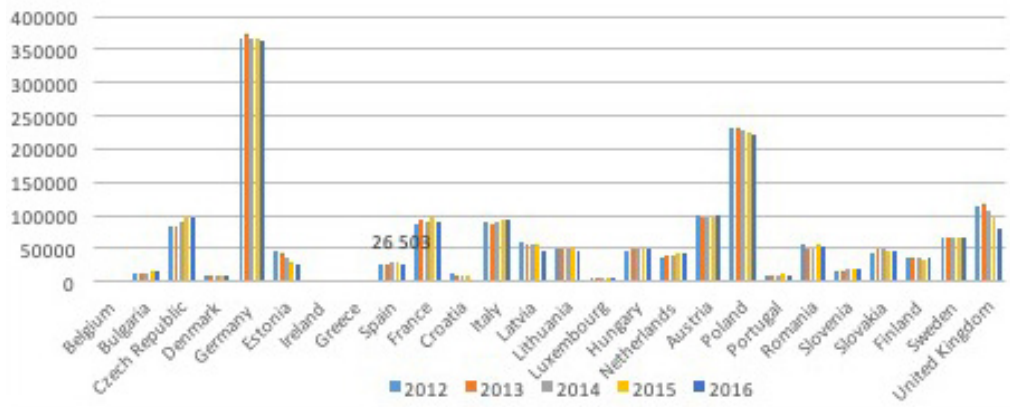
La Coronne and Porto (Portugal). In both cases, however, it appears that the main difficulty is not getting CNMC's approval, but to ensure that their main competitor (RENFE) agrees to hire trains to start these activities.

In any case, with regard to passenger transport, the Spanish authorities have delayed the opening of the sector adapting it to the calendar of the European directives and have focused the opening process on international rail traffic and long distance through a system based on the granting of licenses and technical certificates to potential entrants, while maintaining the public service obligations in the deficit lines served by RENFE, which reserves the right to maintain the lines on which it currently operates.

In rail freight, the strong intermodal competition in road transport has led to a gradual decline in the share of rail use passing from 53% in 1950 to 30% in the 1960s and 12% in the 1970s, and currently stands at 1.4%, surpassing only air transport (0.04%) and far behind road transport (70.6%) and shipping (27.9%) (CNMC, 2017). Compared with land means of transport, rail freight accounts for 2% of tonnes transported and 4.7% in tonnes / km. It is a relatively small market amounting to 290 million euros in 2016, compared with more than 2,000 million euros for the passenger rail transport (CNMC, 2017).

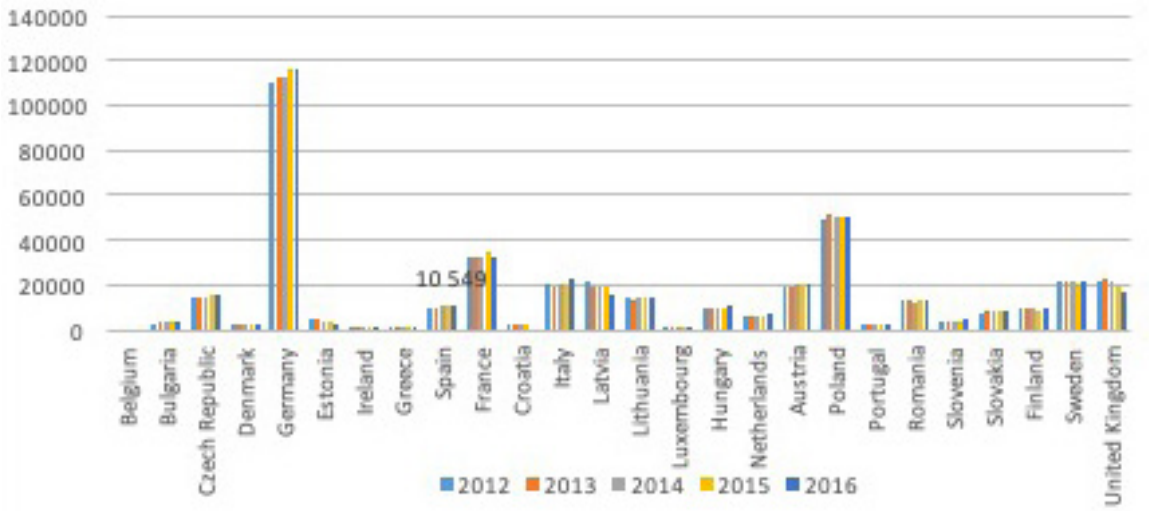
In addition, the reduction in rail freight market share has continued in recent years, as has the activity of the dominant operator (RENFE Mercancías), which recorded a 10.1% drop in 2016. As can be seen in Figures 10 and 11, the rail freight market is very small compared to other European countries of the same size, measured in tonnes of goods and goods / km.

FIGURE 10. GOODS TRANSPORTED IN THOUSANDS OF TONNES



Source: Eurostat

FIGURE 11. GOODS TRANSPORTED IN THOUSANDS OF TONNES/KM



Source: Eurostat

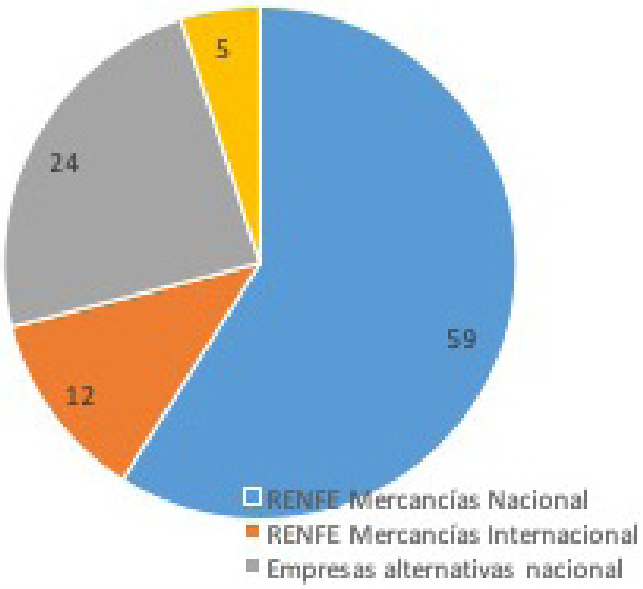
According to CNMC data (2017), in 2016 the rail freight market turnover represents around 12% of the total turnover of the rail sector, including government subsidies for the delivery of services subject to public service obligations. Thus, RENFE Viajeros made more than 2,080 million euros for the sale of transport tickets that year and received 604 million euros from the different public administrations. For their part, infrastructure managers (ADIF and ADIF Alta Velocidad) received royalties and other services for 659.1 million from passenger traffic and 5.6 million from freight. In addition, they supplemented their revenues with 590.6 million government grants.

Freight companies have a workforce of 1,728 employees in 2016 (approximately 7.3% of the total of 23,786 workers in the sector), which has increased slightly in recent years (4.7% for passenger transport, 1,7% for freight and 0.4% for infrastructure).

Freight has been officially liberalised since 2005, although the entry of the first alternative companies to RENFE did not take place before 2007, and its activity represents 6% of trains running on the network in 2016 and 13% by train / km. It should be noted, however, that, despite the general stagnation of the sector, alternative companies increased their traffic between 2015 and 2016 by 3.3% in net tonnes, 3.9% in tonnes / km and 9.2% in train / km. As a result, the market share of alternative companies has increased in net tonnes in recent years from 14% in 2011 to 29% in 2016 (14 to 39% in tonnes / km). For its part, the incumbent RENFE freight has decreased by 12.3% of net tonnes in 2016 and 7.3% to 6.9% in tonnes / km and 6.9% in train / km (representing the activity level of 2012).

Rail transport of goods in Spain is mainly national, the international quota being 17.2% in net tons and 19.3% in tons / km.

FIGURE 12. MARKET SHARE OF RAIL FREIGHT TRANSPORT IN % OF NET TONNES



Source: CNMC, 2017

It should be added to complete the general map that there is also the traffic of goods by regional railways (mainly Ferrocarrils of the Generalitat de Catalunya, FGC, and Euskotren in the Basque Country), which is not done on the network of general interest; in 2016, it represented an activity of 0.59 million net tonnes and 45.9 million tonnes / km, which represents 2.2% of total merchandise activity in net tonnes. FGC holds a 42.4% market share in the province of Barcelona (mainly through traffic between the Port of Barcelona and the SEAT factory).

Income earned by rail freight (excluding other sources of revenue such as infrastructure management or equipment leasing) is € 331.4 million in 2016 compared to € 304 million in 2011. However, while RENFE Mercancías decreased from 252.1 million in 2011 to 223.6 in 2016, alternative companies increased their turnover from 51.9 million in 2011 to 107.7 in 2016 (CNMC, 2017).

Thus, it can be seen that until now rail freight is a very small market dominated by the traditional operator, even if it is a sector officially liberalised since 2003. To detect the possible causes of this result, the former National Competition Commission (NCC), part of the current CNMC, published a report in 2013 outlining the main factors limiting competition in this market. Those are:

With regard to infrastructures :

1. International isolation due to the difficulties of connection with Portugal and France (of the 214 million tonnes per year circulating between Spain and France, only 3.9 million tonnes are transported by rail and of the 30 million tonnes per year between Spain and Portugal, only 0.7 million tonnes are transported by rail). The fact that Spain has three kinds of train track widths contributes to this: the UIC width (1 435 mm), the Iberian width (1 668 mm) and the metric width (1 000 mm), contrast with the European width, mainly UIC.
2. The low commercial speed of the trains, with an average speed of 56 km / h.
3. The smaller average size of the trains, due to the lack of adequacy of the infrastructures.

4. The limited development of intermodality between rail and road (only 4.1 million tonnes), and between rail and ports (only 3% of goods leave or enter ports by rail)

With regard to infrastructure management:

5. There is a lack of adaptation of the management of ADIF to the operators' needs concerning the opening hours and the schedule of the terminals.
6. The ability of the network monopoly ADIF to regulate the entry of ancillary services companies, resulting in legal uncertainty and discretionary risk.
7. The discretionary way in allocating capacity in case of coincidence of requests or congestion of the network, which ends up favoring RENFE Mercancías.
8. The absolute priority of passenger transport on the transport of goods, especially near major cities.

With regard to the regulation of access :

9. The high costs and delays in the negotiation of licenses for new operators, which last between 5 and 8 months compared to the normative forecast of 3 months maximum.
10. High costs, delays and lack of transparency in the allocation of safety certificates (4 months with negative administrative silence), aggravated by the obligation to have a contract for the purchase of locomotives while in Spain there is hardly a second-hand market for locomotives.
11. High costs and delays for the approval of rolling stock in a narrow market for second-hand equipment or leasing.
12. The high costs and long time for the training of train drivers, with the participation of RENFE in the qualification of train drivers of the competition.
13. The complexity and opacity of the royalty system.

In addition to these factors limiting competition in the sector, the CNC also highlights some of the specific advantages granted to the former RENFE monopoly:

1. The "grandfather clauses" that exempt RENFE from documents that are required to competing companies (staff clearance, approval of materials or even the right to exploit the capacity of the existing network at the time of liberalisation).
2. The wide availability of rolling stock, whereas competitors would have little access to this equipment in Spain.
3. An extensive network of equipment maintenance and repair services, reinforced by traditional links with manufacturers.
4. The risk of cross-subsidies between the different companies of the RENFE Group and opacity on the sector obtaining (passengers and freight) subsidies from the central government. Thus, the independence of each company must be not only legal, but accounting and functional, in order to avoid that RENFE can offer better prices for the lines where it is in competition and expensive services where it operates as a monopoly.
5. Links with ADIF and the Ministry of Development. ADIF and RENFE are both companies attached to the same Ministry and there are traditionally structural links between the two companies (for example, the president of RENFE is a member of the board of ADIF) or the right of usufruct retained by RENFE on certain goods in ADIF terminals, which are not made available to other competitors.
6. RENFE's ownership interest in companies that are also competing companies, which may weaken the competitive intensity between them.

Again, as in the postal sector, several factors appear to be seriously impeding competition in rail freight transport. Sometimes it is structural problems (the width of the track); but other times, it is the consequence of the deliberate decision of the various governments to favor road transport over an open rail transport market; or, above all, this results from the old organic links between the network operator, the Ministry and RENFE, owner of rolling stock, maintenance facilities and benefits acquired during the monopoly years.

3. THE QUALITY PERCIEVED BY USERS

In accordance with Article 56.7 of Directive 2012/34, the regulatory authority "shall consult regularly, and in any case at least once every two years, the representatives of the users of railway services". To fulfill this mandate, the CNMC conducted a survey between July 5 and September 18, 2017 with representatives of passenger and freight transport companies and consumer and user associations. Specifically, 10 responses were obtained from transportation companies, 20 freight user responses and 9 passenger association responses.

In the rail freight sector, rail freight companies showed higher levels of dissatisfaction with the overall situation of the sector (1.9 out of 5) and access to rolling stock (1.8 out of 5) because of the difficulties offered by the width of the Spanish tracks compared to the European width and the weakness of the market for this material. Moreover, they argue that RENFE Mercancías is a source of market distortions because of its public nature and its policy of low prices and high wages for drivers. They also highlight the difficulties of accessing international traffic due to technical barriers and high regulatory costs required to operate.

For their part, the logistic companies' representatives note the rail's lack of competitiveness in the face of the road, the low intermodality, and the limits of the infrastructure and service facilities, that do not correspond to their needs and oblige them to use other means of transportation or to incur additional costs.

Finally, representatives of passenger user associations have better satisfaction data, particularly on station commercial services, long-distance trains (7.4 out of 10) and high-speed train services, that offer the best perceived quality (8 out of 10) although the cost of the tickets is considered excessive. On this point, passenger transport users consider rail as an appropriate option and superior to other means of transport.

6. THE ELECTRICITY SECTOR

1. GENERAL FEATURES

In December 31, 2016, the number of retail electricity consumers was 27.7 million, of whom 16 million (57%) supply points are provided by independent suppliers, representing 88% of the total energy consumed that year (CNMC, 2017 c: 4).

Consumers with a contracted power of less than 10 kW are entitled to be supplied by a reference distributor in the manner known as the "Voluntary Price for the Small Consumer" (PVPC in Spanish), as regulated by Decree 216/2014, or by a free market distributor. The PVPC has changed the methodology for calculating the price, from the price determined at auction to a price based on the spot electricity market. Thus, 54% of consumers entitled to the PVPC (59% in terms of energy consumed) are supplied by an "independent" distributor (distributor not related to regulated tariffs).

According to the above-mentioned CNMC report (2017c), at the end of 2016, 268 distributors other than the reference distribution operators (COR) provided electricity to consumers: 255 in the

household sector, 247 for small and medium-sized enterprises (SMEs) and 144 to industries. These data show an increase in the activity of new distributors in sectors that, like households and SMEs, were traditionally more resistant to the free market, which is partly due to the greater penetration of new distributors in distribution networks of the five major Spanish energy groups. The size of these distributors, however, is very small since in the household sector, 70% of them have less than 2,000 supply points; in the SME sector, 70% have less than 300 points; and in the industrial sector, 70% have fewer than 20 customers (CNMC, 2017c: 6).

2. THE LIBERALISATION OF THE ELECTRICITY SECTOR

Red Eléctrica Española (REE) is the company that manages the electricity network in which the State retains 20% of the shares through the holding company SEPI and which is legally required to retain at least 10% of the shares. No other company can, directly or indirectly, hold more than 5% of the capital or 3% of the voting rights, which falls to 1% in the case of electricity companies.

With regard to operators, the concentration of the Spanish electricity market has not changed much in recent decades and continues to grow. The three largest operators account for 70% of the total energy supplied on the open market in 2016, compared to 68% in 2015 and 67% in 2014.

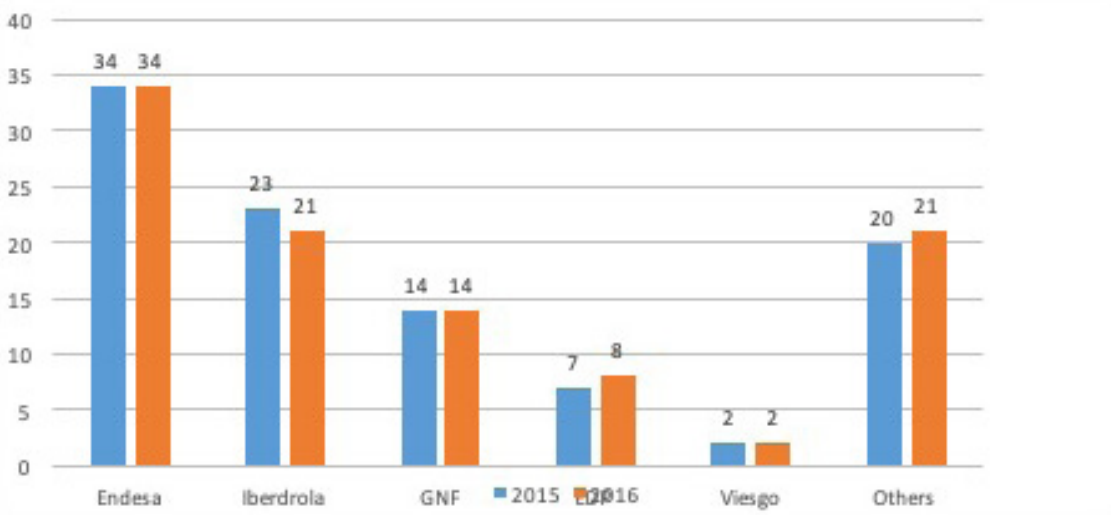
Endesa remains the leading operator in this sector with 34%, two points above the 32% of 2014, while alternative operators to the five major traditional groups have a 21% market share. If we analyse not only the free market, but the whole market (including the COR sector), the three major operators reached in 2016 89% of the total energy supplied (92% by supply points), while the alternative companies to the Big Five have barely 5% (see Figures 13 and 14).

In addition, it should be noted that there are only six companies in the peninsula (apart from one company in Ceuta and one in Melilla) that can offer PVPC. The problem is that these companies are integrated into groups of companies that also offer free services through other companies. It is therefore not easy for the consumer to distinguish them.

According to the free-market Hirschman-Herfindahl (HH) index (which calculates the degree of concentration of the market on a scale where 0 represents perfect competition and 10,000 a monopoly), for the industrial sector and SMEs the score is 2 000, which reflects a moderate concentration of the market, whereas the score of the household sector is 3,000, which means the existence of a too concentrated market (CNMC, 2017: 9-10).

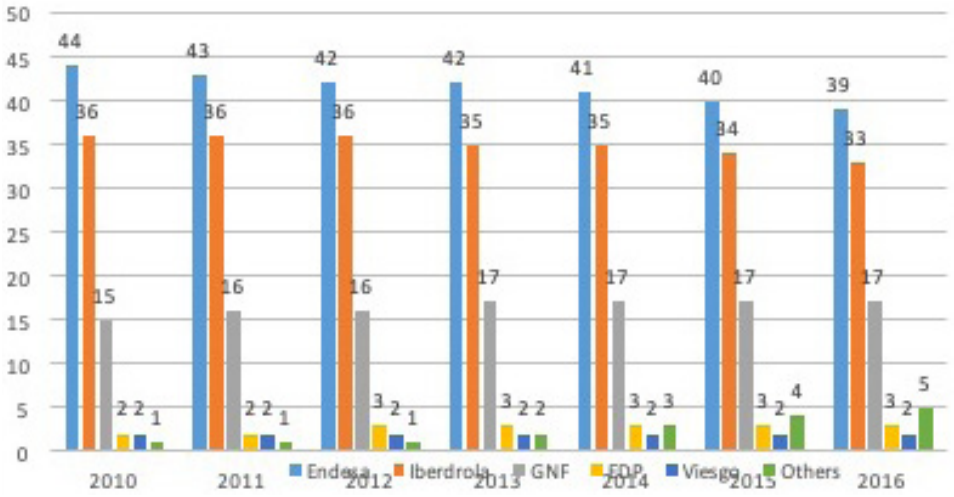
Another indicator of the degree of concentration of the Spanish electricity market is provided by the ACER-CEER report (2017), which shows the relative level of competition at national level by an index between 0 (low competition) and 9 (high level of competition). In this classification, Spain stands at 4.6 in an intermediate position among the European countries.

FIGURE 13. MARKET SHARES OF LARGE OPERATORS IN THE OPEN MARKET



Source: CNMC 2017 c

FIGURE 14. EVOLUTION OF THE MARKET SHARES OF LARGE OPERATORS IN THE WHOLE MARKET (FREE AND REGULATED)



Source: CNMC 2017 c

FIGURE 15. CHANGE RATE OF DISTRIBUTING COMPANIES

Source: CNMC 2017 c

The rate of change of operators has fallen steadily between 2013 and 2016 (see Figure 15) at around 10%, representing a reduction of almost two points in three years, although this is a relatively high rate in the European context according to data from ACER-CEER (2017). In addition, savings achieved by consumers through these changes are very low, which would probably explain the lower rate of change.

In the household sector, the largest number of changes occurs between free distributors (over 2 million changes) and less from a reference distributor (COR) to an independent distributor (less than a million of changes). The report also highlights the increase in returns from independent distributors to reference distributors, accounting for 10% of all changes made in this sector. The rate of change in the SME sector, where the rate of change is around 20%, is however higher. The Law 24/2013, in accordance with Directive 2009/72, introduced a 21-day temporary framework to complete the process of change of operator, although, according to data from ACER-CEER (2017), the average duration of process in Europe is 12 days.

3. ELECTRICITY PRICES

The Electricity Sector Law 24/2013 and the Decree 216/2014 have modified the power system and introduced as a last resort the « voluntary price for small consumers » (PVPC) system, ie for customers having subscribed power of less than 10 kW. As a result, from January 1, 2014, the last resort rate for small consumers applies only to vulnerable consumers or consumers who are not eligible for the PVPC, but who do not have access to the open market supply. Currently, the PVPC is applied to 42% of all eligible consumers (some 11.1 million consumers). The Decree 216/2014 establishes the method for calculating the PVPC, the price that includes the cost of energy in addition to access rates and other charges such as the regulated margin of the reference provider.

The CNMC has prepared a report on the method of calculating the regulated margin based on information provided by the electricity retailing companies, including marketing costs (price, billing system, customer services or structural costs among others).

Decree 496/2016 subsequently amended the previous decree and established a new method including supply costs and profits based on the costs of the three most efficient electricity companies, which represent a market share of at least 40%. In this way, "reference suppliers" are obliged to apply these prices to small consumers who wish to have variable prices.

The Decree-Law (Decree with force of law) 7/2016 has modified the conditions and regulation of the "social bonus" financing system (reduced price for vulnerable consumers) and other protective measures for the vulnerable consumer of electricity. Thus, the "vulnerable consumer" is considered to be the consumer with a contracted power less than or equal to 3 kW, the retiree over 60 receiving the minimum pension, families with all members unemployed and large families (three children at least). These consumers must pay the last resort fees, which are set at 25% or 40% of the PVPC. In addition, the deadline for suspending the supply of energy to vulnerable consumers or consumers covered by the PVPC has been extended from 2 to 4 months and the provision to vulnerable consumers served by social services has been considered an essential supply for those who are in danger of social exclusion.

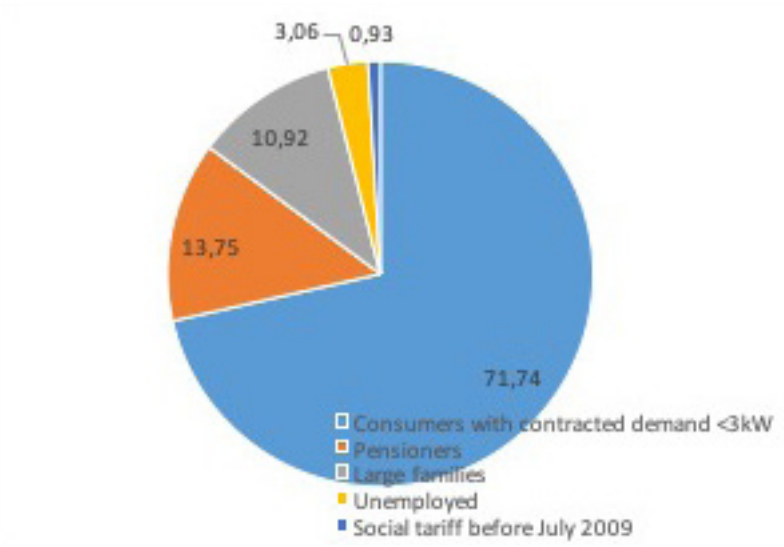
The Decree-Law 15/2018 strengthened these measures to protect vulnerable consumers by increasing the annual energy limits by 15% to compensate for recent price increases on the wholesale market. These measures end up being immediately transferred to the consumer (the average value reached 71.35 euros / MWh in September 2018, with an increase of 87% over the last 15 years). Similarly, the government recognizes that single-parent families (in which the parent is a woman in 85% of cases) suffer more from energy poverty. The Decree-Law 15/2018 therefore raised the maximum income threshold set for accessing the vulnerable consumer status; it becomes 0.5 times higher than that of two-parent families. In addition, it is forbidden to cut off the supply of households covered by the social bond in which children under the age of 16 live or where one of their members is in a 33% dependency situation certified by the social services.

The social bonus is considered a public service obligation and is financed by suppliers. In June 2018, the number of consumers covered by the social bonus was 2,245,369, according to the categories shown in Figure 16.

According to the 2017 Living Conditions Survey conducted by the National Institute of Statistics (INE), 8.3% of households (about 4 million people) can not afford to keep the house at an adequate temperature. Thus, together with this social bonus, the Decree-Law 15/2018 now provides a new social bonus to be used by vulnerable consumers for heating, hot water or cooking, by virtue of the traditional social bonus, to cover other uses of energy distinct from electricity, and the amount of which will depend on the climatic zone of the country the family belongs to and the degree of vulnerability of the household.

For its part, the CNMC has developed on its website a consumer information system that makes possible to compare prices between energy trading companies and a bill verification tool for consumers who opt for the PVPC and have access to a smart meter. In December 2016, 82% of consumers with less than 15 kW of contract power are equipped with smart meters (CNCM 2017c), so that the bill is calculated taking into account the hourly consumption for consumers covered by PVPC or the spot price of the electricity market in the case of the consumers who opted for the open market.

FIGURE 16. CONSUMMERS COVERED BY THE SOCIAL BONUS BY CATEGORY IN % (JUNE 2018)



Source: CNMC 2018: Boletín de indicadores eléctricos.

In recent years, the electricity tariff has changed several times and the cost of electricity has continued to rise for consumers and businesses, both in absolute terms and compared to other European countries. Between 2000 and 2013, the term "tariff gap" appeared for the first time, suggesting that revenues from the Spanish electricity system do not cover production and distribution costs. Thus, in 2013, the government proceeded to a global reform of the electricity system, through the Decree-Law 9/2013, in order to correct a "deficit" which finally exceeded 21 billion euros at the end of 2017.

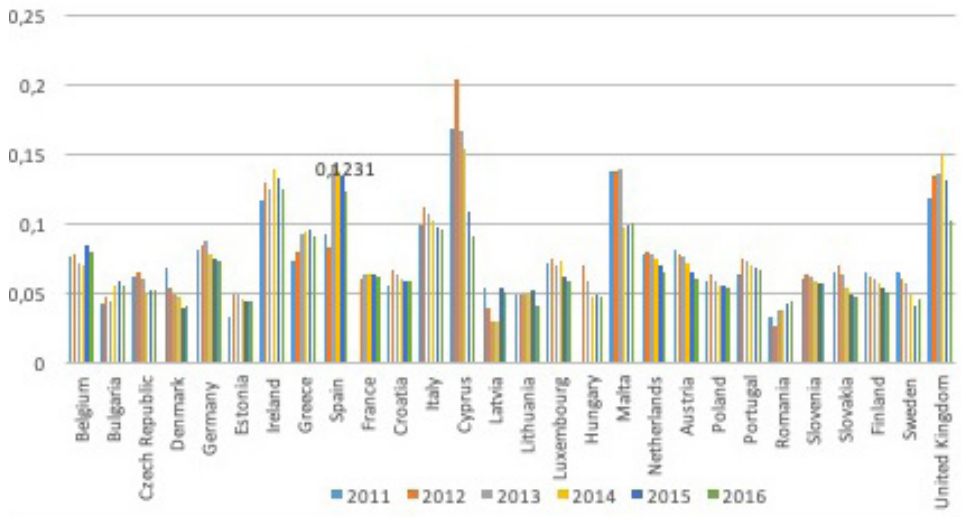
What is certain is that the price of energy is set by the government in order to cover the costs of the most expensive technology, namely that of combined cycle power plants using fossil fuels (gas, coal, oil). But since this price applies to the whole electricity production, the consequence is that cheaper technologies (hydraulic and nuclear) are overpaid because these facilities were already paid by taxpayers in the past (Carrasco 2017), what is a case of windfall profit and is reflected in a price paid to the producer which is one of the highest in Europe (see figure 16). Thus, if the price paid by the consumer (also set by the government) is lower than the price set for the producer, it generates the so-called "tariff gap" in the form of a state-guaranteed debt that is in fact a transfer of taxpayers to the electricity companies and their shareholders. The important thing is to emphasize that this deficit is not a loss for companies, but the difference between the price paid by consumers and the cost of producing the most expensive technology. Thus, according to this perverse system, if the price of oil increases or the demand for electricity increases (and therefore more expensive technologies have to be introduced), the costs of production increase and, consequently, also increase the incomes of the electricity companies, which does not offer incentives for competition.

In this way, the companies that benefit most from this system are the nuclear and hydroelectric corporations, because they have a lower variable cost and are owned precisely by the big power companies. In addition, the major electricity companies obtained compensation from the State of € 8,664 million between 1998 and 2005 for the "costs of the transition to competition", which al-

lowed them to recover their investments in nuclear and hydroelectric power stations[290].

The Decree 900/2015 has provided a favorable regulatory framework for large electricity companies and, on the contrary, is unfavorable for new renewable energy companies (whose ownership of capital is much more fragmented), and for the efficiency of the system and competition. This decree, which officially aimed at promoting renewable energies, has led to the opposite: it has expanded the number of solar installations subject to a "toll of support" to pay for the fixed costs of maintaining the network and has made difficult to get the authorisation of these facilities (this surcharge was commonly known as the "solar tax"). It is interesting to note, however, that the electricity tariff already contains two concepts for maintaining the network: the term "fixed power", which is not dependent on consumption, and "capacity payments" (about 10% of energy price) which is used to compensate the emergency power stations that have to operate during peak hours. It is also striking that Spain is one of the OECD countries where it is more expensive to access to the electricity, according to a World Bank report on ease of doing business (World Bank 2018) which also indicates the lack of competition in this market. However, the Decree-Law 15/2018 attempts to reverse the situation by favoring self-consumption renewable at no cost and shared self-consumption to take advantage of economies of scale. All of this explains to a large extent that in 2016, Spain, taking as a reference consumption between 2,500 and 5,000 kWh, is the second country in the European Union (after Ireland) to bear the highest costs of production and distribution (see Chart 16), and the sixth country with the most expensive electricity after charges and taxes (after Ireland, Belgium, Denmark, Germany and Portugal) (see Figure 17), which is even more striking if these prices are related to the purchasing power of countries (see Figure 18). In this case, Spain is exceeded only by Belgium, Germany, Portugal and Romania.

FIGURE 17. COST OF ELECTRICITY AND ITS DISTRIBUTION FOR HOUSEHOLDS BETWEEN 2500-5000 KWH IN KW/H



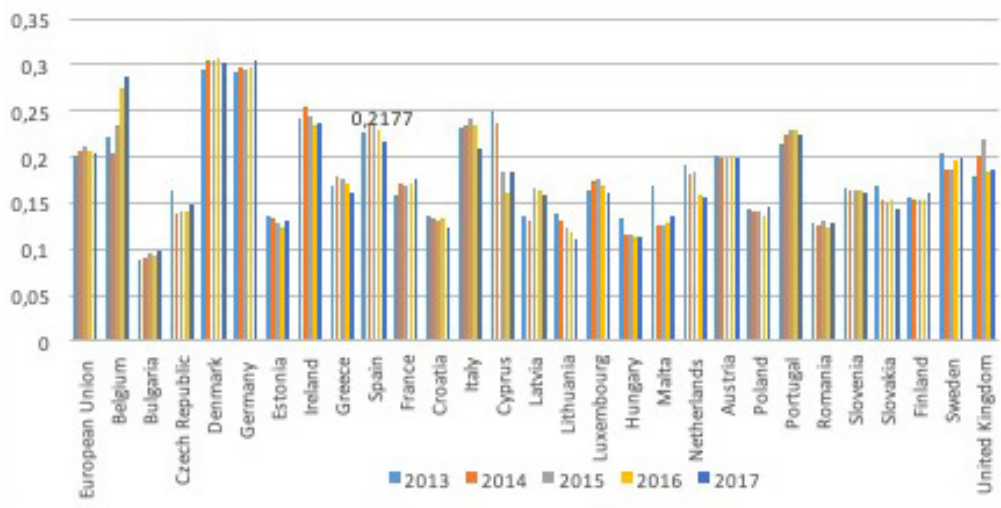
Source: Eurostat

290. Some authors have calculated that they received unduly 3,000 million more, because the compensations were intended to cover a price up to 36 euros / MWh, and at a certain point, market prices exceeded this level. In addition, it is estimated that the remuneration of nuclear power plants exceeds their costs by more than 200% and that the compensation for hydropower production exceeds its costs by more than 600% (Sebastián 2016: 80-82).

In an electricity market like Spain, dominated by a small group of companies and characterised by a distorted price structure (consumption only represents 28% of the final price, while 50% corresponds to other taxes on electricity and 22% additional taxes), the answer should be a structural reform of the system favoring competition and changes to the electricity companies' remuneration system. However, the central government's only short-term answer to lower consumer prices has been the removal of the 7% tax on electricity production for six months, which is a clearly insufficient and discouraging measure.

Ultimately, the Spanish electricity market takes the form of an oligopoly favored by the regulation of successive governments to defend a situation of market dominance and prevent the entry of new competitors, mainly renewable energy companies, which could satisfy a significant portion of domestic consumption. What contributes to this image is the circulation of former ministers and prime ministers between the governing boards of the large electricity companies and the highly politicised appointments of the members of the CNMC[291].

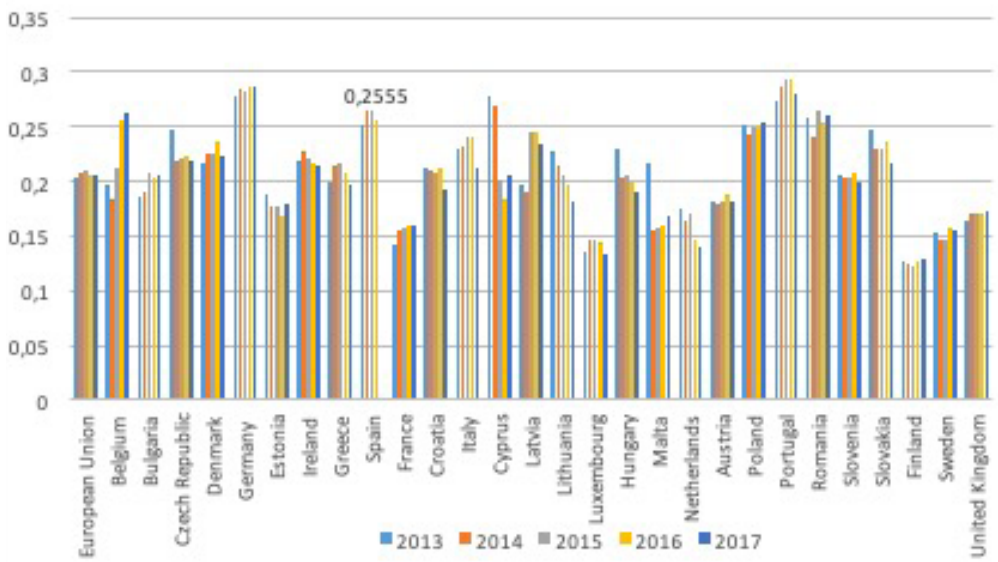
FIGURE 18. ELECTRICITY PRICES FOR HOUSEHOLDS BETWEEN 2500-5000 KWH (TAXES AND CHARGES INCLUDED) IN KW/H



Source: Eurostat

291. Nor does it contribute to an image of institutional neutrality because one of the members of the board of the CNMC, the institution responsible for deciding whether government decisions violate competition, is the Minister of Energy's husband.

FIGURE 19. ELECTRICITY PRICES FOR HOUSEHOLDS BETWEEN 2500-5000 KWH (INCLUDING TAXES AND CHARGES) IN KW/H IN PURCHASING POWER



Source: Eurostat

4. THE QUALITY PERCEIVED BY USERS

In Spain, there is a strong dissatisfaction and mistrust on the part of electricity consumers, according to the latest "Consumer Markets Scoreboard" published by the European Commission (2016). It is perceived as the most deteriorated service in recent years and is at the bottom of the services analysed. These data from the European Commission are consistent with those obtained from other sources. Specifically, the CNMC Household Panel (2018c) shows that electricity remains the least popular service for Spanish households, who find difficult to compare the services offered by different providers and have no confidence that they meet the standards of consumer protection.

On the other hand, the CNMC itself is aware of misleading practices to attract customers and changes of suppliers without their consent, or that 40% of supplier changes occur after a salesperson's visit, what in many cases ends up with a more expensive product than the consumer previously had (CNMC 2017c), which has been ultimately prohibited by the Decree-Law 15/2018, which also requires reference marketers to inform consumers who have been admitted into the PVPC of the savings they would get with time-sensitive access toll change, and allows them to contract power in multiples of 0.1 kW instead of multiples of 1.1 kW so that each consumer can contract more precisely the power he needs. In fact, although 58% of the consumers are in the open market, 80% do not know what their situation is. At the same time, the price of electricity rose by 2% last year for consumers admitted to the PVPC, but from 7 to 13% for consumers in the free market.

In its latest report on consumer complaints regarding gas and electricity, the CNMC (2018d) notes that in 2017, 1.13 million complaints were received against electricity companies, a total of 4 claims for 100 customers, 61% of the complaints were made by telephone and more than 50% of all complaints concerned consumption, billing and collection measures, and 13% the quality of the offer. 40% of the claims have been resolved favorably for the claimants, and in both the domestic and the corporate sectors, the reference providers generally receive fewer complaints than the free market traders.

CONCLUSIONS

Spain has started to develop a consolidated public sector since the beginning of the 20th century. This public sector, which included services of general economic interest, developed during the Franco regime, in the tradition of an internationally isolated and protectionist State in the economic domain. From the 1980s, the different governments launched a process of privatisation of public assets, a means of reducing public spending, for ideological reasons or at the service of the European demand for market liberalisation.

The narrow conception of the role of the State and EU competition requirements has led the State to start withdrawing from the forefront of certain markets of general interest. However, in the postal and rail sectors, two public companies continue to dominate their respective sectors despite the relative openness to competition (officially complete in the postal sector and limited to rail freight transport). Instead, in the electricity sector, five major business groups have dominated a shared market for decades, and have long been able to obtain favorable regulation in their interest and to the detriment of consumers.

The final result of this formal process of liberalisation is that the new players in the general interest markets, although in large numbers, have failed to gain a market share that threatens the hegemonic position of the former monopoly or oligopolies of the sector. It is a constant in the electricity, gas, postal and railway sectors, where there is no real competition, where prices are artificially high and where the main changes produced were artificial in the sense that they have been imposed by the regulatory measures of the administration, and not by the market or the strategies of the new operators. In addition, the small number of decisive operators in these markets means that they constitute large and powerful business groups, both economically and politically, and the ownership of the network, although conditioned by sector-specific regulation, in all the cases gives its owner a dominant position and potential for abuse of power: delays in access management or delaying tactics explained by technical reasons.

The National Commission for Markets and Competition (CNMC) is the general regulatory authority resulting from the merger in 2013 of six sectoral regulators. The appointment of its members is the responsibility of the central government and has become in practice an institution suspected of partisan politicisation and governmental manipulation.

The postal market is divided into two sectors: the traditional postal sector and the industrial and commercial postal sector, with the highest added value and representing 80% of the total turnover. The holder of the public service obligations is Sociedad Estatal de Correos, which is part of the state-owned Correos Group, made up of four companies that also operate in the commercial and industrial market open to competition. In the traditional postal sector, Correos is the only operator in the country after the bankruptcy of Unipost in 2018. However, in the commercial sector (urgent and industrial), there are some alternative operators who are gradually gaining a market share, now close to 40%, although Correos is still the dominant operator. Some of the reasons for the low competition in the postal sector are related to the link between Correos and the Ministry of Development, which has provided a series of tax and symbolic benefits, the occupation of the public space and the postal network management while keeping privileged relations with public administrations.

The railway sector has been organised in Spain since the 1940s around the public monopoly RENFE. The estate-owned RENFE Group is currently composed of four companies and the management of the network belongs to the state-owned company ADIF. Freight transport, essentially national, has been liberalised since 2005, although the activity of alternative companies to RENFE is minimal (6% of the trains in circulation and 13% of the number of trains / km). There are also tentative attempts to enter the international passenger market, strategies that target economically profitable activities

in the context of the liberalisation of the domestic passenger market. Obstacles to competition in the railway sector are diverse: physical (Iberian train track different from the European), institutional links between the dominant operator, the infrastructure manager and the ministry in charge, retention of privileges by RENFE as a former monopoly, implementation of dubious calculation methods for fees and charges, and preservation by the former monopoly of the ownership of rolling stock and maintenance facilities.

Since the Franco regime, the electricity sector has maintained privileged relations of collaboration with the political power. There are currently five large companies that control 70% of the free market and 89% of the total energy and act as a de facto oligopoly, favored by legislation that has provided them with generous benefits, the guarantee of control of the market of the electricity and protection against renewable energies, whose shareholding is more fragmented. The regulated price system attempts to cover the difference between the price paid by consumers and the costs of producing and distributing electricity through a state-guaranteed "tariff gap". However, as the calculation applies to all electricity generation, the market pays the price of electricity at the price of the most expensive energy (that of the combined cycles), but overpays the electricity produced from hydroelectric or nuclear energy, which is amortised and paid for years by all taxpayers. In addition, the market does not encourage competition, because if the price of oil increases or demand increases (and therefore more expensive technologies must intervene), the costs of production also increase and, consequently, companies' benefits do. The outcome of this system is that Spain is one of the countries with the highest electricity prices, which should involve a radical reform of the pricing system and a market-oriented restructuring towards effective competition. However, the only measures taken to remedy this situation are the reduction of the corporate tax burden and the strengthening of the protection measures for the most vulnerable population.

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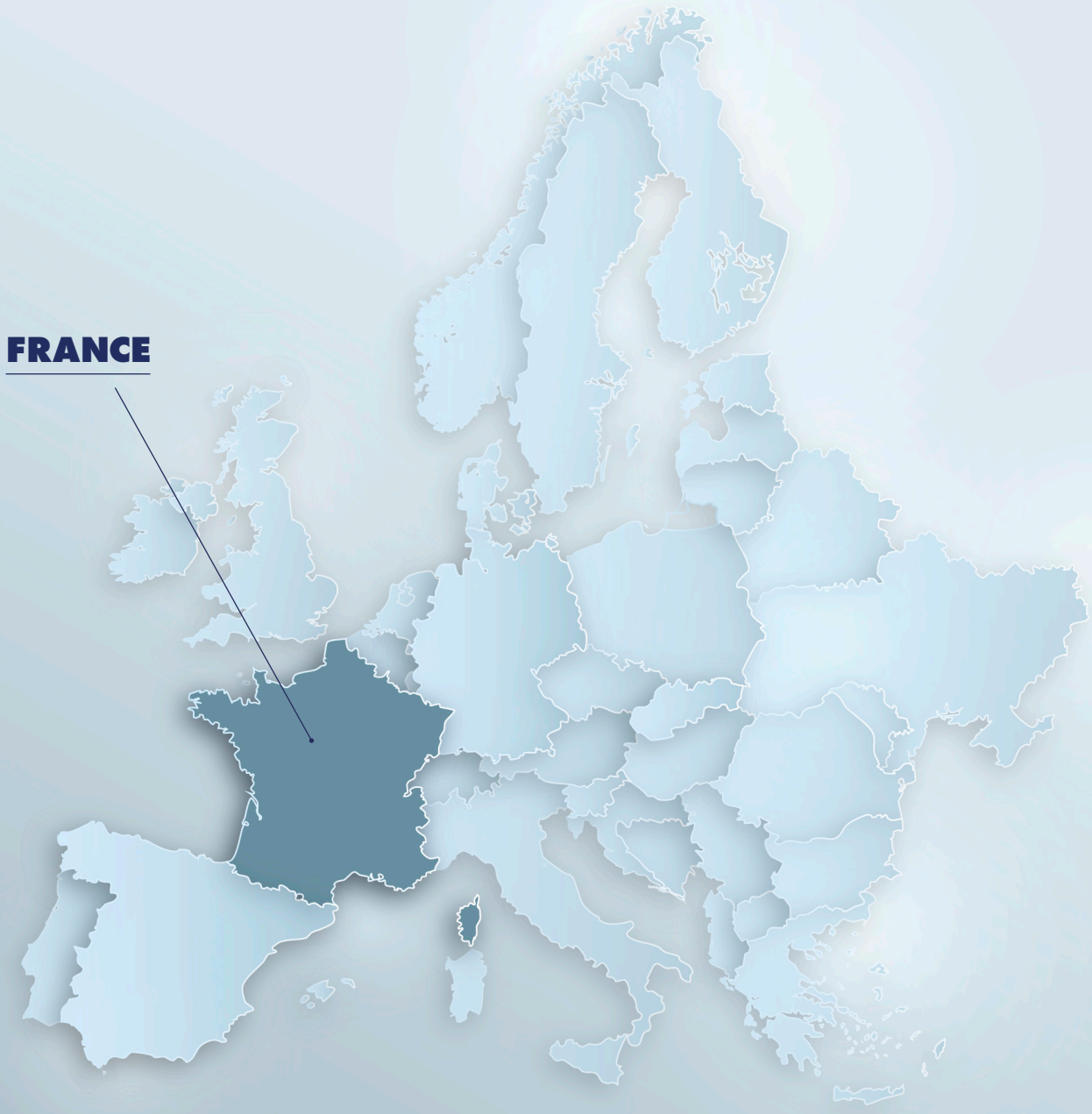
FRANCE

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FRANCE AND THE EUROPEANISATION OF PUBLIC SERVICES

PIERRE BAUBY, PHD IN POLITICAL SCIENCE
ALAIN DE TOLEDO, PHD IN ECONOMICS
MIHAELA M. SIMILIE, PHD IN LAW
RAP (RECONSTRUIRE L'ACTION PUBLIQUE)
WWW.ACTIONPUBLIQUE.EU

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INTRODUCTION

The three sectors covered by study - railways, electricity, postal services - are emblematic of the French so-called "industrial and commercial public services".

This subcategory has been developed in the 20th century[292] to distinguish it from "administrative public services" because of their "industrial" or "economic" character and their financing, which is based more on user participation than on the budgets of the State and/or local authorities.

Thus, during the first third of the 20th century, the development of municipal socialism led to the regulation of certain municipal economic activities (slaughterhouses in 1905, railways of local interest in 1913). Then local authorities became in charge of a series of local services (water, waste, urban transport, public heating, etc.). The state has also taken over because of economic constraints (war economy, economic recovery, bailing out companies in difficulty, particularly in transport) or technical reasons (management of German goods confiscated after the Versailles Treaty).

From the 1930s onwards, industrial and commercial public services developed rapidly. Under the Popular Front, key industries (war material, SNCF) were nationalised. The Vichy regime combined dirigisme and corporate organisation (*Conseil d'Etat* conferred to *Comités d'organisation* the management of public services). The 1944-1946 nationalisations frequently referred to public service missions, as reflected in the Preamble to the 1946 Constitution: "Any good, any enterprise whose operation has or acquires the character of a national public service or *de facto* monopoly, must become the property of the community". This led to the multiplication of public services as economic intervention and incentives, in charge of promoting reconstruction after the Second World War and the economic and social development of the "glorious 30".

They are interlinked with the fundamental characteristics of a highly centralised state, marked by the essential importance of the senior civil service[293], in particular polytechnic engineers and *énarques*, which has a profound impact on the organisation and functioning of the state and national public services.

Designed, defined, organized, financed as part of nation-state building, they are often considered part of the "national heritage" or "republican values".

However, they will be confronted with the European construction, interactions with other histories and modes of organisation and europeanisation processes.

This monograph does not aim to review the history of each of the three sectors, but to revisit some of the key elements of the past seventy years, to understand and analyse the logics and strategies that have been developed; to try to discern continuities, to try to approach the effects of the changes and policies that have been implemented, to discern their paths and, on the basis of exchanges with other national histories, to contribute to enlighten the main issues of the coming years.

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292. See, in particular, Jacques Chevallier, *Le service public*, PUF-Que sais-je ?, 10th ed., 2015 ; Pierre Bauby, *Service public, services publics*, La Documentation française, 2nd ed, 2016.

293. See, in particular, Jean-Luc Bodiguel and Jean-Louis Quermonne, *La Haute fonction publique sous la Vè République*, PUF, 1983.

FRANCE AND THE EUROPEANISATION OF THE RAIL SECTOR

"What benefits do we expect from opening up to competition... I was very impressed by a trip to Switzerland, the quality of the restaurant wagon with tablecloths on the tables and an exceptional quality of service, I would dream that we would have that in France, but I don't know if we would succeed."

Isabelle de Silva, Chairwoman of the French Competition Authority[294]

French rail system is characterised by historical, geographical and social distinctive features.

History

The construction of railway lines started relatively slowly in France. In 1823, the first line was conceded to link Saint-Etienne and Andrézieux; it was put into service in 1827. In 1842 a law was passed creating nine concessions, all of them starting from Paris, due to Parisian centralism, and which was called the Legrand star. The possibility of prompt mobilisation of troops to the borders was not totally unrelated to this construction. Thirty-three companies were created, but very quickly, after the 1848 crisis, the State intervened to create six large companies through mergers. The major financial companies were heavily involved in the construction of the networks and in 1875 there were 20,000 km of lines in operation. A particularly important element to note is the "interest guarantee" provided in the concessions for the less profitable lines.

In 1908, the state had to buy the Western company, whose financial situation was catastrophic. The 1914-1918 war deteriorated the economic and financial situation of large companies and the state intervened by creating various centralisation and compensation bodies, severely limiting the independence of companies. However, the situation did not really improve, particularly as a result of the 1929 crisis, and this led to the creation of SNCF in 1937, in the form of a public limited company, in which the State held 51% of the capital. Until the 1950s, rail transport remained the only medium- or long-distance mass transport mode. In 1983, the State took over all the assets and SNCF became an industrial and commercial public institution (*établissement public à caractère industriel et commercial* - EPIC).

Geography

France is the largest country in the European Union (643,800 km²), almost twice as large as Germany (357,000 km²). As a result, the average density of population is 106 h/km² in France and 228 in Germany. The consequence is the multiplication of local communities and the desire of each of them to be served by the train. At its peak the French network had 42,500 km of railway lines; today it has only 29,000 km[295]. For comparative purposes, the main European networks are those of:

- Germany, 38,828 km;
- Poland, 18,510 km;

294. Opening speech to the Arafer conference on 29 June 2017; all experts agree that the Swiss rail system is one of the best in the world, along with the Japanese network. However, it should be recalled that, with the exception of a few regional lines, CFF is a public monopoly.

295. The closure of lines has created many problems for the people, especially the most vulnerable ones, who do not necessarily have access to other means of transport. As a result, many struggles have taken place against the closure of these lines. For example, it could be cited here the *Comité pluraliste de Réhabilitation, de Défense et de Promotion* of the SNCF line Béziers-Millau-Neussargues-Clermont Ferrand-Paris. This committee, which brings together users and railway workers, has been fighting against the closure of this line since 1995.

- Italy, 17,041 km;
- United Kingdom, 16,209 km;
- Spain, 16,056 km;
- Sweden, 10,908 km.

Social aspects

When SNCF was set up, the company had 500,000 employees and represented the largest company in France. The railway workers were highly unionised and were an important element of the Resistance, as well as in the fight for the reconstruction of the country. This resulted in a balance between the various partners - the state, the management of the company, trade unions - for the economic and social development of the company. This consensus was based on a technical culture that valued speed, among others, with world records regularly broken.

Other common characteristics of rail networks

Two elements are essential to understand how rail network works:

- on the one hand, it is a question of what is called a natural monopoly for infrastructures. It would be ruinous to build two parallel rail lines to connect two geographical points. Such was the case only in the United States at the end of the 19th century. Therefore, all the rail networks of the countries constituting the European Union constitute a natural monopoly, which is not disputed by anyone.
- on the other hand, and this is a very important question when railways are compared with other modes of transport such as road transport, the question of what is called 'the last kilometre' arises. This expression evokes the impossibility, except in the case of certain heavy goods, for trains to bring passengers and goods to their final destination. The question of the 'first kilometre' also arises. This is a clear competitive advantage for the car or truck. However, despite this, there is very different train traffic in countries, with the 'last kilometre' issue not explaining everything.

The European rail packages

It should also be recalled that transport was one of the four common policies defined by the 1957 Treaty of Rome (Chapter IV). However, until the 1980s, when the European Parliament took up the issue and call on the Council to implement the elements contained in the Treaty, almost nothing was done. Moreover, at the end of the 1980s, the situation was obvious to everyone: the share of railways in transport fell everywhere in Europe (between 1970 and 1993, the share of railways decreased from 31.7% to 15.4% in freight transport, and from 10.4% to 6.4% in passenger transport). There was clearly a problem of "competitiveness" with other modes of transport. This led to a first directive - Directive 91/440 of 29 July 1991 on the development of the Community's railways -, which had very little effect in France. Three other directives were adopted afterwards.

In France, this has resulted in a real race for time to postpone the settling of three particularly sensitive issues: the "debt", the status of railway workers and the special pension scheme. These issues were debated in spring 2018, when the Government passed a law to transpose the fourth railway package. By way of comparison, it was in 1995 that the German federal government took over Deutsche Bahn's debt, which was valued at 245 billion francs at the time, which represents about 50 billion euros.

The debt issue

SNCF's "debt" is the subject of many debates regarding its importance, the costs it entails and the means to absorb it. However, the use of this term is problematic. The word 'debt', like that of 'deficit', belongs to the world of the market economy. As an *EPIC*, SNCF does not have to worry about 'profitability', making profits or distributing dividends, but this does not prevent it from meeting the criteria of good management and saving resources. A basic scientific principle is to compare only what is comparable. That is why we will use the word debt in quotation marks.

As an EPIC, it has services to provide, missions to fulfil and the State must provide the means for the establishment to do so. Three sources are available: pricing, borrowing and government contributions (grants or subsidies). The fact the State prefer the EPIC to borrow rather than bring in money itself is a political decision and not an economic one. However, this decision has an additional economic dimension: given the very low rates at which SNCF can borrow, often below inflation, the loan may appear to be a rational decision.

Moreover, these investments will be used for decades to come; therefore it is not 'politically incorrect' to think that part of it will be financed by future generations.

Essential challenges for France and Europe

However, it cannot be said that nothing has happened since the first railway package; five important elements should be noted:

The separation of the network and transport activity

This separation took place on 13 February 1997. While the Directive only required the separation of the accounts of the two entities, France decided to create two distinctive entities, *Réseau Ferré de France* (RFF) and *SNCF*. This separation, reflecting a relatively complex conception, leads to serious conflict between the two entities, due to their conflicting interests on the issue of fees for access to the network by SNCF and the maintenance of the network, which is entrusted to SNCF. In 2015, the difficulties were such that a simple accounting separation replaced the complete institutional separation: RFF became *SNCF réseau*, one of the three EPICs of the SNCF group. These difficulties point to a central issue of liberalisation: too low fees would not allow the investments necessary to maintain the network; too high fees would be a barrier to entry for future competitors. Therefore, an independent regulator is needed, endowed with the means to carry out its functions.

The regulator

The Regulatory Authority for Railway Activities (ARAF - *Autorité de régulation des activités ferroviaires*) was created in 2009. Its task is to ensure the proper functioning of public service obligations and competitive activities in the railway sector. The Authority shall guarantee all operators fair access to the national rail network and the Channel Tunnel. It issues opinions on the conditions for access to rail infrastructure specified in the *SNCF Réseau* reference document: legally binding opinions on tariffs and advisory opinions on technical and contractual conditions. It controls the rules for the separation of accounts of railway undertakings to ensure there is no discrimination, cross-subsidisation or distortion of competition. It settles disputes between railway undertakings, transport organising authorities and infrastructure management entity. It may initiate sanction proceedings in the event of failure to comply with the rules on access to or use of the rail network or service facilities. In 2015, its responsibilities were extended to coaches, then in 2016 to motorway concessions. Then its name has been changed in ARAFER (*Autorité de régulation des activités ferroviaires et routières*). Although this authority undeniably has significant powers, a decisive part of the competition in the field of transport - namely loyalty between the different modes, particularly between road and rail – does not fall under its responsibility.

Rail freight

Rail freight was opened up to competition in two stages:

1. 7 March 2003: opening of international freight transport with first traffic in June 2005,
2. 31 March 2006: opening of inland freight transport.

In 2016, the Court of Auditors of the European Union recalled the Union's objectives in the field of freight:

1. The mobility of goods is an essential component of the EU internal market, and one that is crucial for maintaining the competitiveness of European industry and services. It has a significant impact on economic growth and job creation.
2. However, transport has also a negative impact on the environment and on the quality of life of EU citizens. It accounts for around one third of energy consumption and of total CO_2 emissions in the EU. Promoting efficient and sustainable methods of transport, such as rail and inland waterways over roads, could help to lower Europe's dependence on imported oil and reduce pollution. According to the European Environment Agency, CO_2 emissions from rail transport are 3.5 times lower per ton-kilometer than those from the road transport.
3. More sustainable methods of transport could also help to reduce the costs associated with road congestion, which are currently projected to increase by about 50% by 2050, to nearly 200 billion euros annually, and cut the number of transport fatalities.
4. The promotion of more efficient and sustainable methods of transport, and in particular of rail freight, has been a key part of EU policy for the last 25 years. As long ago as 1992, the European Commission set the shifting of the balance between different modes of transport as main objective. In 2001, the Commission confirmed the importance of revitalising the rail sector, setting a target for maintaining the market share of rail freight in central and eastern European Member States at a level of 35% by 2010. Finally, in 2011, the Commission set a target of shifting as much as 30% of road freight being transported further than 300 km to other modes of transport such as rail or waterborne transport by 2030, and more than 50% by 2050.

In France, the share of rail in freight transport passed from 20% to 10% from 1990 to 2016, most of it being recovered by road transport (87% of freight transport), whereas some countries saw this share increasing. In ten years, the weight transported by rail has decreased from 37.9 billion tons/kilometre to 32.6 billion tons/kilometre.

From 2006 to 2016, SNCF Freight's share decreased from 100 to 60%. Among SNCF's competitors is one of its subsidiaries VLFI.[296]

We have to be sceptical about international comparisons because historical, geographical and social situations are very different from one country to another. Nevertheless, some countries, such as Germany, are seeing the share of rail in freight transport increase, reaching 40% in Switzerland and Austria.

Fret SNCF is subject to triple competition:

- ✦ other rail companies: about twenty, including Euro Cargo Rail, a subsidiary of DB,

296. VFLI (*Voies Ferrées Locales et Industrielles*) has experienced significant growth of its turnover and positive results over the same period. Thanks to the flexibility of its offer, its social framework and business model, which, unlike that of Fret SNCF, is more selective and not generalist, it has been able to adapt to the market. This is also reflected in VFLI's capital and labour productivity, which is significantly higher than that of Fret SNCF, both for wagons and locomotives and for agents.

- road transport in general[297],
- international road transport, in particular carriers from Eastern Europe (some of which belong to Western European groups) or from the South, lowering prices. Competition is all the more fierce as border crossings are still as difficult for rail: changing locomotives, changing drivers (need to speak the language of the country), or differences in track gauge (Spain)[298].

The situation of Freight SNCF is explained by objective and other more political reasons.

Among the objective reasons are:

- a certain deindustrialisation of France and in particular the cessation of the production of certain heavy products (coal)[299],
- the fact that, apart from certain products going from factory to factory, the rest of the goods must be transhipped onto trucks (sometimes on departure and arrival).

The "political" reasons:

- Despite great speeches, no real investment plan has been developed for freight railway[300]. On the other hand, in Germany rail tracks are twice as young as in France.
- Priority to high-speed trains: the investment for the last four high-speed trains has been 5 billion euros per year since 2010.
- Track repairs are done at night, when freight trains are operating.
- Road transport only pays for part of the use of the road (failure of the green tax - *écotax*)[301].
- In recent years, it has benefited from the decline in petroleum products.
- Very few dedicated freight corridors.
- Specific difficulties at the international level. In addition to those already mentioned, it should be noted, for example, that freight trains are 450 metres long in Spain, while the average length is 750 meters in France. The Spanish run freight trains seven days per week, the French

297. Here too, things are far from simple, since one of the main road transporters is Géodis, a subsidiary of... SNCF (see Annex 1, SNCF Group).

298. The adaptation of the core network to specific uniform standards throughout the EU, such as the relevant Technical Specification for Interoperability (TSI), deployment of the ERTMS system, electrification (no particular type being required), as well as the possibility of running 740 m long trains at a speed of 100 km/h with an axle load of 22.5 t. Another priority of the central network is the switch to the UIC standard track gauge (1,435 mm). The implementation deadline for the above requirements is 2030 for the core network and 2050 for the global network.

299. Manufactured products accounted for more than 20% of goods transported by rail in 2016, more than construction materials (18.5%) and food and agricultural products (16.3%).

300. As a matter of fact, in the recent years, while constantly demonstrating its willingness to support rail freight, the state has taken important initiatives that are, in reality, unfavourable to it: a decree increasing the limit of the total authorised weight for heavy goods vehicles to 44 tons, abandon of the green tax, abandon of the opportunity offered to reduce competitiveness gaps by developing the new harmonised social framework applicable to this activity. The development of this framework, provided for by Law No. 2014-872 of 4 August 2014 on rail reform, was intended to reduce the competitiveness differential between Fret SNCF and its rail and road competitors.

301. The international railway line between Perpignan and Figueras is managed by a private concessionaire who determines access charges for trains. The total cost of building this new line amounted to 1.1 billion euros, of which 162 million euros was paid by the EU. On this rail section, the cost of access to the infrastructure for a train is six times higher than the amount to be paid by the equivalent number of trucks to use the highway between these two points.

five days per week. As a result, we are still at an average of 18 km/h internationally.[302]

- ✦ Implementation of only two rail motorways and it should also be noted that the first two generations of wagons were not suitable for international traffic.
- ✦ The state of the French ports[303] leads to some traffic being diverted to more efficient ports.[304]
- ✦ A certain form of social inflexibility.[305]

The result of all this is that shippers are increasingly turning away from rail freight and more particularly from *Fret SNCF*. They complain about the lack of reliability and punctuality and the impossibility of following-up their goods[306]. All parties involved are making losses to the point that Euro Cargo Rail is implementing a redundancy plan for 25% of its staff. Fret SNCF has a loss of 300 mil-

302. Market liberalisation has not progressed in the same way in all Member States, and the realisation of a single European railway area is not ready to be accomplished tomorrow. The EU rail network as a whole remains a system consisting of 26 separate rail networks (Malta and Cyprus do not have a rail system) that are not fully interoperable. There are indeed several infrastructure managers, several national safety authorities and very disparate national rules on the allocation of train paths, management, setting of tariffs, etc.

303. In France, the rail network linking the ports to the inland is generally in poor condition, with speed from the point of departure to the final destination being in some cases very low (for example, 6 km/h between the major port of Le Havre and Paris, according to a study by the European Parliament). From the seven main French ports, only 11.5% of goods were transported by rail in 2012.

304. For a long time now, the inadequacy of rail services to French ports has been accused of increasing traffic diversions to Antwerp and Rotterdam. But this is not the only reason that handicaps French ports against their competitors in the North Sea. The slow and difficult implementation of port reform, initiated twenty years ago, penalises their competitiveness and slows down the growth of traffic. As a result, rail declines.
The Senate has established a correlation between the two phenomena in a report on the future of rail freight. It emphasised the urgent need to 'complete the implementation of port reform in the major seaports' in order to contribute to the revival of rail freight transport. But the recovery of the two largest French ports, Le Havre and Marseille, is still pending. However, there is no fatality that hits rail: rail freight has increased by 45% in Germany over the last ten years, while, at the same time, it has fallen by 40% in France, although it is true that the recovery of coal in Germany has had an impact on freight.

305. In 2005, the French government recapitalised Fret SNCF with 1.4 billion euros in return for a business restructuring plan aimed at organising service and production in a more responsive manner in line with customer expectations. The Court of Auditors notes the importance of the company's efforts to adapt and reorganise in order to adapt to this new context. First of all, since 2008, Fret SNCF has had its own agents, whose number was almost halved between 2008 (14,933 agents) and 2015 (7,420 agents), as well as its fleet of motor vehicles. Between 2009 and 2011, Fret SNCF also sold most of its locomotive fleet (262 traction units) to its subsidiary Akiem and took over only part of it on lease (101 units), which highlights the extent of the equipment overcapacity suffered by Fret SNCF during this period. The single wagon activity, which suffered the greatest losses, due both to its costs and to a very poor quality of service, has been restructured: the number of loaded wagons has been significantly reduced, from around 700,000 in 2005 to 150,000 in 2014; a punctuality commitment has come into force and the activity has been reorganised and renamed "multi-customer multi-lots". Finally, the organisation of Fret SNCF has been streamlined. Despite these reorganisation efforts, Fret SNCF's structural expenses are still high: in 2014, these expenses as a proportion of revenues were approximately twice those of VFLI. In this respect, the Court of Auditors argues that the cost and working conditions of SNCF staff continue to affect its profitability. The evolution of Fret SNCF's wage bill did not follow that of its workforce: the average gross remuneration per agent increased by 2.8% per year between 2008 and 2014 compared to 1.66% for the transport and storage sector. The Court also notes that the average number of days of absence per staff member per year at Fret SNCF is very significantly, higher than that observed at VFLI, and this difference even increased during the period under examination: in 2014, 12.8 days at Fret SNCF and 6.6 days at VFLI against 10.5 and 6.9 respectively in 2009.

306. Rail operators' services include not only the transport itself, but also its reliability or duration. However, infrastructure operators are not formally required to make public data on network performance, such as allocated and cancelled train paths, the average speed of freight transport on the network, or the punctuality and reliability of the network. As a result, infrastructure operators are under no obligation to improve network performance, and shippers have difficulty in obtaining reliable information on the customer service offered by rail freight operators.

lion euros in 2016 and 120 million euros in 2017. Only Europorte, a subsidiary of Getlink (formerly Eurotunnel) and VFLI (SNCF)[307] are in balance.

However, a proactive policy is possible. Again, there is no truth that one learns by comparing ("*comparaison n'est pas raison*"), but countries such as Germany have seen an increase in the share of rail freight as a result of political actions by the Government.

- The main issue stated everywhere is that:
- road transport has a negative impact on the environment (one train = 50 trucks)[308],
- it is the cause of multiple accidents (rail is seven times safer than road),
- it is the cause of road degradation,
- rail freight is an essential element of territorial cohesion.

Therefore, the decline would continue if France would not consider that rail freight fulfils public service missions and that it must be subsidised. For instance, Switzerland has taken many measures to keep freight on the railways.[309]

The competition for the market

This expression refers to the possibility for organising authorities to organise a delegated management of the public service and, for this purpose, a call for tender to put companies in competition.

Thus, for rail transport subject to public service obligations (TET[310] and TER[311]), the organising authorities will be able to launch calls for tenders from 3 December 2019 and, unless particular exceptions, no new public rail transport service contracts may be awarded by mutual agreement after 25 December 2023.

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307. Mr Hervé Gomet, representative of the *Confédération générale du travail* (CGT) to the Economic, Social and Environmental Committee of Nord-Pas-de-Calais: "There is sometimes a feeling of collusion between SNCF and its subsidiary VFLI in the distribution of traffic", which would be linked to the fact that VFLI employees do not enjoy the status of SNCF railway workers, nor the same framework, in particular for working hours. Presented as a commercial competition, it also leads to social dumping.

308. Freight mobility, a fundamental component of the EU's internal market, is essential to maintaining the competitiveness of European industry and services. It has a significant impact on economic growth and job creation. In recent years, inland freight transport in the EU (which includes rail, road and inland waterway transport) has stabilised in volume at around 2,300 billion tons-kilometres per year, with road transport accounting for some 75% of this total.
However, transport also has negative impact on the environment and the quality of life of EU citizens. It accounts for about one third of energy consumption and total CO2 emissions in the EU. Promoting the replacement of road transport by efficient and sustainable modes of transport, such as rail and inland waterway transport, could reduce Europe's dependence on oil imports and pollution. According to the European Environment Agency, CO2 emissions from rail transport are 3.5 times lower, in tonne-kilometres, than those caused by road transport.
More sustainable modes of transport could also help to reduce the costs associated with road congestion, which, according to current forecasts, is expected to increase by around 50% by 2050, to almost 200 billion euros per year, and to reduce the number of transport-related accidents. In addition to the poor performance of rail freight transport in terms of volume and modal share, the average commercial speed of freight trains in the EU is very low (only about 18 km/h on a large number of international lines). This is also due to the lack of cooperation between national infrastructure managers.

309. Switzerland, although a relatively small and mountainous country, which owns no major heavy industry, has managed to maintain the modal share of rail freight at a level above 40% since 2000, with a peak of 48% in 2013. Regulatory measures (heavy vehicle fee, subsidies for combined transport, night and weekend driving bans, restrictions on the maximum authorised weight and size of lorries, etc.) combined with investments in the renovation and construction of new rail lines (in particular transalpine tunnels) have helped to improve the performance of rail freight transport in Switzerland.

310. TET: *Train d'Equilibre du Territoire*.

311. TER: *Transport Express Régional*.

The organisation of regional rail passenger transport has been the subject of a regionalisation experiment, making the regional councils the "organising authorities" of regional transport. This measure was generalised as of 1st January 2002. The Regional Councils conclude with SNCF an agreement on the routes to be set up, the number of connections, fares and the level of service quality to be provided. Since the 1st January 2016, France has had 12 metropolitan regions. Their powers have increased following the new decentralisation laws, which provide for the transfer as from 1 January 2017 of certain departmental powers: the organisation of non-urban road passenger transport and the construction, development and operation of public passenger stations. In addition, the law of 2014 on the reform of rail transport granted regions the freedom to set fares for intra-regional routes.

The trend was towards a decline in regional rail transport. However, decentralisation has led to an improvement in supply and quality of service, which, combined with regional pricing policies, led to 55% increase in the number of passenger per km from 1997 to 2007. At the same time, the modal share remains low. Considering only regional movements from province to province, the market share of regional express transport (TER) was 15% in 2013, compared to 8% before decentralisation. Between 2002 and 2011, subsidies from the regions to TERs in France increased by more than 80%.

The law of 14 June 2018

This law is part of the measures organising the opening of passenger transport to competition in accordance with the European law. However, the liberalisation is carried out according to different timetable depending on the fields concerned:

- High-speed trains (TGV): from December 2020.
- Regional trains (TER): the opening will be carried out at the pace desired by each region. From December 2019, competition will be possible. Until December 2023, the regions will be able to continue to award contracts to SNCF for a maximum period of 10 years. After this date, all contracts will have to be opened to competition.
- Île-de-France: between 2023 and 2033 for the existing Transilien lines; between 2033 and 2039 for RER C, D and E; in 2039 for RER A and B.

Summary analysis

While those in favour of liberalisation - for which competition solves all problems - rely on comparative studies between different European countries to demonstrate this, it should be stressed that these international comparisons must be made with great caution given the specific economic, geographical, political, ecological and social characteristics of each country.

Since the first directive, the construction of the European railway has been developed and transnational railway groups have emerged. While these two points can be considered positive, there are still many issues that need to be addressed satisfactorily.

The main one is that, despite the repeated affirmation by the European authorities of the importance of rail, its relative decline continues.

It must therefore be recalled there are still public service missions, as it is the role of the State and local authorities to internalise externalities, particularly when they are negative. For example, in the field of transport:

1. The awareness of environmental problems, in particular of global warming, is developing, even if these issues were not taken into account in the first directives; now this is admitted by all: rail is less polluting than road (CO2 emissions are much lower).
2. Similarly, all Governments wish to take action to reduce the number of deaths in transport and from this point of view rail is much safer.

3. From the point of view of costs, it must also be taken into account that trucks are responsible for the deterioration of roads.
4. Rail also contributes to territorial cohesion.

Under these conditions, it is normal for public authorities to intervene massively to define and finance these public service missions. This involves three things:

1. Independent and skilled regulatory authorities, which are endowed with sufficient resources to carry out their tasks.
2. The responsibility of regulatory authorities should cover the whole transport sector and not just the rail sector.
3. A stronger involvement of the European Union:
   - ✦ from a budgetary point of view, in particular to promote the development of rail in under-equipped countries,
   - ✦ to develop faster network interoperability,
   - ✦ to promote coordination of regulatory authorities and harmonisation of practices.

ANNEX

ANNEX 1 – SNCF GROUP

In 2018, SNCF has no much to do with what it was in 1945, when it contributed to the rebuilding of the country. Today, SNCF is a group with hundreds of subsidiaries (1000 to 1200 depending on the sources; it had 127 ten years ago) operating in 120 countries and whose activities range from car parks to metros, buses... and also trains. The group's outlook for 2022 is to achieve 50% of its turnover in France, 25% in Europe and 25% in the rest of the world. 50% of the turnover will be generated in the subsidiaries. The group currently has 148,000 employees under status and 115,000 employees in its subsidiaries. In addition to the three EPICs, there are 15 main subsidiaries, two of which are very important, Kéolis and Géodis.

Kéolis has 58,300 employees and manages a fleet of 23,000 buses. The company is also active in metro and tramway activities. Its turnover was 5.4 billion euros in 2017.

Géodis is a company specialising in logistics, messaging, express, full load road transport and freight transit, and is part of the SNCF logistics branch. The company has 40,000 employees; it is the 8th largest in the world in this sector, the 4th in Europe. It is present in 67 countries. Its turnover was 7.9 billion euros in 2016.

ANNEX 2 STATISTICS

(source XERFI)

Operators

There are about fifty companies operating on the French network; the total turnover is about 21 billion euros in 2016.

SNCF mobilités 14.7 billion euros (29.5 consolidated turnover)

SNCF réseau 5.8 billion euros

Colas Rail 622 million euros (Bouygues Group subsidiary)

Ermewa 318 million euros (SNCF subsidiary)

Ermewa ferroviaire 194 million euros (SNCF subsidiary)

Euro Cargo Rail 178 million euros (DB subsidiary)

Europorte France 81 million euros (Euro tunnel group subsidiary)

Forwardis 107 million euros (SNCF subsidiary)

IDTGV 248 million euros (SNCF subsidiary)

Naviland Cargo 91 million euros (SNCF subsidiary)

STVA 146 million euros (groupe CAT)

VFLI 147 million euros (SNCF subsidiary)

Inland freight transport in France in billions of tons km (2016, %)

Road	87,1
Waterway	2,3
Rail	10,6

Domestic passenger transport in France in billions of passengers km (2016, %)

Private vehicles	79,5
Road public vehicles	7,7
Rail	11,3
Air	1,5

Breakdown of turnover (% in 2016)

Air	34,8
Maritime	2,2
Coaches	12,2
Rail	36,9
Trams, metropolitan, bus	13,9

Evolution of domestic passenger transport (base 100 in 2005)

	2010	**2015**
SNCF	112,7	117,7
Métropolitan, RER	109,3	*114,2*
Air	98,6	*120,7*
Bus, coaches	121,9	*126,6*
Private vehicles	98,8	*102,1*

Evolution of inland freight transport (base 100 in 2005)

	2010	**2015**
Rail	73,6	84,2
Road	95,6	*89,3*
Waterway	102,6	*95*

Consumer prices in rail passenger transport (base 100 in 2005)

	2010	2015
Price	112	129,4

Freight rail traffic by product type (% in 2015)

Manufactured goods	20,3
Building supplies	18,5
Extraction products	8,3
Agricultural and food products	16,3
Others	36,9

FRANCE AND THE EUROPEANISATION OF ELECTRICITY SECTOR

Understanding the transformations of the electricity sector in France and the effects of liberalisation implies a synthetic review of the specificities of its history.

1/ THE ORIGINS

Electrical "innovation" was implemented in the second half of the 19th century through decentralised, private and competitive initiatives (a generator for a workshop or a use).[312]

Technological progress led to the creation of the first networks and municipalities organised the occupation of the public domain. Electricity was a local public service and it also had a national framework, as in France the State has built the nation...

Technological innovations, stakeholder initiatives and competition led to standardisation, concentration and the creation of integrated production-transport-distribution systems. Operators looked for setting up exclusive zones and, beside a small number of municipal or intermunicipal public operators, an oligopoly of two large private companies was set up, which structured the market.

In the 1930s, this oligopoly was the subject of much criticism in terms of abuse of dominant position: excessively high tariffs, service to the most profitable areas - particularly urban areas, under-investment in relation to the country's hydraulic equipment potential.

2/ FROM THE 1940S TO THE 1980S: THE EDF MODEL

The war, the occupation, the debates and proposals of the National Resistance Council (*Conseil National de la Résistance*), the post-war reconstruction needs, as well as the criticism of previous

312. Alain Beltran (1991), *La fée Électricité*, Gallimard.

abuses by private operators led to the Nationalisation Law of 8 April 1946, adopted by broad consensus, and the creation of *Electricité de France* (EDF). EDF had the status of public industrial and commercial entity (EPIC) with a quasi-monopoly of production, distribution and marketing of electricity, a national monopoly for electricity transport, import and export, governed by the principle of "speciality" (prohibition of other activities) and with implicit reference to the principles of public service.

"EDF model"[313] is then set up and it remained essentially stable for 50 years. It was based on common values such as faith in science, technology and progress, references to the public service principles of equality, continuity and mutability, the mobilisation of all resources to meet public needs and the challenges of universal electrification of the country, as well as the doubling consumption every 10 years until the 1970s. This model has been based on a conflicting compromise of three major stakeholders: political and administrative leaders, EDF leaders and the largely majority union (CGT, which worked to ensure that nationalisation also conferred a legal status for employees). They worked together to meet the main challenges until the implementation of the ambitious nuclear equipment programme of the 1970s.

"EDF model" led to a predominant place for EDF in the French energy landscape, based on the accumulation of skills and expertise. That situation, as well as the challenges that the company took up, led some to consider EDF as the designer of French energy policy or even as "EDF State".[314]

3/ THE 1990S AND 2000S: THE PROGRESSIVE OPENING UP TO COMPETITION

The Europeanisation process initiated with the ECSC, and the Treaties of Rome (Euratom and EEC), have questioned "EDF model". Though, electricians did not wait until the European construction to develop solidarity relations with their colleagues from other European countries.

Until the Single Act of 1986, the consensus of the European States to allow each of them to continue to define, organise, manage and finance its public services in accordance with its national traditions and characteristics maintained the status quo, despite the Community work and proposals initiated after the end of the 1950s.

The Single Act led to a first strategy shared by national actors: there is no need to change a "system that works" and gives general satisfaction. The technical arguments have been mobilised to this end: electricity "is not a product like any other", it cannot be stored, its production must equal its consumption at all times, the optimum technical and economic solution is the national integrated monopoly.

The French stakeholders and EDF have deployed a series of initiatives on the EU Council of Ministers, the European Parliament and with the creation of EURELECTRIC, bringing together European incumbents, to oppose any form of common European rules on the "internal market" and liberalisation.

However, France will be at the initiative of a first step to integration, with the request for a "transit directive" based on European rules on free movement in order to prevent Spain from banning the export of French electricity to Portugal.

Faced with the gradual erosion of the initial broad European consensus, a Franco-German defensive agreement will be drawn up to bring together the blocking minority in the Council in order to avoid calling into question the specific features of each country's national electricity systems.

313. Michel Wieviorka, Sylvaine Trinh (1989), *Le modèle EDF*, La Découverte.

314. Sylvie O'Dy, Frédérique de Gravelaine (1978), *L'Etat EDF*, Alain Moreau (ed.).

But this strategy eventually failed in 1996[315] and the first European internal electricity market directive was adopted in 1996, initiating a gradual process of liberalisation, notwithstanding the possible definition of public service obligations.

The transposition of the "internal market" directive into French law (law of 10 February 2000 on the modernisation and development of the public electricity service), opened the liberalisation process for industrial customers. Paradoxically, it was accompanied by the first legislative definition of public service tasks and obligations, which were completed by the successive European "packages".

Legal texts provide, in particular, that electricity public service:

- aims to guarantee, in the general interest, the supply of electricity throughout the national territory;
- contributes, in the framework of energy policy, to energy independence and security of supply in energy, air quality and the fight against the greenhouse effect, the optimal management and development of national resources, the control of energy demand, the competitiveness of economic activity and the control of future technological choices, as well as the rational use of energy;
- contributes to social cohesion, the fight against exclusion, the balanced development of the territory and the protection of the environment, research and technological progress, as well as defence and public security,
- embodying everyone's right to electricity, as basic necessity, it is managed in accordance with the principles of equality, continuity and adaptability and with the best conditions of safety, quality, cost, price and economic, social and energy efficiency,
- ensures the balanced development of electricity supply, the development and operation of public electricity transmission and distribution networks and the supply of electricity.

At the same time, the law of 10 February 2000 extended the provisions of the national statute of the electricity and gas industries, which was set up on the occasion of the nationalisation of EDF and GDF, to all employees of the branch.

Just as the nationalisation law of 1946 had not "nationalised" and integrated into EDF the operators having already public status (SNCF and Charbonnages de France production plants, distribution *régies*), the 2000 law did not change the "inheritance" of concessions (distribution networks, production from "small hydropower"), limiting itself to specifying that the licensors must necessarily "delegate" management to EDF, which had the legal statute of EPIC.

By law n°2004-803 of 9 August 2004, EDF-EPIC was transformed into public limited company. Its capital has been transferred to the State, which, in accordance with the provisions of article 24 of the law, holds at least 70% of its capital. This transformation allowed the opening of its capital and its listing on the stock exchange. But it also opens the "Pandora's box" of the previous rules giving the monopoly to EDF EPIC.

Since 1 July 2007, all consumers have had the opportunity to choose their electricity supplier.

Law No. 2010-1488 of 7 December 2010 on the organisation of the electricity market (NOME Law) reorganises the electricity market to allow effective market opening. It aims to provide alternative suppliers with a right of access to 'historical nuclear electricity' at a regulated price of 42 euros/MWh since 1 January 2012, on a transitional basis and limited in volume to conditions equivalent to those enjoyed by the historical supplier EDF. At the same time, it aims to preserve EDF's historic nuclear plant (ensuring the financing of the existing plant by enabling EDF to secure its long-term commitments for dismantling and waste management and also making the necessary investments

315. Pierre Bauby et Frédéric Varone, (2007), "Europeanisation of the French electricity policy: four paradoxes", *Journal of European Public Policy*, 14:7, October 2007.

to extend the operating life of the reactors in its historic fleet) and to maintain regulated prices for final consumers in France.

Law no. 2013-312 of 15 April 2013 ("Brottes" law) provides for the opening of the "first necessity tariff" (Tarif de Première Nécessité, TPN) to all energy suppliers, as well as the extension of social tariffs to new beneficiaries based on tax revenues. The law establishes that TPN and TSS ("special solidarity tariff" - Tarif Spécial Solidarité) customers benefit from enhanced protection during the winter break, resulting in the maintenance of the power supply at full power, even in the event of non-payment. As of 1 January 2018, the social tariffs are replaced by an "energy voucher", which is allocated each year according to the income and composition of each household. It is sent automatically on the basis of the income declared to fiscal authorities.

Law no. 2015-992 of 17 August 2015 on the energy transition for green growth sets out the main objectives for a new French energy model, within a global and European framework. It also aims to encourage "green growth", reduce energy bills and promote so-called "new", clean and secure energies. It also includes provisions for the circular economy and waste management. The text sets the following objectives: greenhouse gas emissions reduced by 40% by 2030 and divided by four by 2050; final energy consumption halved in 2050 compared to 2012 with a share of renewable energies increased to 32% in 2030; the share of nuclear energy in electricity must be reduced to 50% in 2025.

The current situation of "electricity markets"

French electricity markets were first marked by the arrival of new operators, either national or former incumbent operators from neighbouring European countries, most of which were limited to electricity trading. Gradually, the oligopolisation of three major operators has developed, which structures the markets: EDF, Engie (formerly Gaz de France, then GDF-Suez) and Total (which bought Direct Energie, which in 2017 was the third largest operator, with 2.2 million customer sites).

In 2017, 4.5% of the electricity produced originated from wind farms and less than 2% from solar panels. 75% of the production came from nuclear power plants. However, in the second quarter of 2018, the proportion of green energy production (hydroelectricity, wind, solar, biomass) reached 31% of the electricity consumed in France, taking into account in particular the good water conditions.[316]

More than a third of customers' bills are devoted to "taxation", with in particular the "contribution to the public electricity service". 68% of the total taxation is to support renewable energies - 33% for photovoltaic solar energy, 17% for wind energy. The total is estimated at 7.78 billion euros for 2019, up 12% compared to 2017 and 250% since 2011 (CRE data of 16 July 2018).

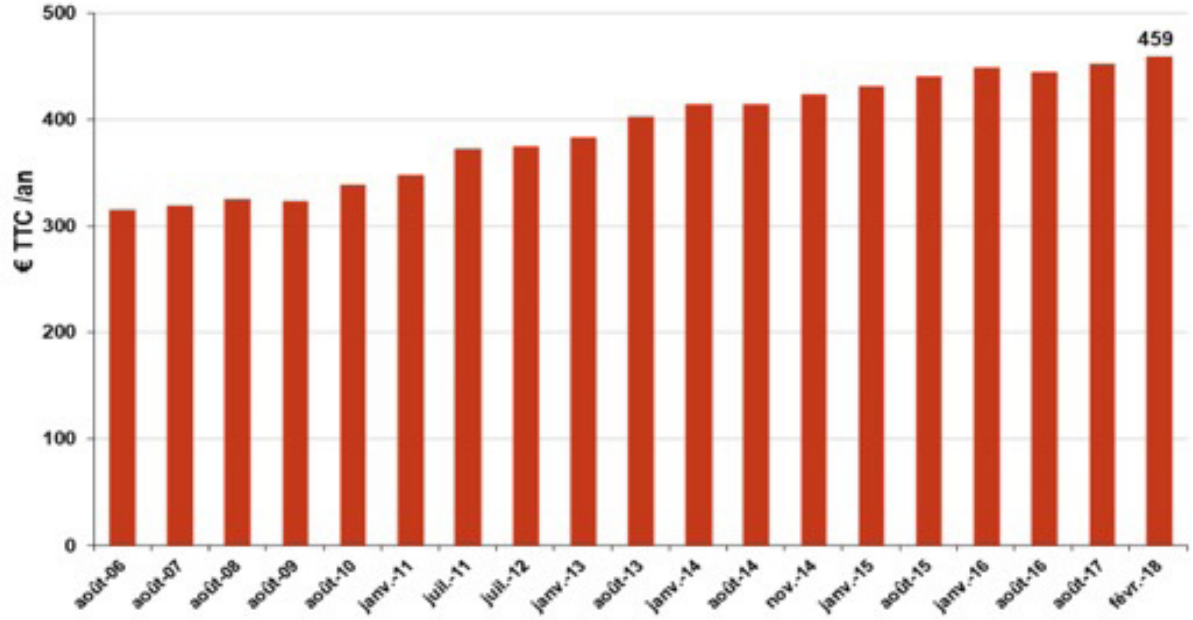
The CRE Observatory points out that for residential customers, the development of market supply sites continued to evolve at a sustained rate in the first quarter of 2018 (+6.1%). 6,252,000 sites, out of a total of 32.5 million sites, are now on the market (19%), almost all of them having chosen an alternative supplier (6,149,000).

For non-residential customers, out of a total of 5 million non-residential sites, 1,838,000 sites were engaged with a market offer in the first quarter of 2018.

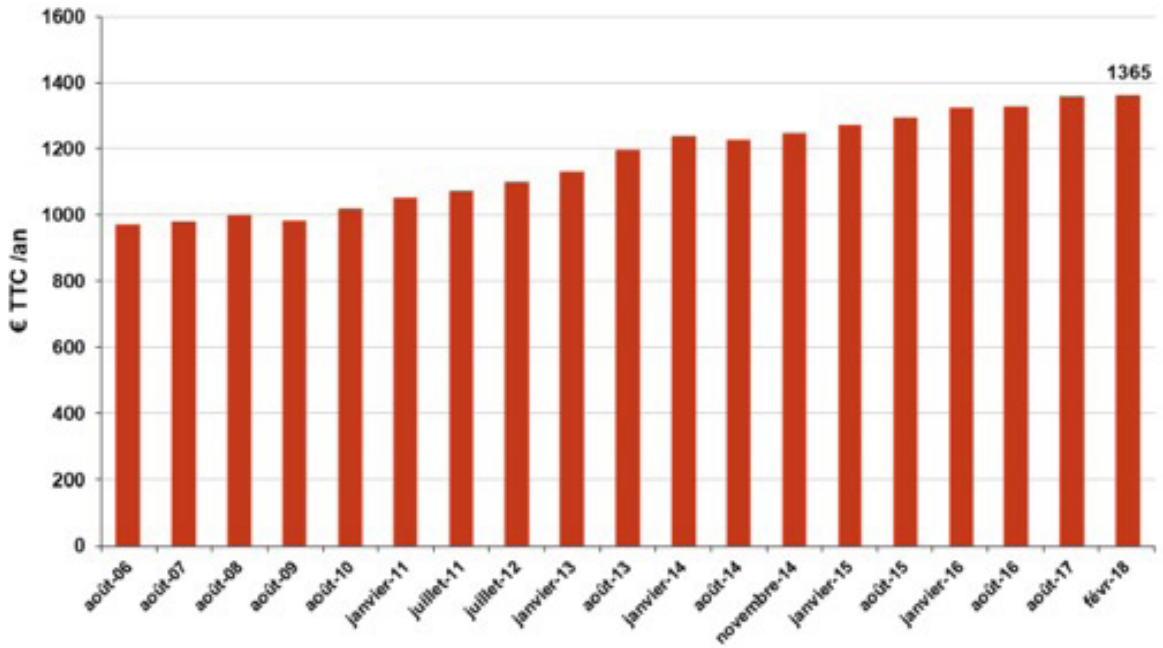
In terms of regulated tariffs, there have been limited but regular increases.

316. Common press release from SER (*Syndicat des énergies renouvelables*), RTE, Enedis, ADEEF, 31 July 2018.

EVOLUTION OF THE ANNUAL ELECTRICITY BILL FOR AN AVERAGE CUSTOMER AT THE BASE RATE OF 6 KVA (SOURCE CRE)



EVOLUTION OF THE ANNUAL ELECTRICITY BILL FOR AN AVERAGE CUSTOMER AT MIXED TARIFF HP (HEURES PLEINES)/HC (HEURES CREUSES) 9KVA (SOURCE CRE)



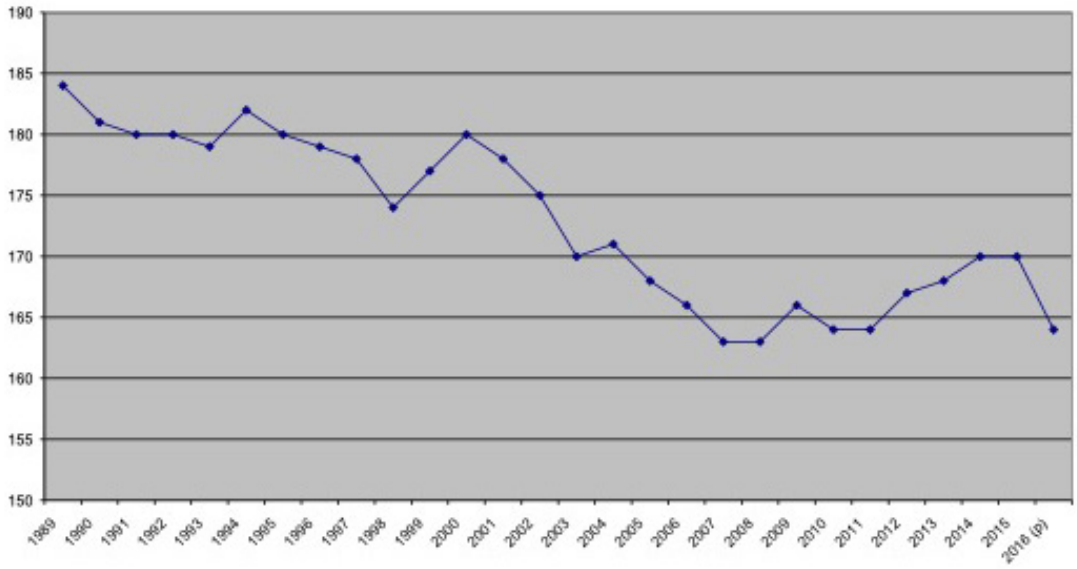
Market prices have three components (see above): energy prices, which are partly due to fluctuations on wholesale markets (with trends in recent years towards decreases due both to decreases in consumption due to energy management and the arrival of new producers, with in particular the decentralised emergence of renewable energies); transmission charges in the networks, which are

identical in all cases; taxes and contributions entitled "contributions to the public electricity service". Thus, electricity traders can propose commercial offers at lower prices than regulated tariffs, but without long-term guarantee (a customer who chooses a market offer... cannot "return" to the regulated tariff).

The number and nature of jobs. There are still no complete and detailed public statistics on the (quantitative or qualitative) effects on employment of the major reorganisations that have taken place in the French energy sector over the past 20 years.

There is only series published by INSEE that shows a slight decline in the number of employees over the last 30 years.

EMPLOYMENT (METROPOLITAN FRANCE) - PRODUCTION AND DISTRIBUTION OF ELECTRICITY, GAS, STEAM AND AIR CONDITIONING



EDF has always used subcontracted operators for certain work (work on lines and maintenance works - because ones had to be French to be a statutory employee). Thus, since the late 1980s, more than 80% of the nuclear power plants maintenance works has been carried out by external non-statutory employees.[317]

More transparency and the legislative definition of public service tasks. The organisation of the electricity system, as it exists today, is the result of the historical construction, the influence of European rules and national objectives. Thus, successive laws transposing European directives have led French public authorities to define the public electricity service, its tasks and obligations, whereas no legislative text has so far done so in France.

The evolution of power cuts (for example, 500,000 in 1992 - 2% of EDF customers[318], 670,000 in

317. Marie Ghis Malfilatre, « La CGT face au problème de la sous-traitance nucléaire à EDF. Le cas de la mobilisation de Chinon (1987-1997) », *Sociologie du travail* [En ligne], Vol. 59 - n° 1 | Janvier-Mars 2017. URL : http://journals.openedition.org/sdt/570 ; DOI : 10.4000/sdt.570. See also « Rapport sur la sûreté et la sécurité des installations nucléaires » n° 1 122, Assemblée nationale, 28 juin 2018, URL : http://www.assemblee-nationale.fr/dyn/15/dossiers/surete_securite_installations_nucleaires#surete_securite_installations_nucleaires_ce.

318. https://www.senat.fr/rap/l98-502/l98-5022.html

the winter of 1994-1995, 400,000 in the winter of 1995-1996[319]) led in 1998 to the introduction of the right to maintain energy supply in the event of non-payment of bills, until the intervention of a financial aid scheme. This may have contributed to the decrease in the number of power cuts (for example, in 2003, only 225,000 were recorded[320]), but significant problems remained during the winter. Since 2013, the Brottes law has prohibited electricity cuts between October 31 and March 31 of each year. However, the Electricity Ombudsman reported 478,000 power cuts over 7 months in 2016, indicating that payment difficulties and fuel poverty are not being absorbed even though efforts to help pay bills have increased.

Hydraulic concessions. Hydraulics is the green energy whose production is the most competitive and the only one that can be modulated, when it is often associated with a reservoir. In 2008, EDF was the main operator of the French hydroelectric domain and the leading hydropower company in the EU, with 280 concessions (signed for 75 years from 1919) - 87% of the total - and an installed capacity of 20,400 MW (out of a total of 25,000 MW for France). The GDF Suez group (now ENGIE) became, following the 2000 law transposing the 1996 European directive (see above), the reference shareholder of the Compagnie nationale du Rhône - CNR and owner of the Société hydroélectrique du Midi - SHEM, a former subsidiary of SNCF. CNR has a single concession for 17 developments in service on the Rhône (2940 MW) and 28 concessions operated by SHEM (for a total of 620 MW). Under the law of 16 October 1919, at the end of the concession, the outgoing concessionaire had a preferential right.

The 1993 Sapin Law required the tender procedure for concessions of more than 4.5 MW. In practice, the works have been renewed by mutual agreement between the State and the operators in place, without competition. The European Commission opened an infringement procedure against France in 2006 challenging the preferential right of the outgoing concessionaire, *EDF having changed its legal status* (from EPIC to a public limited company). This procedure follows procedures initiated in the 1990s but suspended by commitments made by France to adapt its legal framework.

In 2008, the competitive bidding process for hydraulic concessions in France was launched on the occasion of their renewal (Borloo decree). Competition was also seen as a lever to boost hydropower, with the 2008 EU energy package requiring France to reach 23% renewable energy in its energy mix by 2020 and the *Grenelle de l'environnement* providing for an increase in installed hydropower capacity of 2,500 MW (+10%) by 2020.[321] It is also an opportunity to allow the State to collect a fee "when renewing hydroelectricity concessions" (see the 2006 amending finance law; see also in this respect the summary judgment of the Court of Auditors of 21 June 2013, which also refers to the "serious delay" in the implementation of the provisions of this law).

The opening to competition of the renewal of concessions was also intended to the reconfiguration of the weight of operators on this market. However, the implementation of the process has been postponed and opposed.[322]

The European Directive of 2014 on the award of concessions regulates the conditions for their award.

French Law on energy transitions for green growth adopted in August 2015 provides for the competitive bidding of expired concessions, the possibility of extending concessions against invest-

319. cf. EDF in *Le Monde*, 7 novembre 1996, and Médiateur de l'énergie in L'Express, 15.03.2017.

320. http://www.sortirdunucleaire.org/EDF-est-critiquee-pour-la-severite

321. Jean-Michel Bezat, « Les candidats à l'exploitation des barrages français se bousculent », *Le Monde*, Vendredi 7 août 2009.

322. For the CGT union, hydroelectricity is the result of a long national industrial construction in which the public company EDF played a major role and provided financing for investments. It should be preserved in the public sector, to create not competition between public and private operators but renationalisation allowing synergies, cooperation and sharing.

ments and the possibility of creating hydroelectric mixed companies whose shareholders must include at least one private operator holding between 34 and 66% of the capital, and one or more public shareholders (local authority or group).

In October 2015, the European Commission gave formal notice to France for delaying the application of the opening of hydraulic concessions to competition. In March 2017, the government responded with a proposal to extend some concessions against investments, to make available a volume of hydropower MW at market prices and to open up concessions to competition within a sliding period. This proposal was rejected by the European Commission in October 2017. In February 2018, the Government decided to establish a competitive bidding schedule from 2018 to 2021 for 4,000 MW of expired concessions and to introduce a power threshold per operator.

Electricity distribution concessions. Local authorities retain responsibilities in the field of energy and their role seems to become (again) important in the future. Historically, since the end of the 19th century, local authorities have had to manage distribution concessions for the occupation of public property by the networks of private companies. The law of 15 June 1906 on energy distribution established the power of the municipalities to grant electricity distribution. Some communities have also set up gas and electricity production and distribution boards. After the nationalisation of 1946, local authorities retained ownership of the installations and were concession authorities for public electricity distribution. However, from that date onwards, they no longer chosen the concessionaire, which was designated by the nationalisation law (as the national operator in charge of exercising the distribution monopoly). Similarly, the main obligations imposed on the concessionaire under the concession contract were provided by law and the State set the administered tariffs. Therefore, even if the law maintained the responsibilities of municipal authorities existing in 1946 and admitted semi-public companies, their role remained minor.

The liberalisation process launched in the 1990s opened up new prospects for the electricity distribution market, but the distribution monopoly entrusted to EDF was enshrined in the 2000 law. However, the 2014 European Directive on concessions may reopen the issue when concession contracts (concluded for a period of around 30 years) expire: in 2017, negotiations on the contractual model for the renegotiation of local contracts took place. Such a model was validated by the FNCCR, France urbaine association, Enedis (distribution grid operator) and EDF at the end of 2017.[323] Among other things, it aims to set up a multi-annual investment programme and to strengthen the information that the concessionaire must transmit to the concessionaire authorities (with information requirements going beyond those provided for in Decree no. 2016-496 of 21 April 2016 on the annual activity report on electricity concessions). More generally, the process of Europeanisation, the objectives of developing renewable energies and protecting the environment will lead to the development of the role of local and regional authorities in the energy field (some of them even looking for "energy independence/autonomy").

4/ ESSENTIAL TECHNOLOGICAL, ECONOMIC AND SOCIAL CHANGES

It would be wrong to limit the analysis of the evolution of the French electricity system to the effects of liberalisation and opening up to competition. In fact, it is confronted with a series of major disruptions, some of which call into question what seemed to be timeless "acquis".

1. We are moving from exponential growth in consumption from the 1950s to the 1970s to stability and even declines. The traditional "business models" of electricity operators are everywhere in the spotlight.

323. Morgan Boëdec, « Distribution d'électricité : les collectivités reprennent la main », 28 June 2018, https://www.caissedesdepotsdesterritoires.fr/cs/ContentServer?pagename=Territoires/Articles/Articles&cid=1250281343231

2. Energy policies goal is no longer so much to produce more as to improve energy efficiency. Today, the most relevant and "profitable" investments are aimed at energy savings and energy efficiency, whether in housing and all buildings, transport or industrial processes.
3. For more than a century, the highly structuring technical and economic approach aimed at increasing returns to electricity production. Everywhere, electricians have developed intense research to conduct a "racing for size". Today renewable energies are becoming competitive... No matter when and where, but the cost curves intersect; to paraphrase what Galileo would have said about the shape of the earth, "and yet they intersect....
4. It was clear, as an "evidence", that electricity could not be stored; that required a permanent balance between production and consumption, whatever the contingencies. Technological progress is leading to significant reductions in battery costs and leads to storage being considered as a solution to major changes in consumption during the day and the year.
5. Until now, the "environment" has been seen by energy sector players as an "output", an "externality". Environmental issues are becoming an essential input to energy policies and strategies everywhere. This is how "decarbonisation" structures the energy choices and policies from each territorial level to the world conferences (COPs).
6. European countries have had very different "national" energy resources depending on their geographical and geological characteristics and historical periods. Some were structurally energy exporters, while others had to import and deal with issues of energy independence. Therefore, until 2009, European integration allowed each Member State to conduct its own national energy policy. Today, all European countries are gradually becoming net importers of energy. This has generated a new common interest among EU Member States, which has led them to initiate a new common policy (Title XXI Energy) in the Lisbon Treaty, and then to talk about "Energy Union". But the Treaty leaves Member States the choice of their energy sources and energy mix. The Energy Union is based on the principle of subsidiarity: in the context of the establishment or functioning of the internal market and taking into account the need to preserve and improve the environment, "the Union energy policy shall aim, in a spirit of solidarity between Member States, to ensure the functioning of the energy market, the security of supply in the Union, to promote energy efficiency and energy saving and the development of new and renewable energy and to promote the interconnection of energy networks" (Article 194, paragraph 1 TFEU). The measures necessary to achieve these objectives shall not affect the right of a Member State to determine the conditions for the exploitation of its energy resources, its choice between different energy sources and the general structure of its energy supply (Article 194, paragraph 11§2TFEU).
7. European energy initiatives - outside the ECSC and Euratom - were based, from the 1990s to the 2000s, on the completion of the internal markets in electricity and gas, based on market and competition principles - but accompanied by the definition of public service obligation or, for electricity, universal service obligations, most of which are based on Member States initiatives. In fact, it can be seen that, given the specific characteristics of electricity, there is not - and cannot be - a homogeneous and fluid internal market, but regional markets, which leads to the question of the objectives and purposes of the Energy Union being raised again.
8. In most European countries, we have seen the implementation of an integrated "industrial model" of electricity - production, transport and distribution networks, trading - most often centralised and managed by a public operator under monopoly. Today, we are seeing the development of decentralisation and territorialisation approaches, in relation to the explosion of renewable energies that are by nature territorialised. A major structural trend is developing based on the desire for control, autonomy, re-appropriation by local authorities, self-sufficiency and positive energy systems, with the development of regional, local or community energy

policies. ENEDIS points out that there are now nearly 350,000 decentralised production sites in France.

9. Between the first electricity directive of 1996 and the current packages, some "public service obligations" have been Europeanised, extended (see energy poverty) or become more restrictive, even if most of them remain the responsibility of Member States' decisions. As the EU moves towards the elimination of regulated prices and seeks made energy poverty subject to social policies, the "Pillar of social rights" adopted in Gothenburg on 17 November 2017 states that "Everyone has the right to access essential services of good quality, including water, sanitation, energy, transport, financial services and digital communications. Support for access to such services shall be available for those in need." This is creating new tension as to the objectives and content of Europeanisation.
10. Electricity has been developed into a meshed and interconnected "network" that has been progressively extended to large areas integrating the proliferation of uses. In a way, the network was the "reactor core" of each electrical system to ensure continuity and safety. There is a twofold movement, on the one hand, the geographical extension of the interconnection grid, which raises the question of its management and governance in Europe, which cannot remain the sole responsibility of each Member State, and on the other hand, the emergence of intermittent electricity grid and highly decentralised initiatives. This leads to the need to redefine the function and organisation of the electricity grid in order to bring together the different levels of organisation - from local to continental - and the different actors. The network can no longer be the "dictatorial" order giver it once was, because it decides neither the wind nor the sun!

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These 10 breaks are not completely synchronous and are the result of different rationales. But they interact and "form a system". They raise the question of moving beyond the notion of energy "transition" to that of an energy "revolution", leading to the redefinition of energy systems based on democracy, multi-level and multi-stakeholder governance.

5/ THE BREAKDOWN «IMPLOSION» OF THE ELECTRICAL SYSTEM AND ITS NECESSARY RECONSTRUCTION

Thus, the characteristics of the national electricity system are challenged from both above and below. From above, the competitiveness of renewable energies, whose effects on the future French energy mix, the future of nuclear energy both globally[324] and in France, are particularly evident, given the uncertainties in terms of multi-annual energy programming (*programmation pluriannuelle de l'énergie* - PPE) and the tasks of the main operators. From below, because there is a growing trend towards "de-integration", a "denationalisation" of energy issues, a reappropriation, either by local authorities or their regroupings, of the definition and control of decentralised energy policies. Are we moving towards a breakdown or implosion of the electrical system?

This is how we see the development of reflections and initiatives around the concept of "prosumer" [contraction of the English terms pro(ducer) and (con)sumer] aimed at making each inhabitant a (small) producer of electricity at one time or another, which leads to destabilisation and therefore to the need to redefine the role of the networks. Already, there are several tens of thousands of entry points into the French electricity grid.

These changes do not lead to regretting the "good old days", but to a whole series of redefinitions:

324. The IEA's World Energy Investment Report published on 17 July 2018 highlights a sharp slowdown in investment for the construction of new nuclear power plants around the world.

- What implementation of the principle of subsidiarity (EU - Member States - Regions - Local authorities - prosumers)?
- What is the place and role of the actors (operators, public authorities, the CRE, consumers and their organisations, etc.)?
- What is the relevance of a multitude of "markets" - European, national, regional, local - overlapping and uncoordinated?
- What will happen to the 500 electricity concession contracts that will expire around 2021?
- Is it inevitable that the "small hydro" will have to compete?
- What is the role of "capacity markets", aimed at guaranteeing a certain security of supply?
- What public service objectives and missions?
- How can fuel poverty and universal access be taken into account?
- What future for "regulated tariffs" guaranteeing a price for all users, which today includes 26.5 million households (82% of sites) and 3.3 million small professionals?[325]

More fundamentally, these issues raise the question of their democratic control.

Is there a "return to basics" (decentralized, private and competitive initiatives)?

What new risks of abuse of dominant positions?

What public control?

It is neither the purpose nor the timetable of this study to propose solutions... They must be co-constructed with all the actors concerned because we cannot envisage a world without electricity or a renunciation of the universality of its access.

FRANCE AND THE EUROPEANISATION OF POSTAL SERVICES

France, due to its high level of mail per capita, as well as its size, is one of the leading European postal markets. At the same time, the territorial and population density characteristics make its market and competitive potential very unequal. In fact, France is the European Union country with the largest surface area and its population is very unevenly distributed over the territory, which, in addition, has various geographical characteristics. This makes the organisation of the postal service quite special, given that postal mail must be delivered to all parts of the territory, including the most isolated or hard-to-reach areas. This has always justified the intervention of public authorities to ensure postal services as public service, service of general economic interest and universal service.

325. In a decision of the *Conseil d'Etat* of 18 May 2018, the latter emphasised that the obstacle constituted by the regulation of electricity selling prices is justified, in a context of high volatility and in the case of a non-substitutable form of energy constituting a basic necessity, to pursuit the objective of guaranteeing consumers a more stable electricity price than market prices.

THE CREATION OF THE POSTAL MONOPOLY AND POSTAL PUBLIC SERVICE

After the setting up of postal service under the French Old Regime, it was from the 19th century onwards that postal services started to be directly operated by the State, under a monopoly regime. Initially, the service served only urban areas, but the rural service was established thirty years later (1830), with a daily tour starting in 1832.[326] At that time, also marked by the beginning of the development of rural exodus, postal mails were the only means of communication between individuals and families. And, for more than a century, they continued to be the main means of mass communication (from 800 million letters at the end of the 19th century, to 7 billion objects in 1965 and 11 billion letters at the end of the 20th century). Changes in economic structures have been an important factor in the growth of mail, as the evolution of mail has long been correlated with that of GDP.

Towards the end of the 19th century, post and telegraph services[327] (P&T) were unified and placed under the authority of the Ministry of Posts and Telegraphs. Then, in the context of sustained traffic growth and the need to increase their budgetary capacities, the law of 30 June 1923 separated the P&T budget in an annex to the general budget, which allowed for accounting[328] and management autonomy, as well as the gradual suppression of the fiscal character of the beginning.[329] This law provided for the requirement of a balanced budget through the remuneration of the services provided to users.

In the early 1970s, the PTTs were organised under the authority of a department of the Ministry of Posts and Telecommunications with a separate account within this Ministry and the possibility of using the loan on domestic or foreign markets.

THE EMERGENCE OF COMPETITION

The development of a commercial approach

In the opinion of some former postal and telecommunication managers[330], the law of 30 June 1923, which provided the P&Ts with a budget annexed to the State budget, and thus expressed the industrial and commercial orientation to be taken, was a symbol of the introduction of commercial practices at *La Poste*.

However, for a long time, the management of the service remained administrative, budgetary and not entrepreneurial, commercial. It was in the 1960s that a commercial structure was set up for major mail senders in order to affirm the commercial dynamics of PTTs (contacting customers-companies, receiving their complaints, etc.).[331] Then, in the following decades, the notion of profitability was introduced, as well as marketing approaches.

From a legal point of view, the classification as public service has been based on its statutory definition. Thus, in 1968, *Tribunal de conflits* qualified the PTTs as public administrative service. It

326. « *** La Poste : une saga française » in Direct soir N°678, 12 January 2010, p. 4.

327. Telegraph was primarily developed for reasons of national security, and therefore under the responsibility of the State.

328. PTT were largely profitable until 1919 but they paid most of the profits to the general budget. (Sébastien Richez, « Mise en perspective historique de la 'prospective' à La Poste », 2004, IREPP – Comité de l'Histoire de La Poste, p. 7).

329. M. Le Roux, B. Oger, « Aux origines du budget annexe des PTT », Journée d'études du 10 septembre 1999 : La direction du Budget, entre doctrines et réalités, 1919-1944., 1999, p. 10.

330. Hélène Delahaye, *Dissonances et convergences entre conduites du quotidien et productions de service : le cas du réseau des bureaux de poste*, Université Paris-Est, 2009. Français. <NNT : 2009PEST1078>. <tel-00584400>, p. 198.

331. Delahaye, 2009, p. 198.

maintained this qualification until 1993 (after the 1991 reform - see below), when it admitted that *La Poste* was managing an industrial and commercial service.

The rise of competition

Some activities of La Poste have been almost always carried out in a competitive environment

The competitive context is not really new in the French postal sector, even if, for a long time, it has only concerned a very small part of postal activities.

Thus, since the end of the 18th century, the field of parcels has evolved in the competitive field. Then, from the end of the 19th century, only letters and packages having less than 1 kg were placed in public monopoly.[332]

In addition, with few exceptions[333], financial activities have almost always been in a competitive situation, a competition that has developed since the late 1960s[334].

At the time of the adoption of the first European postal directive (97/67/EC - Directive on common rules for the development of the internal market of Community postal services and the improvement of quality of service), the French postal sector was considered by some to be "not only a highly competitive sector, which is already highly competitive, but where competition is all the more brutal because it is not officially recognised".[335] Others pointed out that, in the face of existing competition, postal administration had already adopted a commercial policy "to defend and expand its market share".[336]

The new technologies of communication are developing 'external' competition in the postal sector by dematerialising exchanges

From the late 1960s onwards, other means of communication have developed. This marked a certain decline in postal communication and uncertainties about the future of the public postal service, which were the subject of various reports: the substitution of postal services by telecommunications services (Nora-Minc report of 1978), the continuity of the public postal service despite a marked slowdown in the development of postal activity (Rippert report) and the potential of the public service in the future communication market (Chevallier report of 1984).[337]

According to a former official of PTT[338], competition from other communication channels made *La Poste*'s management react more than did the opening of markets to other European Posts.

Though, external competition really became important after the emergence of electronic communications. But the substitution of postal services by interactive media mainly concerns mail, the historical mission of the national monopoly, and more particularly the volume of correspondence of

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332. Dominique Piotet, *Les grands débats sur La Poste au XIX^e et au XX^e siècles*, Boulogne-Billancourt Mission de la recherche de La Poste, 1998, p. 5, 46, 51.

333. Postal check accounts and Livret A accounts; for the latter, the monopoly was conferred to *La Poste* and the *Caisse d'épargne* until 2008. This monopoly was used to finance housing policy.

334. Thus, while in 1967 36% of all current accounts were hosted by *La Poste*, in 1982 they only represented 18%.

335. Martine Lombard, « Commentaire de la directive 97/67/CE du 15 décembre 1997 concernant des règles communes pour le développement du marché intérieur des services postaux de la Communauté et l'amélioration de la qualité du service », in AJDA, 1998, p. 716.

336. Benoît Oger, « Les mutations de La Poste (1792-1990) », *Flux*, n° 42 : « La Poste et ses territoires », octobre-décembre 2000, pp. 7-21. http://www.persee.fr/doc/flux_1154-2721_2000_num_16_42_1339, p. 17.

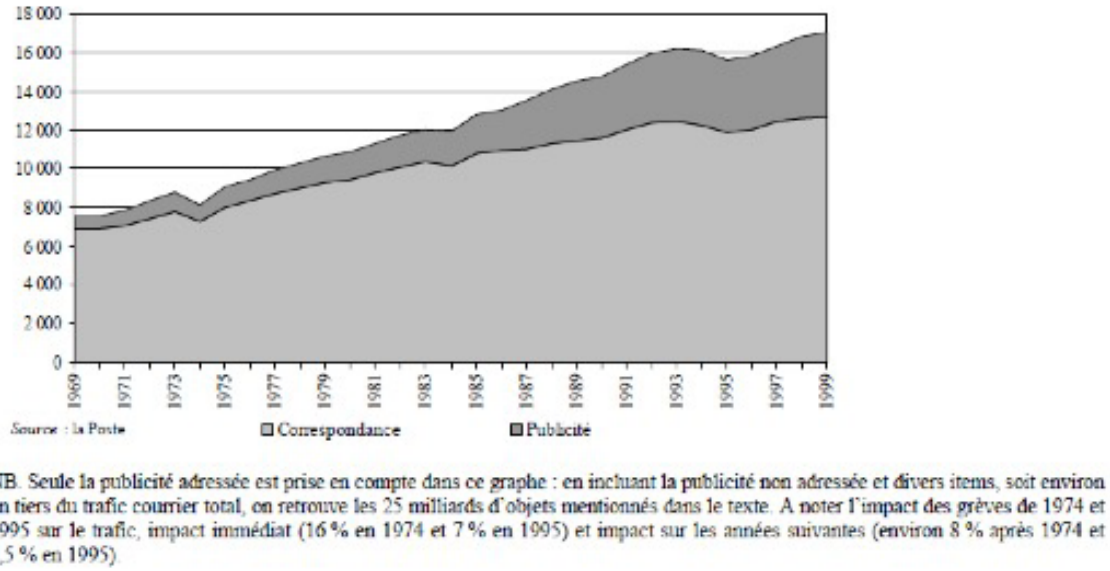
337. Richez, loc. cit., 2004.

338. E. Simon, former general director (1978 – 1980), in Delahaye, 2009, p. 221, 222.

companies, which accounted for most of the turnover of the mail branch.

At the same time, new technologies bring new opportunities for parcel industry[339]. This is particularly the case for electronic commerce, which increases parcel traffic, even if its evolution is not yet stable and requires adaptations, as well as a universal distribution network.

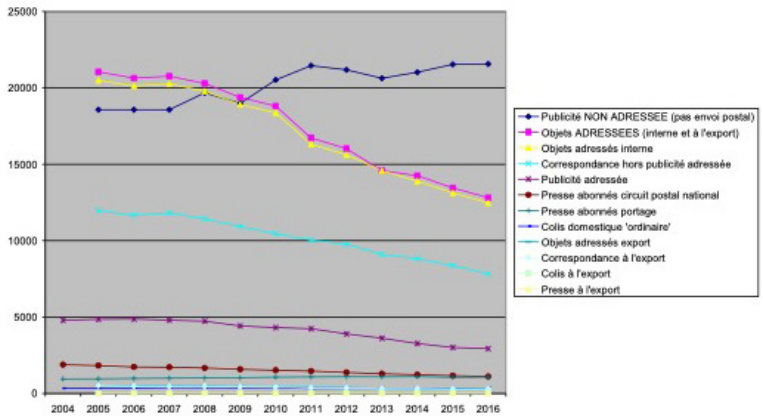
EVOLUTION OF POSTAL TRAFFIC IN FRANCE BETWEEN 1969 AND 1999 (IN MILLIONS)



Source: Paul Soriano, « Les échanges postaux », in *Futuribles / Etude rétrospective et prospective des évolutions de la société française (1950-2030)*, 2000

For the first time (outside the war period) traffic started to decline in 1998 (-2.5%), then in 1999 (-1.1%) and -0.1% in 2001. This period is also linked to the beginning of the Community liberalisation process. Thus, mail decline has accompanied the opening up of the mail market to competition. However, this general decline is determined by the phenomenon of electronic substitution and not by liberalisation, which has had an impact on this declining market, generating changes in the market shares of the various operators (in particular the loss by *La Poste* of a certain part of its market in favour of its competitors).

SHIPMENT VOLUMES (MILLIONS OF ITEMS)

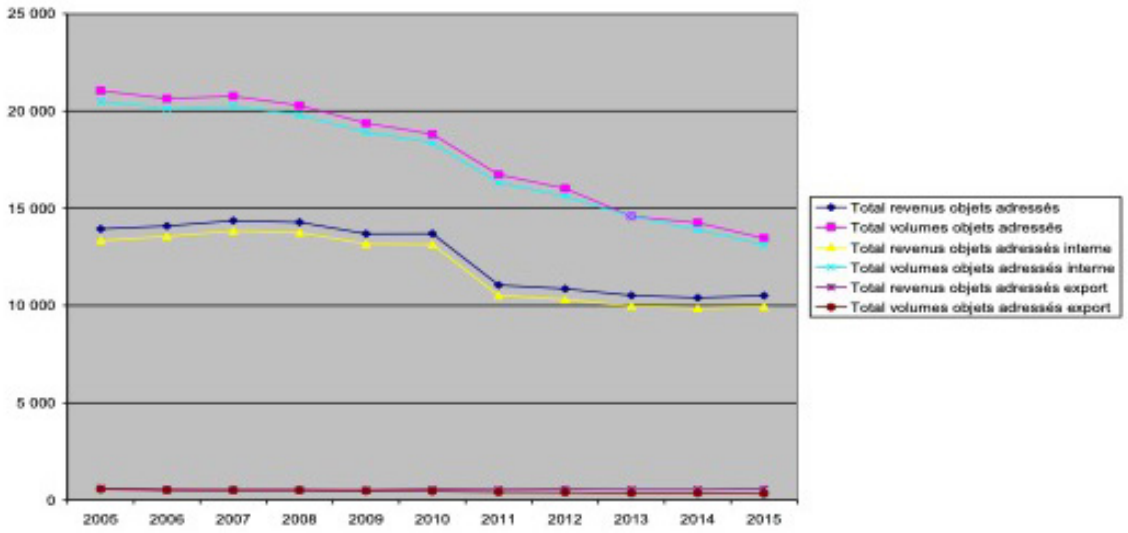


339. More generally, for example, *La Poste* has taken technological developments into account to improve the speed of mail delivery (from the mailbox to the use of high-speed trains or aeronautical technologies) or to create automatic document reading services.

Source of data: ARCEP, Observatoire des activités postales, https://www.arcep.fr/index.php?id=13746#c96433
Notes: Express mails do not appear, nor does the press distributed on kiosks and outside the postal network. From 2011 onwards, data concern authorised operators.

In some market segments, price increases have been successful to some extent in curbing a larger decline in income.

LOWER REVENUES IN THE CONTEXT OF LOWER VOLUMES (MILLIONS OF EUROS OR ITEMS)



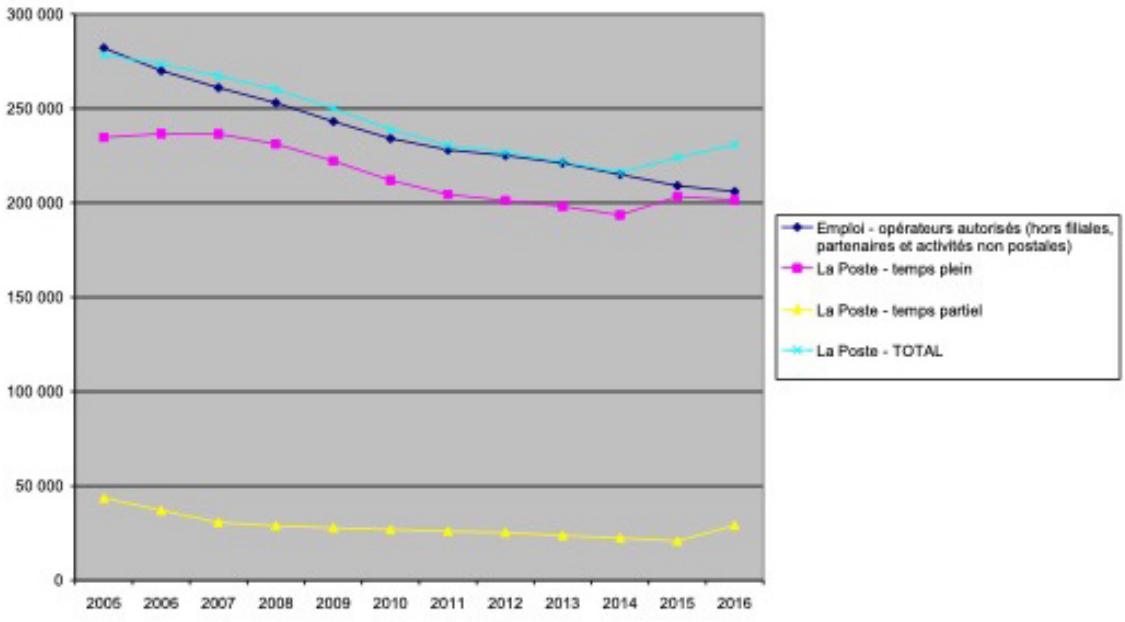
EVOLUTION OF TARIFFS FOR SOME OF MAIL SERVICES (20 G) TO INDIVIDUALS (IN €)

	1998	2002	2003	2005	2007	2008	2009	2010
Lettre prioritaire J+1	0,46	0,46	0,5	0,53	0,54	0,55	0,56	0,58
Lettre verte J+2					0,50	0,50	0,50	
écopli	0,41	0,41	0,45	0,48	0,49	0,50	0,51	0,53
Lettre suivie								

	2011	2013	2014	2015	2016	2017	2018	2019
Lettre prioritaire J+1	0,60	0,63	0,66	0,76	0,80	0,85	0,95	1,05
Lettre verte J+2	0,57	0,58	0,61	0,68	0,70	0,73	0,8	0,88
écopli	0,55	0,56	0,59	0,66	0,68	0,71	0,78	0,86
Lettre suivie					1,07	1,13	1,2	1,28

Employment has also decreased in the postal sector (see graph below - almost 80,000 jobs in 10 years). However, these figures only partially reflect the reality of employment in the postal sector and do not show the market segments affected by these declines and those that may have seen job creation. In addition, statistics published by DG Internal Market only concern the employment of the universal service operator (*La Poste*) and do not seem to distinguish between jobs allocated to postal services (and in particular to the universal service) and other jobs (however, they show a significant decrease, from 283 945 jobs in 2004 to 241 835 in 2009).

EMPLOYMENT IN POSTAL ACTIVITIES OF AUTHORISED POSTAL OPERATORS VS EMPLOYMENT IN LA POSTE



Source of data: For all authorised operators - ARCEP, *Observatoire des activités postales*, https://www.arcep.fr/index.php?id=13746#c96433; For La Poste (postal activities and others), Statistics from Universal Postal Union, http://pls.upu.int/pls/ap/ssp_report.main?p_language=AN&p_choice=BROWSE

More broadly, digital technology is triggering a revolution in modes of communication, relationships and interrelationships, with multiple impacts and opportunities.

The European liberalisation process gradually eliminates the legal monopoly in the postal sector while defining a universal postal service

The national public postal monopoly created in the 19th century was maintained in France until the beginning of the gradual implementation of the European liberalisation policy by Directive 97/67, as amended in 2002 and 2008. European policy both initiated a gradual liberalisation process and provided for a universal postal service requiring, in certain aspects, more demanding exigencies than what was provided for by French regulations.

The first Postal Directive of 1997 has been transposed in the French law by the law no. 99-533 of 29 June 1999 ("Voynet Law"). This text amended a text dealing with spatial planning (Article 19 of Law 99-533 of 25 June 1999, which defined universal service and reserved services). Other legislative and regulatory provisions completed the transposition with regard to the accounting separation of universal and reserved services, the conditions for the provision of liberalised services, the access to public postal network, the national regulatory authority. However, the first European postal directive provided that universal service obligation requirements apply to postal items up to 2 kg and parcels up to 10 kg (under certain conditions up to 20 kg), whereas according to the French law only services provided under public monopoly were considered "public postal services", i.e. letters without weight limit and packages not exceeding one kilogram in weight. The Directive has therefore decoupled and extended the French "public postal service"[340] from and beyond the public postal

340. Lombard, loc. cit. 1998 p. 716.

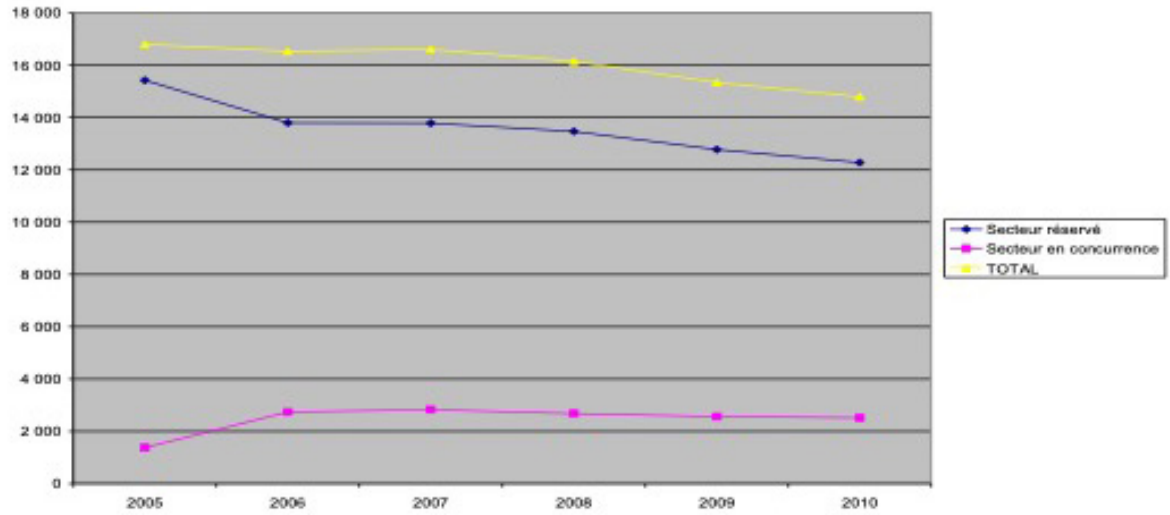
monopoly defined by the French law 90-568[341], which explains why the first stage of liberalisation of postal services affected modestly the French public operator *La Poste*.[342]

The second directive of 2002 provided for liberalisation in three stages: 2003, 2006 and 2009. The French law no. 2005-516 of 20 May 2005 on the regulation of postal activities transposed this directive.

La Poste estimated that 34% of its mail turnover had been open to competition since 1 January 2003 and that this percentage would reach 43% on 1 January 2006, almost twice as high as between 1999 and 2002.

The Third Postal Directive (Directive 2008/6/EC) marked the stage of full opening of the postal market to competition with the abolition of the reserved area. It was considered that the maintenance of a reserved area is not a necessity to guarantee and finance universal postal service in the Community. This directive has been transposed in France by law no. 2010-123 of 9 February 2010 on the public company *La Poste* and postal activities.

MAIL VOLUMES (MILLIONS OF ITEMS)



However, until now, full opening to competition has not in itself been a sufficient condition for the emergence of effective competition in the postal market, given the general shrinking of this market and the need to guarantee a universal service (see below), which implies distribution up to the "last mile", which is not easy to manage and remains costly for carriers.

Though, alternative competition limits the development of a competitive postal market at national scale

As shown above, the development of new communication technologies has a considerable substitution impact on certain traditional activities and on the competitive potential of these markets. Thus, so far, the structural decline of mail (see above) has led to limited competition in the letter

341. Except for press transport and distribution, which are not under the monopoly, even if they are part of the activity of the French public postal service.

342. According to *La Poste*, the limits set in 1997 made it possible to keep almost 75% of postal turnover under monopoly.

market, which, despite legal market opening, leaves a dominant position for the incumbent operator in this sector, or even a certain de facto monopoly.

As a result, *La Poste* has no real competition in the field of mail delivery (excluding express mail) in France, except from a few local or multi-local operators.

Mail competition is rather developing upstream of the postal sector, through routers and aggregators, which, since the 1970s, have been developing services for the manufacture, preparation, postal deposit and consolidation of postal items. But they do not provide postal delivery.

Therefore, the only "competitor" to postal mail remains e-mail, which is faster, simpler, more interactive, whose cost is integrated into the cost of telecommunications and the operation is directly assumed by beneficiaries, senders and recipients.

However, there is potential for competition with *La Poste*'s 50 main major issuing customers, which alone account for around one third of the national operator's mail turnover. But this market has also been affected by substitution effects.

THE TRANSFORMATIONS OF THE POSTAL PUBLIC SERVICE IN THE CONTEXT OF THE LIBERALISATION OF THE EUROPEAN MARKET

Universal postal service: minimum Community requirements, rather large national adaptation powers

Directive 67/97 is not only a liberalisation directive but also a directive regulating the universal postal service. It provides a general definition of universal postal service, which sets out the obligation to provide at least a set of services that are available and affordable to all, thus ensuring a certain level of service quality.

National ambitions can be adapted, even if this has sometimes led to lower levels of services than before. For example, the location of mail collection is not specified by the Directive, or the opening hours of postal points, which allows Member States to specifically organise their postal network. Some countries have chosen to eliminate rounds beyond the fifth day (France has maintained mail distribution 6 days a week but in fact some deliveries are not carried out – the so called 'open rounds' / '*tournées à découvert*' - especially to households[343]). The Directive provides for minimum one collection and distribution per day, five days a week, which has allowed States to adjust the daily frequency of distribution rounds. France, for example, has chosen to eliminate certain urban practices of several tours per day. The time at which distribution takes place also remains at the national discretion, as well as the deadline for filing a letter to ensure its distribution the following day. However, it is difficult to identify these reductions as a direct and main effect of the liberalisation process.

Directive 87/67 gradually abolished the 'reserved area' that States could organise for the provision and financing of universal service and offers three options for ensuring universal service: by the market, by designating one or more universal service operators (France, as almost all Member States have designated the incumbent operator) or by public procurement.

In France, the public service and postal operator have tasks that go beyond universal postal service

The 1990 law had expressly entrusted *La Poste* with several tasks concerning public postal service

343. Mikaël Salaün, *Le métier de facteur à l'épreuve des nouvelles organisations du travail à La Poste*, Sciences de l'Homme et Société. Université Paris-Est, 2008, https://pastel.archives-ouvertes.fr/tel-00481835, p. 311, 312.

and certain financial services. *La Poste* was also required to make several contributions to defence and public security (art. 17), regulation (art. 18), promotion of French innovation and technology abroad (art. 19), international technical cooperation and development aid (art. 20) and, in particular, to regional planning (art. 21).

Subsequently, the legislation has evolved to transpose the provisions of the Postal Directive 67/97 and its amendments and the requirements of the universal postal service have been specified by successive contracts of enterprise signed between the State and *La Poste*.

The transport and distribution of the press are part of the universal postal service

Press is considered to contribute to citizenship and democracy through the development of freedom of expression and the circulation of ideas and opinions. Therefore the obligation to distribute the press has been entrusted to *La Poste*, at preferential rates for press publishers (see below).

La Poste's specifications (decree n° 2001-122 of 8 February 2001) include press delivery and distribution services in the universal postal service, so that each reader can receive at home, throughout the country, the press titles to which he or she has subscribed.

The contribution to spatial planning

This task is governed by the territorial postal presence contract signed between the State, the Association of Mayors of France and the Presidents of Intermunicipalities (AMF) and *La Poste* (the current contract covers the period 2017-2019). It requires *La Poste* to maintain a high level of accessibility to postal services throughout the country, including in less densely populated areas. In 2016, 96.8% of the metropolitan population was within 5 kilometres and less than 20 minutes by car of a postal contact point, that is more than the minimum of 90% provided by law (see below for universality).

Banking accessibility

This task granted to *La Poste* aims to ensure that certain basic services (provision of income direct debit, cash withdrawal and payment vouchers) are made available to population without restrictions. However, in practice, the guarantee of access to a bank account is not automatic since *La Banque Postale* may refuse such access and in this case the obligation to guarantee access requires an injunction from *Banque de France*.[344]

New tasks?

The *Commission supérieure du numérique et des postes* (CSNP) proposed the signatories of the contract of enterprise (the State and *La Poste*), as it had previously suggested in its opinion on the 2017-2018 territorial postal presence contract (November 2016 opinion), to work towards "the creation of a new public service in the field of social intermediation, based on *La Poste*'s dual human and digital strength".

The values of the postal public service in France

Quality

In France, since 1969, the sender has in principle chosen the time it takes to deliver his mail by the price of the stamp attached to his correspondence. Over the past few decades, the improvement in the quality of postal service has been noticed. However, some believe this progress "constitutes,

344. For insights into other practical access difficulties see https://www.liberation.fr/debats/2018/11/08/roms-l-integration-entravee_1690527

not the *consequence* of competition, but the *counterpart* of competition"[345], since the introduction of competition has been accompanied by a desire to preserve public service, which has been achieved through better definition and higher quality requirements as well as better financing.

Data for quality assessment are not uniform. According to a source, the proportion of "priority mail" actually arriving at "D+1" increased from 69.6% in 2003 to 87.9% in 2012.[346] Other sources[347] show that, during the previous decade, the quality of postal delivery service remained well below that provided for by European legislation and national requirements, with an average of 77% of D+1 and 93.5% of D+2 in 2002; that represents a constant quality since 1996 but a significant decrease between 2002 and 2003 (7%). Postmen[348] interviewed by this study also shared the vision of a certain deterioration of the quality of mail delivery. The increase in the number of complaints can be considered as a similar indicator at least partly. The same source considers that the 75% figure given to the public and customers is overestimated by the company, the figures being in reality between 55 and 70% (for the period 2001-2004).[349] In addition, behind these averages there are significant regional disparities.

La Poste has set itself increasingly ambitious mail quality objectives to reach 80% of D+1 (according to the "1,000 days to improve performance" strategy announced in 2003), then with the *Cap Qualité Courrier* programme launched in 2004, which targeted 90% of mail delivered on D+1. The implementation of these objectives is supported by major investment in sorting automation.

On 1 October 2011, *La Poste* launched a new, cheaper mail service D+2 (the green stamp). It is part of the company's responsible development commitments to reduce its ecological footprint, since this delay allows metropolitan mail to be transported by other means than air transport.

Statistics on mail delivery times are fairly general, partial or discontinuous. The national regulator (ARCEP) has published data on the delivery times of the different categories of mail covered by the universal service. For its part, Eurostat published annual data on the speed of distribution of the universal postal service (domestic and international services) for the period 2004-2011 and on the percentage of letters distributed over time for the period 2012-2016. The table below gathers this information; data concerning the deadlines of the priority letter (D+1) published on the website of ARCEP are identical to those published on the Eurostat website, whereas the latter is supposed - by the title of its tables - to display the respect of deadlines for the whole universal service.

345. Jacques Batail, *Les libéralisations sectorielles : situations, perspectives, problèmes*, Contrôle général économique et financier (CGEFI), Secteur « Industrie et services », 1er février 2013, p. 19. In 2003, according to La Poste, the performance was 70% or 75% for the D+1 distribution to the population. (*Libération*, 23 novembre 2003)

346. Batail, loc. cit., 2013, p. 19.

347. Salaün, loc. cit. 2008, p. 311, 312 and 2012 annual activity report of *La Poste*.

348. Salaün, loc. cit., 2008.

349. Idem, p. 167.

RESPECT OF THE DEADLINE OF DELIVERY OF POSTAL UNIVERSAL SERVICE (% OF THE TOTAL UNIVERSAL SERVICE)

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Eurostat	75,7	79,1	81,2	82,5	:	:	83,4	87,3	87,9	87,4	86,7	85,5	84,9
ARCEP													
J+1				82,5	83,9	84,7	83,4	87,3	87,9	87,4	86,7	85,5	84,8
J+2									92,8	92,8	93,2	93,8	94,9
J+2 lettre recommandée					90,9	88,7	85,8	92,5	94,7	95,2	94,6	93,9	94,0
J+2 colissimo guichet					85	87,7	84,8	88,7	89,8	89,4	91	91,6	92,2
J+3 import				95,5	97	95,7	92,7	96	95,8	95,5	91,5	91,4	83,4
J+3 export				94,8	95,4	94,4	90,4	93,6	94,2	93,4	91,8	90,9	90,2

Meanwhile, *La Poste* has implemented a progressive approach to ISO 9000 and 9002 quality certification for mail centres. This standardisation effort is aimed in particular at reassuring the customer.

In relation to institutional clients, the national company has put in place quality contractual commitments, possibly including financial compensation for defaults.

Affordability

Postal service is one of the services whose provision has always had a commercial nature but whose economic profitability was not the main reason for its existence; therefore it was organised as public service or service of general interest.

Initially, postal rate was progressive, mostly according to distance; it was the recipient who paid, to the postman, the rate for the distribution of the correspondence addressed to him.

In 1848, based on the English model of the universal postal correspondence tariff, France introduced the single postal tariff, varying only by weight. Thus, a national geographical tariff equalisation for distance, with the postal tax paid by the sender, was set up. In this system of national solidarity through social, economic and territorial distribution, tariff equalisation is calculated so that areas that are difficult to access or profitable are assisted by other areas, to ensure universal accessibility.

This equalisation still exists today, but it is not made mandatory by the Directive and must be justified on grounds of public interest. In addition, the possibility of a contractual derogation from the single tariff was already applied in France well before the adoption of the Postal Directive, with tariffs adapted to volumes, service, etc.

In France, the 2005 law transposing the second postal directive reflected the affordable tariff requirement by setting the limit of 1 euro for the basic tariff (for a 20 gram letter). However, for the red stamp (D+1) this threshold will be crossed from 1 January 2019, since its value must increase from 0.95 euros to 1.05 euros (against 0.66 euros in 2014 - an increase of 59% while traffic has only decreased by 21%). According to *La Poste*, households are hardly affected by these increases since, on average, postal expenses represent around 0.1% of their total budget (around 44 euros per year, an average increase of 3 euros per year).

The tariffs of the universal service operator (*La Poste*) are subject to a four-year regulatory framework (2015-2018), with an average annual increase of 3.5 points above inflation (ARCEP Decision 2014-0841 of 22 July 2014).

In the competitive parcel market, services and prices have diversified as a result of the development of e-commerce.

Equal treatment

The principle of equality concerns several aspects.

In relation to users, as a principle of public service, equality implies the same treatment of users meeting the same conditions. For *La Poste*, while postal activity has long been governed by the principle of homogeneity of services provided (a mass production of standardised products), at present, the aim is to establish equity and the treatment of all "but taking into account the evolution and specificity of each individual's needs"[350].

This principle does not prevent differential treatment between categories of users (individuals and businesses) or particular commercial agreements with certain customers (for example, discounts for customers preparing the sorting, specific delivery conditions, etc.). In fact, on the one hand, the development of the commercial approach leads to an approach that offers more adapted and diversified services and products, even individualized and prioritised (for example, early delivery up to a deadline for certain institutional clients). On the other hand, the link between postal activity and urban policy objectives allows for specific treatment of certain sensitive areas[351], which present social problems, and therefore profitability for *La Poste*, as well as, sometimes, security.

The liberalisation process has led to the entry of new operators into the national postal market. Between 2006 and 2015, ARCEP authorised 27 operators (between 2 and 4 new authorised operators per year - we retain those who were still active in 2015), but most of them are developing activities in part of the national territory and only three (excluding *La Poste*) at national level (we do not include operators authorised for cross-border services). In addition to *La Poste*, the main operator on the national market is Adrexo, which originally developed into the market for the distribution of unaddressed advertising and free newspapers.

Nombre d'entreprises	**TOTAL**	0-1 employés	2-9 employés	10-19 employés	**20-49 employés**	**50-249 employés**	**Plus de 250 employés**
2014	**3 683**	3 307	266	55	**46**	**4**	**5**

Source : Postal and courier activities - Services by employment size class (NACE Rev. 2, H-N, S95)
http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do

The parcel market, which has been mainly outside the scope of regulation, has experienced sustained growth and competition, thanks to the development of electronic commerce. In addition to *La Poste*, express operators (historically oriented towards and between companies since they have high added value) and distance selling operators are active on this market. The new context of this market is leading operators to reposition themselves. Thus, former express operators are moving towards delivery to individuals, particularly for low-value goods (which led UPS to purchase the Kiala relay point network) or are entering into partnerships with relay point networks to deliver

350. Study report on « *système de valeurs de* La Poste », Direction de la communication Groupe *La Poste*, January 2005 in Delahaye, loc. cit., 2009, p. 206.
"The hyper segmentation of markets leads to multiple and diverse customer expectations. Serving millions of customers every day by customising our offer and our relationship is *La Poste* Group's first challenge" (Plan stratégique 2008-2012)

351. Yasmine Siblot, *Des guichets pour la banlieue ?*, La Vie des Idées, mars 2011.

packages in the event of a failed delivery. In turn, the networks of relay points that historically distributed their company's parcels (Relais Colis and Mondial Relay) are seeking to open their network to all remote sellers. Market development also favours new entrants, some to offer innovative services, others to maximize their commercial potential (this is particularly the case for large platforms such as Amazon, Uber, etc.).

La Poste has also adapted and diversified its offer of services for e-commerce, in particular delivery methods (relay, express, automatic lockers, by appointment, in the evening, collection of parcels from letterboxes).

Universal access

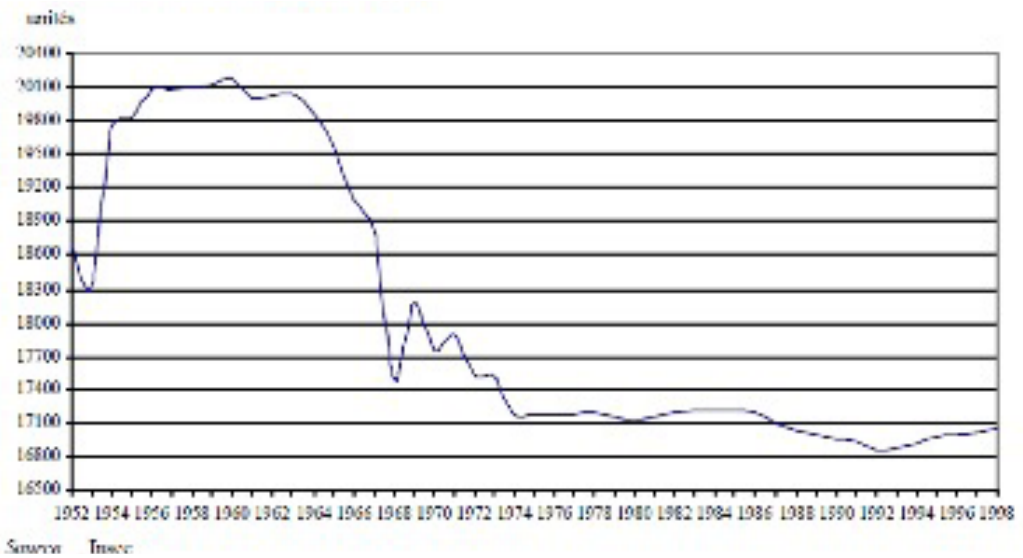
The notion of accessibility to public services can be broken down into several types of access: financial or tariff access (see affordability, above), physical and geographical access, time access, cognitive access, human access.

These different types of access are often interconnected. Thus, physical accessibility is linked to affordability as some geographical areas are less profitable than others, which can lead to excessive pricing if no solidarity system is implemented.

For distribution, universal access is achieved through postal workers and postal points. For the collection, it is carried out in particular by depositing in post office boxes and post offices but also directly with postal workers.

In France, post offices were first established in the kingdom's major cities (since the 16th century); then, in the headquarters cities of a post office relay (18th century); after that, a more systematic network of locations took place in each of the canton's main towns (during the first two thirds of the 19th century) and in the municipalities hosting the railway (late 19th - early 20th century). Since the last decade of the 19th century, two phases have coexisted: a refinement of the network by the installation of fully-fledged offices in towns with a certain economic, political or geographical characteristics; finally, the introduction of various types of ancillary offices in isolated or underserved areas, and in cities where a single office was not enough.[352] After the First World War, the distribution of post offices also took into account the degree of user traffic.

TOTAL NUMBER OF POST OFFICES



352. Richez, loc. cit., 2004, p. 32.

Although information available differs from one source to another, it can be concluded that this graph does not concern post offices but more probably the number of postal points. Thus, according to another source[353], the number of full-service post offices was 13,905 in 1960 and 12,357 in 1993, while the number of branch offices and postal agencies was just under 3,800 in 1970 and over 4,800 in 1993. According to the same source, at the beginning of the 2000s, 12,000 out of 36,000 French municipalities (one third) had a postal antenna. In any case, in the last decades of the 20th century there was a decrease in the number of postal points. The commercial approach developed since then seeks to take into account the needs of the public while placing increasing emphasis on the economic performance requirements of the postal network. This leads to the transformation of certain offices, to their placement under partnership management, to the rationalisation of their location, or even of their number; to the adaptation of the territorial postal organisation according to a division that is no longer exclusively administrative, facilitating the management of the network, but also commercial, according to the practices and uses of postal offices by customers and therefore of living areas, and increasingly in a service logic.

European statistics show the irregular evolution of the number of contact points for France and seem not to distinguish the different categories of contact points (the total number of postal contact points is not available). However, the reduction in the number of contact points offering a full service is visible and other national sources allow other transformations to be identified (below).

	2004	2005	2006	2007	2008	2009	2010	2011
Postal offices and agencies	17 052	17 113	17 066	17 068	17 082	17 082	17 079	17 024
Postal offices and agencies with full services	13 722	13 442	12 468	11 864	11 450	10 648	:	9 955

Source: http://ec.europa.eu/eurostat/tgm_grow/refreshTableAction.do?tab=table&plugin=1&pcode=post_ps_ac&language=en *(at 31 August 2018)*

These transformations have led to the development of local partnerships. In fact, in the early 1990s, local elected officials began to worry about the closure of post offices without local consultation. This led to the 2nd Plan contract between the State and *La Poste* ("Contract of objective and progress"), covering the period 1998-2002, providing for new methods of consultation, as well as responsibility, of territorial stakeholders with the establishment of a departmental Commission of territorial postal presence (CDPPT) in each department, to which is presented any significant evolution of the postal network. In 2007, a National Observatory of Postal Presence (Observatoire national de la présence postale) was set up.

Indeed, in France, before the implementation of the European postal directive, normative acts had not defined accessibility standards for postal points. But the directive requires that the density of contact and access points take into account the needs of users, while leaving Member States the freedom to choose the criteria for accessibility to postal points. Thus, some countries have defined a spatial criterion (distance to the postal point), others, such as France, a complex criterion of access time, weighting physical distance with the speed of travel on country roads or, on the contrary, queues at counters in urban centres and access difficulties in mountain areas.

Under the terms of the 1990 law, as amended, *"the universal service provider is required to organise its network in such a way that at least 99% of the national population and 95% of the population*

353. Larcher, loc. cit., 2003, p. 76, 77, 79, 80, 82, 89, 103.

of each department are within 10 km of a contact point, and that all municipalities with more than 10,000 inhabitants have at least one contact point per 20,000 inhabitants". Successive territorial postal presence contracts specify the territorial organisation and its evolution.

Partnerships with other public companies (and/or local authorities) aim to reduce the costs of public infrastructure. Thus, multiservice information points (PIMS) centralise a number of public activities (EDF-GDF energy, France Télécom telecommunications, SNCF rail transport and La Poste postal services) in a single location (local offices or agencies). Partnerships with local authorities usually take the form of municipal postal agencies, including shared costs for maintaining postal presence (services are maintained but the agent is paid by the town hall). Finally, partnerships with local businesses, to use them as warehouses, contribute to the continuation of certain postal and financial services. In addition, 'internal' partnerships are organised. Thus, a cost sharing is carried out with in the offices that offer financial services of *La Banque Postale*, which is a subsidiary of *La Poste Group*.

Before competition outside the postal sector intensified, some reports[354] had stressed the need to adapt the postal network to the demographic (urban congestion, rural desertification) and economic changes of the 20th century. The company's official figures confirmed this trend, highlighting the lacks in the urban postal presence, imbalanced spatial location, the demand for geographical proximity that is becoming the expectation for spatial and temporal accessibility. Thus, according to postal statistics, only 16% of the postal infrastructure is available to the urban population, which represents 60% of the French population.[355] In addition, major social issues are concentrated in certain urban areas. In 2017, *La Poste* carried out an analysis of the 20% of offices located in sensitive social areas, which receive 37% of customers and have specific dysfunctions (above-average absenteeism, tensions and incivility). Subsequently, an agreement was reached with four trade union organisations (CFDT, FO, CFTC and CGC) to introduce specific compensation for customer representatives in the 1,700 offices concerned (1,000 euros per year for the first three years), which would attract staff to work in these offices.

Jean Launay, author of a report in January 2015 on the conditions for maintaining public services in the territories and the contribution that *La Poste* could make to them, proposed transforming post offices into "*maisons de service public*" (public service houses). The law on the new territorial organisation of the Republic (law NOTRe) established the development of "*maisons de services au public*" (MSAP) and departmental plans to improve the accessibility of services to the public as means to increase physical accessibility to services.

Since the early 1990s, the adaptation of postal presence was accompanied by the modernisation of the space[356] and the reception of customers within the offices and the development of new services and facilities to enhance the commercial potential of the remaining post offices.

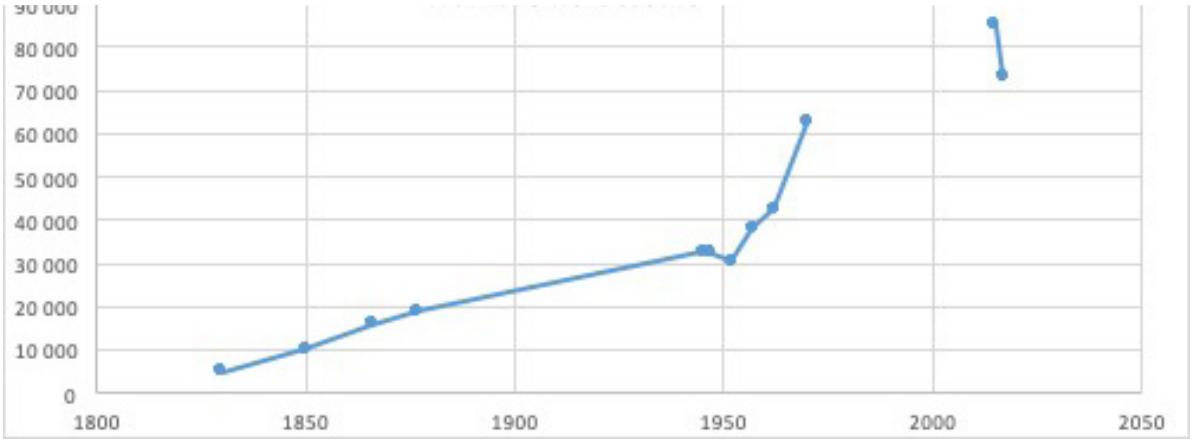
These changes also have an impact on the number of factors affecting *La Poste* (see graph below). While *La Poste* has increased the hiring of postmen in recent years (1,800 in 2016, 4,700 in 2017 and more than 3,000 hires announced in 2018) to cope with the increase in parcel volumes, this does not entirely replace retirement.

354. Bergougnoux et al, loc. cit., 2000, p. 186.

355. Delahaye, loc. cit. 2009, p. 209, 210.

356. For example, in the old configuration, about 80% of the office space was dedicated to technical and administrative services, 15% to counter staff, and 5% to clients. In the new configuration, administrative and technical services have been relocated and the commercial space occupies at least two thirds of the office space. Cf. Céline Merlin-Brogniart, *L'innovation dans les services publics : le cas de La* Poste, Thèse, Université des Sciences et technologies de Lille, 2004, p. 191.

NUMBER OF POSTMEN



The adaptations also apply to drop-off mailboxes. 130,000 units were registered in the late 1960s, 156,000 in 1979 and then dropped to around 136,000 in 2000. Arcep[357] began publishing mailbox figures ("yellow boxes") in 2004. From 2006 onwards, published statistics show an increase in the number of post office boxes. Then, in 2013, more than 1,000 street mailboxes were removed[358], a decrease of less than 1% in the number of mailboxes (compared to a decrease of nearly 6% in mail volume in 2013). *La Poste* explains (see Arcep) the reduction in their number by better accounting (previous overestimation) and a rationalisation policy (replacement of small capacity boxes by a smaller number of larger capacity boxes). In addition, the reading times for mail deposited in the boxes have been modified (change to one reading per day, and earlier in the day).

EVOLUTION OF THE NUMBER OF MAILBOXES (2004-2016)

2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
140 500	140 500	140 500	147 343	149 793	149 208	148 366	144 610	141 646	140 331	138 849	136 930	134 707

Source: Eurostat (for the period 2004-2011); La Poste for ARCEP (for the period 2012-2016)

In the competitive market, it was in the 1990s that distance selling operators (3 Swiss by the Mondial Relay subsidiary, La Redoute by the Sogep subsidiary, Kiala) opened the first "withdrawal points" to ensure parcel distribution outside the postal network, too. In 2006, these two merchants had more than 7,500 points of withdrawal among small merchants, placing, according to Sogep, more than 85% of the population within 5 km of a point of withdrawal. This network was also opened to other brands and, in 2006, it was estimated that approximately 15% of the parcels sent following distance sales were delivered via these brand points or stores. In the context of the development of electronic commerce, competition and the number of withdrawal points have increased. Spaces accessible 7 days a week and 24 hours a day have also been set up (*La Poste* was the first to experiment them, but their accessibility is subject to schedules today; competing operators are starting to set up these continuous withdrawal spaces).

Time access covers several dimensions around the weekly and daily schedule depending on services.

The EU postal directive requires the availability of universal service at least 5 days a week. France

357. Source *Observatoire de l'activité postale* created in 2005 by ARCEP on the basis of the law of 20 May 2005 on the regulation of postal activities: https://www.arcep.fr/index.php?id=8838

358. Between 1875 and 1914, the number of mail boxes doubled to 84,000 on the eve of the First World War. (Oger, loc. cit., 2000)

has chosen to maintain a service over 6 days but with reorganisations on other aspects (tours, offices, jobs, work, etc.). Historically, and under very different communication, social, cultural and economic conditions from those of today, France had set up a distribution service seven days a week (it was introduced in 1832 and became effective throughout the country in 1864). Sunday service was gradually abandoned only after the First World War.[359]

With regard to daily collection and distribution, for more than 100 years (1880 - 1980 and later) a distinction was made between the single daily service in rural areas and several distributions and lifts in large cities. Today, multiple daily distributions are only made under commercial agreements.

Cognitive access is less recognized and studied. It is linked to cultural, social and financial barriers that hinder access to the service or the fulfilment of a right. Overcoming these types of obstacles requires specific service adjustments, sometimes with specific financial costs, time and training. Competitiveness and productivity sometimes bring constraints that may sometimes increase obstacles (automation, reduction or rationalisation of contact times with users).

User rights

Since the end of the 1980s, the term "customer" has replaced the term "user" in official and managerial speeches and his image has accompanied the growing commercial approach. The 1986 Favre report[360] stressed *La Poste*'s "incomparable network of personalised and permanent contact" and the need to go beyond the too anonymous and impersonal administrative approach to solicit, welcome and even seek user as customer. Then, the Rocard circular of 23 February 1989 contained a section on the "reception and service policy for users".

Thus, since the 1991 change in the Staff Regulations, *La Poste* has developed a long process of reconsidering the status of citizens and users and adapting its commercial activities to their needs and requests, which should guide services it provides: renewal of contact methods with the end of glazed windows and commercial reorganisation of offices, diversification and, where appropriate, personalisation of services, commercial offers, introduction of commercial methods in order to fully understand the "customer need" at the counter[361], etc.

Customer satisfaction is affirmed and it structures technological, managerial, organisational and work modernisation.

Requests from large mail-issuing customers, which may be subject to competitive bidding, are handled separately. For example, in 1999, a "business mail customer service" was set up to handle their complaints; in 2003, it created a call centre and an indigo telephone number (individuals had to send their requests to their post office).[362] *La Poste* has also set up an internal ombudsman who can be called upon if the user's complaint has not received a satisfactory response from the consumer service. *La Poste* is the only French postal operator to have set up a second internal remedy to resolve users' complaints. If the user is not satisfied with the Ombudsman's solution to his complaint, he may refer it to ARCEP.

The protection of the environment

Environmental protection creates constraints on the use of paper and, therefore, on materialised mail, which should be limited in order to meet the objectives of waste reduction. La Poste's 2015

359. Richez, loc. cit., 2004, p. 32.

360. J. Fabre, *L'avenir de la Poste*, séances des 24-25 juin 1986, Rapport, Direction des journaux officiels de la République française, Paris, 1986.

361. OQVQ : où, quoi, valeur, quand (where, what, value, when) ; OQVQD : où, quand, valeur, quoi, délai (where, when, value, what, delay) ; OQVQF : où, quoi, valeur, quand, fréquence (where, what, value, when, frequence).

362. Salaün, loc. cit., 2008, p. 204.

programme *Réinventons le Courrier*, identifies three breakings, including the ecological revolution, which includes actions such as the National Transport Plan.

At the same time, product segmentation and specialisation within *La Poste* have disruptive effects at the level of service relationships and the multiplication of postmen for the same address in the same day.

As noted by a study: "A corporate customer can indeed have, on the same day, the visit of five separate agents of *La Poste*: during the morning delivery, with a first postman, during a later delivery of registered mail with a second postman, during the delivery of a package by a *Chronopost* agent, during the distribution of a package by an employee of the *Coliposte* agency and during the mail collection by a third postman in the afternoon".[363]

In addition, *La Poste* may not be the only supplier or distributor of mail and parcels, which further multiplies the effects on the environment and has challenging consequences on the development of competition. At the same time, one would expect that the decline in mail volumes would also attract some decline in transport journeys, even if operators multiply. Especially since restructuring efforts increasingly integrates environmental and social issues (CSR, quality, electric vehicles, cycling, dematerialisation, recycling, etc.).

The compensation of public service and universal service obligations, the increasing role of local authorities

In France, the compensation of public and universal service obligations is part of the public operator's long-standing relationship with the state.

For a long time, postal and telecommunications services were organised within a central administration. Therefore, they were mostly subject to self-financing requirements. In 1969, the postal and telecommunications accounts were separated and the requirement for self-financing was lifted in 1970 with the possibility of borrowing to meet investment needs.

Since 1991, when *La Poste* changed its status and became *exploitant public*, it has been required to maintain financial equilibrium and relationships with the State have been governed by a multiannual planning contract that sets financial objectives, gives tariff visibility and provides for the State's financial contribution. Public aid can take various forms and is also governed by European law.

In 2010, the transformation of *La Poste* into a public limited company lifted its obligation for financial balance and gave the State the right to dividends.[364]

In the context of the reduction in mail volumes, but also of the relative increase in competition on various postal markets and in various forms, distortions between the tariffs of *La Poste* and the costs it has to bear to ensure public service obligations are increasingly mentioned.

It is therefore the question of the financing of public service obligations by public authorities (in addition to financing through tariffs paid by users and customers) that appears, whereas these services were traditionally self-financed.

In the context of the adoption of the first postal directive, a French parliamentary report of 1997 put "for the first time" a figure on all the charges in the general interest assumed by *La Poste* without compensation.[365]

363. Salaün, loc. cit., 2008, pp. 215, 216.

364. The 2015 strategic plan foresees that the dividend distribution rate to the State and the CDC will be increased from 25% to 36%.

365. Three billion euros per year is 100 times the net income of La Poste group as a whole in 2002, twice the amount of shareholders' equity, and also 17% of turnover. Larcher, loc. cit. 2003, p. 138.

But, in 2000, another report noted that, at the end of the 1990s, financial flows between the state and *La Poste* were "more or less explicit" and "the available evaluations of costs and their coverage by the State remain highly questionable".[366]

Some considered that the reduction in the scope of reserved sectors achieved by the liberalisation process could not allow "maintaining the economic balance of the general interest service in postal field if it would not be accompanied by adequate measures to compensate for the cost of general interest obligations".[367] However, competition has not increased significantly on these markets; it is more external competition from other means of communication that has affected the economic balance of the former reserved sector. At the same time, various forms of compensation are allowed by the EU law (compensation funds, authorisation procedures, including individual licences). And, the 1997 Directive had admitted, within the reserved services, the possibility of cross-subsidisation between profitable and less profitable sectors.

In France, compensation varies according to the missions concerned.

The universal service is financed by *La Poste* users and does not benefit from public compensation, except for the distribution of the press. According to forecasts, for the first time in 2014, *La Poste* mail business would not be sufficient to finance the universal postal service.[368]

The law of 20 May 2005 (article 15) provided for the possible creation of a universal postal service compensation fund managed by the *Caisse des dépôts et consignations*. The activation of this fund is to be decided by decree, following a request from *La Poste* and a public notice from ARCEP; it should also take into account the conditions laid down in Article 9 of Directive 97/67, which provides for the existence of an unfair financial burden borne by the universal service operator. Only authorised operators operating in the field of universal service, including *La Poste*, should be required to contribute to it. This fund has not been activated until now.

Even if 22,000 of the 32,000 rural municipalities have never had a post office and are served solely by the postman's visit, the presence of postal points in the other 10,000 municipalities, plus sorting centres and transport links, generate additional costs to compensate. Thus, with regard to territorial postal presence, a new approach of territorial responsibility and less national solidarity is emerging with the setting up of the national postal fund for territorial equalisation, a mechanism for distinguishing within *La Poste*'s accounts public aid allocated to its spatial planning mission.[369] This fund was set up by the Postal Regulation Law of 2005. A multi-year tripartite agreement signed between the State, *La Poste* and the most representative national association of mayors supervises its implementation. The departmental territorial postal presence commissions determine postal infrastructures (contact points) threatened with abolition by *La Poste* and whose maintenance can be subsidised by this fund. While initially this mission was the sole responsibility of the State, local and regional authorities have gradually been involved in the decisions and financing of this mission. Thus, the exemption from local taxation enjoyed by *La Poste* is covered by this fund and other local resources may contribute to it. The local tax allowance rate is set annually by decree, after ARCEP has assessed the net cost of the mission. In addition, municipalities may have to make an additional contribution (for example, to pro-

366. Bergougnoux et al, loc. cit., 2000, p. 182.

367. Lombard, loc. cit., 1998 p. 716.

368. *Le nouveau contrat de présence postale territoriale est arrivé !*

369. A decision of the European Commission of 26 May 2014 relating to the compensatory provisions of the spatial planning, transport and press distribution tasks assigned to *La Poste* recognises the spatial planning task entrusted to *La Poste* Group as an SGEI. Decree No. 2011-849 of 18 July 2011 specifies the method for calculating the compensation for spatial planning missions.
In 2012, a Commission decision had declared OSU's compensation in France compatible with state aid rules. On the other hand, in 2014, the ECJ ruled that the French State guarantee for *La Poste* was incompatible with State aid rules.

vide premises or pay an agent to provide local services at the counter).

The CSNP noted in a 2017 opinion that the spatial planning public service mission had been under-compensated by the state in the last decade, which limited investments of *La Poste*, particularly in digital technology.

THE BUDGET OF THE NATIONAL POSTAL FUND FOR TERRITORIAL EQUALISATION:

- 170 million euros (2011-2013)
- 510 million euros over 3 years (170 million euros per year) for 11,369 contact points, including 10,190 in rural areas[370] (2014-2017[371])
- For 2016, ARCEP estimated the net cost of the regional development mission at 223 million euros, which has been falling steadily since 2009 (288, 269, 247, 252, 251, 242, 238 million euros)
- La Poste's expenditure for the regional planning mission:
- ARCEP: 252 million euros in 2012, 269 million euros in 2011 and 269 million euros in 2010
- The territorial postal presence contract for the period 2017-2019 provides for 75 million euros to be allocated for the development of digital accessibility (compared to 45 million euros in the previous territorial postal presence contract).

To avoid excessive compensation, other avenues have been explored: seeking profitability by reducing costs (for example, in terms of employment or by pooling costs within public service companies), diversifying activities or developing activities to offset the decline in mail (parcels through e-commerce).

The transformations of the national operator status in the context of the liberalisation of the European market

From central public administration to exploitant public

In 1990, the Quilès reform was introduced in France (law 90-568 of 2 July 1990[372]) to enable PPTs "to fulfil their traditional public service missions and to be present on new and competitive activities". This transformation was also in response to the Community recommendation to separate the regulatory function from the operational function.[373]

To this end, a statutory change in the public monopoly was made, which gave the postal operator (and the telecommunications operator separated from it under the name France Télécom[374]) institutional autonomy as "*exploitant public*", a public law status (administrative, close to *EPIC*). It had no share capital and was placed under the supervision of the Ministry in charge of Posts and Telecommunications and other competent authorities.

The statutory transformation made by the 1990 Law became effective on 1 January 1991. From now on, La Poste has been subject to commercial accounting, its relations with suppliers and customers are governed by private law and it has been given the possibility of recruiting contract staff under

370. A CSNP's opinion (available, in French, here - avis) showed that the 10,000 smallest contact points concentrate barely 6% of the activity and 10% of the total turnover generated in the network.

371. According to the territorial postal presence contract signed on 16 January 2014 between the State, the AMF and *La Poste*.

372. Later amended by the laws n°2005-516 of 20 May 2005 and n°2010-123 of 9 February 2010.

373. G. Larcher, loc. cit. 2003, p. 139.

374. Later, *La Poste* joined forces with a private operator to provide mobile telephone services (see below).

private law, even if the status of civil servant, deeply simplified and adapted to the professions exercised (see below), were maintained.

These flexibilities were intended to facilitate the evolution of the national company towards a more commercial approach. Thus, the new status and strategy as public operator have enabled *La Poste* to increase its turnover and profitability (from 5.7% in 2005 to 6.9 in 2007). In addition, *La Poste* was required to maintain a financial balance and was entrusted with a number of tasks in the public interest.[375]

From exploitant public to limited company (Groupe La Poste): in relation with the Europeanisation and internationalisation, precursor to the privatisation?

In 1997, the possibility of transforming the public operator *La Poste* into limited company with majority of public shares was considered by Gérard Larcher's first report on *La Poste* as "a way for the postal operator to conquer a global position".[376] In this sense, in 2000, he co-signed, together with other senators, a legislative proposal[377] on the procedures for transforming *La Poste* into a public limited company with majority public capital, while guaranteeing the maintenance of the staff regulations. In 2000, the Bergougnoux report[378] also raised the question of maintaining *La Poste*'s status as *exploitant public*, which "does not seem to be a sufficient response to the challenges facing the company. To enable *La Poste* to participate in the current wave of restructuring in Europe, the question of maintaining its status could arise and lead the State to move towards the solution chosen by many countries and transform the undertaking into a limited company with public capital".

Then, a new report by Gérard Larcher noted that "currently, only social capital can guarantee sustainable postal development, the necessary management autonomy, solid alliances, and the economic and social unity of the operator"[379]. It added: "For France to keep its full place in the European and global postal landscape, there must be a postal revolution (...) How to implement offensive international external growth strategies, in messaging, for example, with the status that we have today?".[380] And in 2003, in a third report, Senator Gérard Larcher deplored the risks of maintaining *La Poste*'s "administrative status": "This is no longer the time to conquer a major position on a global scale. It is no longer time to follow a German-style strategy that was still within reach in 1997. (...) Today, the priority is to take measures to avoid a European "shrinkage" of our postal operator".[381] The Court of Auditors expressed the same view: "if it does not succeed in radically changing the situation, *La Poste* will have lost all its chances of joining the small group of few operators that will remain in Europe tomorrow."[382]

In 2008, the Ailleret commission, which was set up by President Nicolas Sarkozy to consider the various possible development paths of the undertaking, insisted on the "affirmed European dimension" for the future of public companies. It prepared the statutory change of *La Poste* into public limited company with 100% public capital[383], a change that took place by Law No. 2010-123 of 9 February 2010 on the public company *La Poste* and postal activities.

375. Decree No. 90-1214 of 29 December 1990 also lays down the provisions of La Poste's specifications.

376. Gérard Larcher, *Sauver La Poste. Devoir politique, impératif économique*, 1997.

377. Proposal of law n°104 (2000-2001) on 25/11/2000 regarding the national undertaking *La Poste*.

378. Bergougnoux et al, loc. cit. 2000, p. 189.

379. Gérard Larcher, Rapport d'information sur les Actes du Colloque « Postes européennes : libéralisation et service public, entre mythes et réalités » organisé par le Sénat le 20 juin 2001, p. 6.

380. M. Pierre Hérisson, membre CCSPPT dans Larcher, loc. cit. 2001, p. 39.

381. Larcher, loc. cit., 2003, p. 139.

382. Cour des Comptes, 2003.

383. In October 2010, Caisse des Dépôts reached an agreement with the Ministry of Finance to become a 26% shareholder of La Poste, with a right of veto and control over the public company's strategic choices.

According to an analysis by the central government, the move towards limited company status ("and the possible opening of capital"[384]) is linked to liberalisation. First, the status of limited company makes it possible to avoid the "principle of speciality" specific to *exploitants publics*, which impedes the diversification of activities. Secondly, the new Staff Regulations "dismantle the criticism" of the European Commission that a public operator would benefit from an implicit guarantee from the State, which would distort competition (see the contentious launched by the Commission EDF, La Poste, etc.). Finally, the status of limited company allows "an opening of capital", and therefore "in particular to raise funds useful for modernisation, diversification and internationalisation, and to establish capital-intensive partnerships."[385] However, it should be noted that until 2018, no decision concerning the privatisation of *La Poste*'s capital was actually considered. The profitability of the public company has been ensured and it is moving towards diversification and internationalisation to ensure its continuity and development (see below).

The change in status met the opposition of trade unions, who saw in this decision the end of the public service and "the madness of expansion".[386] They organised a broad consultation and mobilisation against this statutory change (2.3 million signatures of citizens collected), which would also have repercussions on employment and internal culture.

For the management of the public company, this change was necessary to ensure the reduction of the debt (6 billion at the end of 2008) and investments allowing its internal and external growth and acquisitions during 2009-2012.

In 2015, the State was 73.68% shareholder of the group, the rest of the capital being held by Caisse des Dépôts et Consignations (CDC). In July 2018, the merger between CNP Assurances (the leading life and health insurer in France) and La Banque Postale, a subsidiary of La Poste, was confirmed. This would lead to an increase in La Banque Postale's capital in CNP and, in return, an increase in Caisse des Dépôts's capital in La Poste, which could reduce the State to the status of a minority shareholder. The operation aims to develop the diversification of La Poste's income and to create a "genuine semi-public banc-assurance company".387

OTHER SIDES OF THE INCUMBENT OPERATOR'S REFORM

The European liberalisation of postal services has transformed the models in force and European postal services. The former state administrations or similar public entities have been led to evolve towards a status enabling them to enter a competitive environment, whether by accompanying or anticipating the liberalisation process.

In the context of Europeanisation, Europe is seen by some as "the new privileged space of French growth".[388] From 1991 onwards, and throughout the implementation of the liberalisation process, *La Poste* engaged on a major transformation that affected not only its status, but also its organisation (concentration, devolution, management by business line and no longer by territory, national

384. Jacques Batail, *Quelle concurrence pour le secteur postal et quels effets*, Contrôle général économique et financier (CGEFI), Secteur « Industrie et services », 28 juillet 2012, p. 11.

385. Batail, loc. cit., 2012, p. 11.

386. Les syndicats de la Poste dans un rapport de force, *Libération*, 10/12/08, Catherine Maussion.

387. S. Wajsbrot, L. Steimann, L. Thévenin, « Le rapprochement entre CNP assurances et L Banque Postale est enclenché », Les Echos, vendredi 13, samedi 14 juillet 2018.

388. Michel Camdessus, *Le sursaut : vers une nouvelle croissance pour la France*, Paris, La Documentation Française, 2004, p. 141.

services, service mergers[389], shortening of hierarchical lines, streamlining of structures, subsidiaries[390], etc.), its management, its positioning on European and world markets (below), the diversification of its products and activities (below) and its relationships with users and customers.

Enlargement of La Poste's scale of operation on European and global markets

In the context of the liberalisation of the European postal market, *La Poste*, like other major European postal operators before it (in particular KPN/TNT, Deutsche Post, Post Office), has launched strategies and actions aimed at gaining new market shares and new markets, and extending its scope of intervention to European and even global markets.

La Poste, through the creation of specialised parcel subsidiaries[391], the acquisition of companies or networks, partnerships with private operators and other European Posts, the acquisition of private competitors and merger projects, as well as product diversification, business segmentation and market share gains, is seeking to position itself sustainably in the new competitive environment and improve its profitability in the context of declining mail volumes.

Diversification of activities and current priorities: from "public service" towards "the world of services"

While the internationalisation and Europeanisation of La Poste primarily concern the postal activity provided by the company at national level, its development also requires a policy of diversification of its products, activities and services. The 2003 Larcher report noted that *La Poste*'s "multi-business character is one of its main strengths" and that "*La Poste*'s particularly extensive presence in the country will probably give it the capacity to expand the market as well as to take part in it".[392]

La Poste's history has seen a transition from a mail transport business to activities that make up the entire mail chain (collection, transport and distribution), from mail to parcels, from the distribution of the press and advertising, from postal mandates to diversified and enhanced financial services (particularly after the creation of the subsidiary *La Banque Postale* in 2005[393]), from the physical circulation of information flows to the integration of new technologies and the development of new services around the Internet world.

La Poste's main asset is the material and human network covering the entire territory in all its diversity and likely to have daily human contact with each inhabitant. The specificity of the recent period, linked to the liberalisation of the postal sector, lies in the fact that the diversification strategy has taken a new turn, based on its original and unique network.

La Poste's aim is to focus "on growth drivers, on activities that we believe make sense for *La Poste*,

389. cf. Yves Redon, Mario Viviani, « Secteur public : Des PTT à la Poste et Orange », colloque: « CFDT, 1968-2018 : Transformer le travail, transformer la société ? Des luttes autogestionnaires au réformisme », Lyon, March 2018.

390. Richez, loc. cit. 2004, p. 31. In 2001, the group had 200 consolidated companies, see Mr Martin Vial, President of the French Post Office in Larcher, loc. cit., 2001, p. 84.

391. Parcel has long been La Poste's second largest business in terms of turnover, behind mail and at national level the public company was the largest courier operator.

392. G. Larcher, loc. cit., juin 2003, p. 59.

393. As the successor to La Poste's postal cheques (CCP) and financial services, La Banque Postale was authorised to offer all real estate loans (including those without prior savings), and then obtained authorisation in 2007 to make consumer loans in competition with institutions active on the credit market. Previously, La Poste was prohibited from becoming a banking operator. Since its creation, many associations with French banc-assurance organisations have enabled La Banque Postale to broaden its product range and become a sustainable division for La Poste Group. In addition, La Poste is the only company to offer a universal banking service and to allow the most vulnerable to use the Livret A savings account as a current account.

linked to the activities of postal workers (...) who are able to focus on the world of services".[394] These transformations aim to place *La Poste* at the forefront of French proximity human services companies, supported by digital technology[395]: silver economy (e.g., "Looking after my parents" program[396]); passing theoretical driving licence exams; energy transition; urban logistics; mobility; deliveries (carrying meals, delivering groceries, medicines and dry cleaning, *colissimo* on demand); e-health; personal health record; installation of digital boxes; collection of materials to be recycled or data (job offers, surveys); taking pictures of small disasters or of road conditions; monitoring of small railway stations.... Thus, for the company's representatives, the postal worker of tomorrow will no longer be just a referent of a letter district but a referent of a service district, mail being a part of his job. This transformation seeks to give a future to postmen profession and to maintain the existing human network of postal workers. Moreover, a decade ago, a study noted that "in the representations of very many heads of establishments and agents [of *La Poste*] (...) the activities (...) linked to the mail (...) now benefit only from the symbolic prestige linked to the company's historical core business".[397] In fact, in the face of the decline in mail, the creation of postal banking already offered *La Poste* Group an economically more solid business, while at the same time meeting the need for a universal banking service. And unions have played an important role in preventing, as has happened in other countries, the separation within post offices of financial activities from other postal activities.[398]

This diversification also implies a new economic model, different relationships with users.

EMPLOYMENT: "LA POSTE" BECOME A "GROUP", CONTRACT JOBS REPLACE CIVIL SERVANTS

The postal sector appears to be an industry that relies much more on labour than other sectors, which generates high fixed costs.[399] As a result, the transformations brought about by liberalisation have been likely to have a significant impact on employment: the number, the statutes, the management methods and the social dialogue.

In France, for more than a century, most of the employees in the postal and telecommunications sector were employed by the central administration in charge of the PTTs and the entities under their authority.[400] Thus, until the 1990 reform of the PTTs, most of the branch's staff had a public law status as civil servants, even if their number had experienced strong historical variations (see statistics).

The condition of stable statutory employment begins to be disrupted once the process of statutory transformation and liberalisation has begun.

Thus, in 1990, the transformation of *La Poste* into a public operator led to a new classification of personnel functions and new rules, as well as diversified personnel management methods. In fact,

394. Contrôle général économique et financier (CGEFI), *Quelles clés pour réussir leur transformation et moderniser leur gouvernance ?*, Actes du colloque du 31 mai 2016, p. 14.

395. La Poste being the (or one of the) leading professional smartphone networks in the world.

396. Service of one, two or six visits per week for the elderly or fragile people for families, for carers.

397. Salaün, loc. cit., 2008, p. 159.

398. Tract CFDT, F3C, « Quel avenir pour le grand public ? », Juin 2007 ; Tract FO Com, Postes, « Les postiers ont droit à la vérité », Juin 2007 et Tract FO Com, Postes, « Réforme ou coup de grâce ? », Juin 2007 dans Vézinat, 2013, p. 5.

399. "More than 80% of our added value is represented by personnel expenses. That is 300,000 people. We are the largest company in terms of staff size in France." cf. M. Martin Vial, President of *La Poste* in Larcher, 2001, p. 84.

400. On this subject, Armand Bizaguet refers to 83% of the branch's workforce in 1983.

as a public operator, *La Poste* was authorised to recruit staff on private law employment contracts, which led to the diversification of employment status.

Towards the end of the 1990s, in the context of the implementation of the reduction of working time to 35 hours, the recruitment of staff on fixed-term contracts took on a certain scale, which was however mitigated by disputes requiring them to be converted into permanent contracts.

At the same time, *La Poste*'s cost-cutting policies have sought to reduce staff numbers by partially replacing retirements[401], increasing the renewal of employment by contract workers, reducing training and intensifying work[402]. The use of temporary agents or partial subcontracting of urban distribution was also considered, according to similar practices from foreign private operators.

Ageing and massive retirements (almost a third of the workforce in the 2000s[403]) have facilitated change. Thus, since 2001, *La Poste*'s contract agents have represented more than a third of the total workforce and nearly half of postal workers since 2005 (compared with 9.6% in 1991). Wages represented 60.5% of *La Poste*'s total costs in 2012 (all activities included, not just postal activities that require a larger proportion of the workforce).[404]

The remuneration and career system specific to contract workers is lower than that of civil servants for the same position. Thus, the massive recruitment of contract workers, the increasing use of atypical forms of employment and short-term employment contracts have led to some lower-quality jobs.[405] This situation was taken into consideration by the legislator, which, by the law of 20 May 2005, extended to *La Poste* the measures reducing social security contributions on low wages enjoyed by private companies (art. 24).

According to some trade union representatives[406], the speed of change is greater than adaptability capabilities, which explains the increase in discomfort, employees' concerns about the future, the loss of orientation, difficult working conditions and the increased number of suicides.

Directive 97/67 requires the Commission to submit regular report on its application in the Member States. This report must also include useful information on the development of the sector, including the social aspect (art. 23). However, the directive does not specify the main lines of this reporting and, in general, it is the structure of employment that is monitored. Social transformations in this sector would require further analysis. Moreover, Regulation 2018/644 on cross-border parcel delivery requires parcel delivery service operators to provide the national regulatory authority of the Member State in which they are established with information on the number of persons who have worked for them, including breakdowns by professional status, in particular the number of those working full-time, part-time, temporary or self-employed.

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401. The reduction in headcount is not as pronounced in *La Poste* Group's other business lines as it was at *La Poste* (in 2010, 3.7% for the group compared with 4.7% at La Poste). As for the total number of "French" postal operators authorised to operate by Arcep, the overall number of employees is also falling, at a rate similar to that recorded for *La Poste*. Batail, loc. cit., 2012, p. 10.

402. For example, at the level of postal workers, this has resulted in longer rounds, an increase in the average number and weight of distributed objects. Cf. Salaün, loc. cit., 2008, p. 256.

403. According to Patrick Bourgeois, Federal Secretary of the CGT-PTT in Larcher, 2001, p. 68. A report in 2013 confirmed that La Poste has lost nearly 100,000 jobs in ten years. According to Viviani (Viviani et al, 2018), this is done in the context of the « *Cap Qualité Courrier* » program to solve the company's debt and profitability problems. In 2008, the renovation of mail delivery and processing required the establishment of 48 industrial mail platforms capable of handling 5 million mail pieces per day, the closure of 60 sorting centres and the elimination of one-third of the workforce between 2002 and 2013.

404. WIK-Consult, *Main developments in the postal sector 2010–2013*, *Country reports*, Report for the European Commission, 2013.

405. Salaün, loc. cit. 2008, p. 614.

406. Viviani, loc. cit. 2018.

The statutory status of postal and telecommunications staff has traditionally been reinforced by the importance of unionisation; but it could be transformed by the social changes at work, even if, since 1990, trade unions have been involved in social negotiations.[407] This issue is all the more sensitive as liberalisation and unequal competition in the sector, as well as the diversification of employment status, raise new questions in social regulation.

In France, social regulation is covered by the branch collective agreement provided for by the law of 20 May 2005 (art. 26) establishing the ad hoc joint committee bringing together employer representatives (Syndicat des opérateurs postaux) and employee unions. The agreements signed so far concern the modalities of negotiations, the integration of people with disabilities and gender equality (the number of women in the sector has increased).

REGULATORY AUTHORITY

The liberalisation process has also changed the nature of regulation in the postal sector to meet the requirement of separation between the regulatory function and postal operators provided for in the Postal Directive 97/67 (Art. 22).

France complied with this requirement late, after an appeal by the European Commission to the ECJ for failure to transpose the Directive. Some national representatives were of the opinion that a regulatory authority was of little interest "as long as competition remains marginal in the field of mail itself".[408] In December 2001, France set up a universal service ombudsman (decree 2001-1335), but the Commission has indicated that this authority, which has no coercive powers, cannot meet the regulatory requirements, which are exercised by the Minister, in addition to the supervisory activities over *La Poste*. Following the infringement procedure launched by the Commission, France complied with the Community obligations and by the Law of 20 May 2005 extended the powers of the Telecommunications Regulatory Authority (ART, created by the Law of 26 July 1996) to the postal sector. ART became the Telecommunications and Postal Regulatory Authority (ARTP), then the Electronic Communications and Postal Regulatory Authority (*Autorité de régulation des communications électroniques et des postes* - ARCEP).

Like many other Member States, France has opted for a multisectoral regulator, which does not, however, cover the audiovisual sector. The authority has decision-making powers (in particular for issuing authorisations), to express its opinion on aspects concerning the organisation and functioning of the postal sector, financial powers (for example, to determine the pricing of the universal service) and powers to ensure that operators comply with regulatory obligations.

It is composed of seven members for a six-year mandate. The President is appointed by decree by the President of the Republic. Two members are appointed by decree of the President of the Republic. Two members are appointed by the President of the National Assembly and two by the President of the Senate. The composition of the college must respect parity between women and men (excluding the president). ARCEP's powers do not cover the entire postal sector or all of La Poste's obligations or activities. They are limited to the universal postal service and the functioning of the market for letter mail, which has been the subject of the process of opening up to competition under Directive 97/67/EC (in particular the granting of authorisations for operators entering this market and access to the universal postal infrastructure and letterboxes). ARCEP also deals with complaints from postal service users that could not be resolved through the procedures put in place by authorised postal service providers.

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407. Moreover, it was stated as early as 1974 that « the [statutory] individualisation of the PTT function will make it possible to lighten the traditional civil service of some 350 000 agents who, by their mass and the strength of their demands, often currently have a significant training effect on the rest of the civil service », CAEF, Z 17 191, 1974, Établissement public, Position des PTT, « Sur le personnel de la Poste », p.57.

408. Jacques Guyard, president of CSSPTT, deputy of Essonne, in Larcher, loc. cit. 2001, p. 52.

Public service obligations relating to regional planning conferred on *La Poste* (territorial postal presence) fall within the remit of ARCEP only as regards the assessment of the cost of this mission. As for postal activities other than the regular collection, sorting, routing and delivery of postal items, they are governed by competition law and not by postal regulation. Similarly, La Poste's financial activities do not fall within the competence of ARCEP.

SYNTHESIS: FRANCE AND THE EUROPEANISATION OF PUBLIC SERVICES

The elements gathered in this monograph make it possible to work out the strategy (-ies)[409] of the Member State "France" in terms of the Europeanisation of public services.

Just as France has been active and driving force in European integration since the aftermath of the Second World War (it is enough to mention Jean Monnet or Robert Schuman among the "founding fathers"), so much so in terms of the Europeanisation of public services - services of general interest - France has rarely been driving and proactive.

The strategy was first defensive, whether it was during the 30 years that separated the 1957 Treaty of Rome from the 1986 Single Act, when it promoted the thesis of maintaining national competences for each of the areas concerned, or during the period following the Single Act, which saw it trying to block any proposal for European rules based on the internal market - in electricity until 1996, for postal services until 1997, or for rail transport by not seizing the potential for transnational cooperation and the cancellation of SNCF's debt opened by the 1991 directive (91/440) and by refusing to consider freight on the one hand and high-speed trains on the other hand as public service mission on the absurd grounds that this was a "profitable" activity.

But gradually, we have seen the emergence of another strategy consisting in exploiting the possibilities of Europeanisation in favour of French interests and operators, as we saw with the 1990 "transit" electricity directive, using the "internal market" logic to develop EDF's exports.

Then the strategy was more offensive around the objective of promoting the "French champions", their European deployment, in the context of European liberalisation. Thus, France did not limit itself to defending EDF's interests in the electricity sector as best it could, but organised the merger of Gaz de France and Suez - now Engie, to form a second major French-based group - in the same way as the water and sanitation sector in which Veolia and Suez dominate the world market - which could claim to be part of the European oligopoly shaping the market with the German groups RWE and E.ON.

Very quickly France organised the change in the status of its national champions, in order to turn them into "companies like any other", multinational service companies, with certain public service missions, public service or universal service obligations, which some consider to be a legacy from the past much more than a solid foundation for their development.

409. A strategy is never deductible, because to state it clearly would deprive oneself of any room for manoeuvre, negotiation or bargaining. These are multi-stakeholder processes, the result of which must make it possible to respond as closely as possible to the expectations and aspirations of each participant while providing benefit for all.

These strategies have been defined and deployed in increasingly limited settings. From the 1950s to the 1980s, *Commissariat général du Plan* set up a whole series of commissions bringing together all stakeholders - from senior administration to trade union organisations, company managers, researchers and academics, representatives of civil society - to give themselves time for plural analyses, hypotheses or scenarios, preparing frameworks for often consensual decision-making. Now, much smaller networks concentrate strategic thinking, with an increasing weight of senior officials closely intertwined with political decision-makers, with in particular the role of ministerial cabinets.

In France, there is an extreme centralisation of the definition of strategic choices of European breadth, with the SGCI (General Secretariat...), now SGAE (General Secretariat for European Affairs), the Permanent Representation of France to the EU, the key role of "Bercy", which has brought together the Ministries of the Economy, Finance, Industry, Energy, a network of several hundred senior officials from the Financial Inspectorate, the Court of Auditors, major technical *corps*.

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Compared to other European countries, it appears that France has experienced rather "temperate" liberalisations over the last 20 years. There has been no overall challenge to the fundamental characteristics of public rail transport, electricity and postal services, but a series of one-off challenges:

- Trends towards the degradation, both quantitative and qualitative, of rail transport, freight having been more affected than passenger transport.
- The essential achievements of the electricity public service have been maintained, even if fuel poverty has worsened.
- The public postal service is facing increasing profitability and disengagement, but the debate remains open about the future of its network.

These aspects, which have been scarcely smoothed against the threats, are due to a combination of factors: the attachment of the French people to public services and their achievements, trade union mobilisations, local authorities and civil society organisations to resist the most significant challenges.

However, the trend towards increasing degradation requires more than just defensive measures. It would probably be necessary to start from the diversity of situations and needs on the ground to rebuild the public service of the 2020s.

This would involve developing dynamics based on the systematic organisation of the expression of individual and collective needs, in all their economic, social and territorial diversity, at each territorial level, from local to European level, in order to engage, drawing on the immense potential of digital technology:

- the establishment of an inventory of the diversity of territories in terms of physical, human, social and territorial geography,
- the identification of transport and mobility, energy and communication needs,
- on this basis, the redefinition of missions and objectives to provide effective responses to each type of need,
- adjustments to the organisation and regulation methods by adapting them to the missions and challenges,
- adaptations of human and material resources to missions,
- reconfiguration of financing methods to ensure that needs are met,
- democratic participation of all stakeholders in evaluating and adapting services.

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