Multi-level and democratic Governance, to co-produce 21st century Public policies

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How to meet the increasingly complex and uncertain challenges of the 21st century?

It can no longer be done with mechanisms based on exclusivity and extreme centralization of public authorities and essentially top-down governance.

The communication aim, both theoretically and from empirical situations in the European Union, to explore a virtuous circle of Governance (cf. Annex) based on the one hand on the combination of different levels of public authorities - from territorial to Europe - (multi-level), on the other hand, on the democratic participation of all the actors concerned.

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Shared powers and responsibilities

Given their function – meeting the needs of inhabitants, citizens and of each community – public policies are rooted in local areas. They adapt to local realities, their governance is part of the global governance of societies, and is particularly linked with urban governance and development. At the same time, they integrate local specificities, structure regions, create networks between places, and connect the local and the global.

Overall, there is a general trend towards the sharing of powers and responsibilities between different levels of government, and between different institutions in each country and region, though differences exist in the intensity, scale and sectors of these interactions. This sharing of authority may be vertical or horizontal, inter-sectoral, or some combination of all three dimensions. Thus, in Europe, public policies are increasingly subject to *multi-level governance*.

For instance, the key actors in solid waste management include central governments (through the environment ministry or agency, and other government agencies with varying degrees of executive responsibilities), sub-national and local authorities. Planning responsibilities generally fall under the jurisdiction of central authorities, with the exception of Italy, Netherlands and Germany, which assign waste planning to the regions, provinces and the 16 *Länder*. In some countries, sub-national authorities have responsibility for establishing regional waste strategies. Sometimes this results in a lack of coherence among different government levels and may lead to lack of clear sector policy guidelines for municipalities.

The European Union is increasingly promoting approaches of "multi-level governance," to take into consideration local and national diversity and differences, by opening up decision-making processes to new actors. This includes local and regional authorities after the creation, by the Maastricht Treaty, of the Committee of Regions, the consultative body representing sub-national authorities (i.e. local and regional) in the EU legislative and decision-making process, and the recognition of these authorities by the Lisbon Treaty.

For the Committee of the Regions, multilevel governance means *"coordinated action by the European Union, the Member States and local and regional authorities, based on partnership and aimed at drawing up and implementing EU policies. It leads to responsibility being shared between the different tiers of government concerned and is underpinned by all sources of democratic legitimacy and the representative nature of the different players involved. By means of an integrated approach, it entails the joint participation of the different tiers of government in the formulation of Community policies and legislation, with the aid of various mechanisms (consultation, territorial impact analyses, etc.)". The Committee has stated that "in the policy fields where the European Union does not have explicit responsibility but where Community policy does have an effect, such as housing policy and large segments of services of general interest, multi-level governance is a tool which enables the cross-cutting nature of these fields to be seen and makes it possible to transcend an overly rigid interpretation of the*

division of responsibilities in order to reach common objectives whilst maintaining due regard for the constitutional and administrative diversity of the respective Member States". "*The concept of multilevel governance (…) has the capacity to counter negative trends in relation to devolution*" and "*ensures that all levels of governance cooperate in making decisions and exercising powers.*" Therefore, the Committee has affirmed its "*intention to develop an EU Charter on Multilevel Governance.*"

At regional and local level, a variety of entities are involved in water policy making. The institutional architecture can be more complex at metropolitan level due to the creation of metropolitan-wide governance mechanisms. For their part, local governments have responsibilities for water resources and water-wastewater supply (including the operation and maintenance of infrastructure, metering, billing) through which they implement a variety of policy aims (reduction of water consumption and energy use for water delivery, prevention of water system infiltration and disruption, etc.).

Organizing the expression of citizens' and users' needs

The first step is systematic organization of the expression of the needs of each citizen and user and their evolutions, including their complaints - which makes it possible to fill somewhat the information asymmetries which exist between them and the public authorities - by using in particular the extraordinary interactive means of digital;

The effective governance requires the organization of the changing needs of citizens. By combining different levels of organization and facilitating a democratic debate with citizens and users, solutions can be found to ensure that needs are met.

The sole purpose of basic public services is to meet evolving public needs. With this in mind, organizing systematically the expression of the needs of each user, as well as of social groups and the public service personnel that make service work, is essential. This expression of needs must be decentralized so that it is as close as possible to those who live and feel citizens' expectations. All available means, including consultations and public debates, formal expressions of needs, complaint handling, election of users' committees, should be employed to meet this objective.

Methods of participation vary by country, and may take the form of open meetings of local councils, referendums, online debate and feedback, public meetings, and public consultations.

Defining alternative solutions and organizing public debates

Organize public debates on the different public policies and organizational solutions to address the issues raised;

Meeting users' needs requires the consideration of a range of technical, economic, sectoral, inter-modal solutions, their advantages, disadvantages and costs.

Local governments of several European countries organize public debates on these alternatives with interested parties: users, operators and their staff, and elected officials.

Still, the participation of all stakeholders may extend as far as the use of consultations or decision-making referendums, as is done in Italy. In this country, water services were traditionally provided by the direct public operation of networks, regional planning of infrastructure and a high level of subsidies for investment. In the last decade, water management system saw far-reaching reforms and the Law n° 36/1994 instituted a compulsory association of municipalities (an inter-municipal agency) within each new management unit (ATO – 'optimal territorial units') to ensure a vertical integration of responsibility across the whole urban water cycle and a single operator for all services. The Law Decree n° 135/2009 imposed compulsory competitive tendering and the termination of all in-house management models. However, on 19 July 2010, Italian citizens asked, through the Italian Forum of the Water Movements, for a referendum on water.

At the referendum of 12 and 13 June 2011, the necessary quorum was attained (57% of the population with the right to vote), and 95% of the voters participating in the referendum voted to repeal the rules allowing the management of local public services to be entrusted to the private sector89 as well as regulations governing the determination of the water service tariff based on an adequate return on invested capital.

Defining appropriate areas and organizing authorities

Determine the relevant area and the most suitable mode of definition and organization of each public policy (organizing authorities, who are responsible for clearly define the objectives and missions of each public policy, the specific rules and standards to which they are subject, developing interactions with other levels of public action and ultimately deciding) ;

Multi-level governance implies the development of cooperative relationships and partnerships between stakeholders, the definition of appropriate geographical area of each service or task and, on that basis, the establishment of "organizing authorities" for basic public services. Organizing authorities do not have exclusive responsibility for service provision; rather, they are tasked with coordinating the links between all relevant stakeholders.

This is how, for instance, important reforms regarding the organization and regulation of water services have been undertaken in Spain and the Netherlands:

- In Spain, water resources fall within the jurisdiction of the central State (Ministry of Environment, Rural and Marine Environment and Water Directorate). The National

Water Council plays an advisory role in water planning (national and basin plans). At basin level, the management of water resources (planning, construction and operation of major water infrastructures, quality monitoring, inspection, etc.) falls within the jurisdiction of a basin agency, which also plays an important role in determining the framework for the provision of water and sanitation services. In some situations, water management competence belongs to Autonomous Communities. The provision of water services is the responsibility of municipalities and local entities, which may organize their provision either through a municipal public company, an inter-municipal cooperation, or concessions to mixed or private companies. In fact, Spain is one of the few EU countries where the management of water services is largely delegated to private operators.

- In the Netherlands, water management is in the hands of five different levels of government: the central government, the provinces, the 25 regional water authorities or *Waterschappen* (there were 2500 in 1945) the municipalities and water companies. Water boards are important institutions as about one quarter of the country lies below sea level. They are public decentralized bodies (with their own elected representation and taxation powers) and are the oldest democratic institution in the Netherlands, with elected executive councils dating back to the Middle Ages. The chair of the executive committee is appointed by the central government. Their regulatory power is limited to water (dams, canals, water purification, etc.). The sector is characterized by vertically integrated regional monopolies and the management of water production, distribution and supply is undertaken by a single operator. Drinking water may only be supplied by approved companies; operators other than water supply companies are prohibited from supplying drinking water to households. Due to the specific characteristics of the drinking water supply sector, the need to guarantee quality, public health and security of supply, there is currently no competition in the sector and no rules allowing third party access to the network. Operators, regardless their legal status (most are private companies) must be owned by public authorities (mostly provinces, water authorities or municipalities). The multi-level structure of water management has also led to numerous water charges which are mostly set on a cost-plus basis and vary significantly by region. The Interest-Pay-Principle ensures that all relevant stakeholders participate in decision-making regarding water management. In 2011, the Administrative agreement on water affairs was signed by all government tiers and the drinking water companies. With this agreement tasks and responsibilities are further clarified. The national government is responsible for policies on national water safety and fresh water supply. The provinces are responsible for policies on regional water management and safety, ground water and drinking water. The regional water authorities, or water boards, execute water safety measures and the operation

and maintenance of the water safety infrastructure. They are in charge of wastewater treatment. Municipalities are responsible for the collection and transport of wastewater, rainfall and excess groundwater. Drinking water companies are responsible for the treatment and distribution of drinking water. The 2011 agreement has spurred regional cooperation between municipalities and water boards in the synchronization of investments and the operational management of the wastewater chain and its infrastructure, in order to enhance efficiency and quality and limit vulnerability.

Combining and converging levels, "self-government" and solidarity

Converging public action from micro-local to European level in a non-hierarchical way to combine self-government, subsidiarity *and* solidarity is a challenge in which national governments continue to play a crucial role. The challenge is to combine "self-government," subsidiarity and solidarities.

In its Communication on the Economic and Monetary Union (EMU) of 30 November 2012, the European Commission defines two fundamental principles of multi-level governance: "democratic legitimacy as a cornerstone of a genuine EMU needs to be based on two basic principles. First, in multilevel governance systems, accountability should be ensured at that level where the respective executive decision is taken, whilst taking due account of the level where the decision has an impact. Second, in developing EMU as in European integration generally, the level of democratic legitimacy always needs to remain commensurate with the degree of transfer of sovereignty from Member States to the European level."

The emphasis on the "self-government" of local authorities and the implementation of the subsidiarity principle can lead to rivalries between levels, uneven development, and growing discrepancies in service outcomes. Multi-level governance does not imply competition between regions or between actors; rather, it involves developing mechanisms for them to collaborate, and building solidarity by linking levels and projects. This requires the participation of all stakeholders, allowing them to express their expectations and needs, to ensure open, public debate, and to propose alternative solutions, strategies and choices. On these bases, public authorities have essential responsibilities in decision-making, prioritization, and arbitration.

EU cohesion policy also offers some examples and lessons in this respect, as it has established a framework for multi-level governance (based, in particular, on partnership and complementarity). A general tendency towards multi-level governance is developing, but it takes different forms and patterns according to the characteristics of each sector, as well as varying according to national histories and traditions. The trend is not yet stable.

Democratic stakeholder participation

Crucial to the success of any model is a public system of regulation, based on the democratic participation of all stakeholders. This marks a move from regulation by "experts" to regulation by "actors". There is an increasing acknowledgement of the necessity to involve all stakeholders, not just public authorities and service operators, but also consumers (domestic and industrial users, both large and small), citizens, local authorities, elected officials, staff, and trade unions. Due to their diverse experiences, all these actors have much information at their disposal that the organizing authority and the regulatory agency lack. Their expectations and demands are rooted in their diverse experiences. Bringing together all stakeholders to engage in debate, dialogue, and negotiation, is a means of reinforcing the regulation and governance of services of general interest.

Within the Council of Europe, an Additional Protocol to the European Charter of Local Self-Government was adopted 16 November 2009 concerning the right to participate in local authority affairs. It entered into force on 1st June 2012. The right to participate in the affairs of a local authority consists in the right to seek to determine or to influence the exercise of a local authority's powers and responsibilities. It requires taking legal and other measures to facilitate the exercise of, and give effect to, this right. The protocol also requires that measures be taken to ensure that the ethical integrity and transparency of the exercise of local authorities' powers and responsibilities are not jeopardized by the exercise of the right to participate.

Organize the democratic evaluation of effects of public policies in order to have a feedback and to make the necessary adaptations.

The use of specific indicators to evaluate public policies is being developed at national and local level, some of which are made public and/or involve the direct or indirect participation of service users.

Public authorities and elected officials play an essential role in organizing the evaluation and control public policies to ensure their adaptability to changing needs. Without removing the responsibilities of choice, arbitration, and decision-making from public authorities and elected officials, the decentralized expression of the needs and expectations of users gives them a better knowledge of the challenges they face and the choices on offer.

At the same time, public authorities must assume the ultimate responsibility for defining the objectives of each public service, implementing the best ways to achieve them, and organizing and evaluating results and adapting the decisions they take accordingly.

These initiatives and responsibilities, to be carried out successfully, require commitment to the complementarity of "top-down" and "bottom-up" approaches, to democratic participation, co-definition, co-production of Public policies.

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ANNEX

The virtuous circle of Governance of Public policies

Partnership
process of
elaboration
Bottom-up

Relevant territory
Pilot organising
authority

Adaptation to
changing needs and
preferences of users

Organising
cooperation
and partnership
with all levels
and actors

Evaluation

Non hierarchical
relationships
between levels
and actors

Multi-actors
regulation

Implementation
as close to the
citizen as possible
Proximity