

GOVERNANCE OF PUBLIC-PRIVATE CORPORATIONS IN THE PROVISION OF LOCAL ITALIAN UTILITIES

Giuseppe Grossi

ABSTRACT

This work proposes to examine the governance structure of public-private corporations that manage local utilities (water, energy and multi-utility) in Italy. The objective is the verification, from a qualitative point of view, that the governance structure adequately guarantees the reconciliation of interests of different categories of shareholders (public and private), as local public service corporations increase their own shareholding basis by involving financial and industrial shareholders who bring with them both financial and industrial interests. The work shows that the corporate governance structure is one important tool in the end of the public owner in order to steer and control the public and private corporations.

INTRODUCTION

During the last 15 years, the public service sector in UE countries underwent enormous change. One of the most notable initiatives has been the externalization of public services through corporatization, contracting out, public and private partnership (PPP) and privatization of activities and entities not at the core of public administration (Torres and Pina, 2002; Dexia Crediop, 2004). All these initiatives are part of New Public Management (NPM). Definitions of NPM vary, but it often involves downsizing, privatisation, corporatization, competition and devolution (Hood, 1991; Walsh, 1995; Pollitt and Summa, 1997; Gruening, 2001; Reichard, 2002; Wollmann, 2004). Increasing use of market-like mechanisms and the growth of public/private partnerships (PPPs) of various public services in the UE, have blurred the boundaries between the public and private sectors (Pallot, 1999; Lane, 2000; Ryan and Ng 2000; Bovaird, 2004).

The Italian local utilities sector is undergoing a process of reform that is significantly modifying its structure and regulations of function, as well as the forms of management of the corporations which operate in it (Grossi and Mussari, 2004). Community pressure, the evolution of technologies and markets, and the general perception of inefficiency and ineffectiveness of public intervention are forcing two types of change: the progressive liberalization of the sector and the transfer of company property to private entities. The transformation to joint-stock companies and the gradual use of private capital have significantly modified the ownership of corporations in which, for the last century, ownership and management coincided. The opening of the ownership structure has required modifications in the mechanisms of corporate governance of public companies - the representation of new categories of shareholders.

This paper proposes to analyze whether, and in what measure, modifications should be made to the corporate governance structure of Italian local utilities corporations in order to guarantee the participation of different categories of shareholders (public or private). It will examine the structure of governance of public-private corporations that manage local utilities which are part of FederUtility (Italian Federation of Water, Energy and Other Utilities). Utilizing a formal structure, we will investigate the modalities of the establishment and functioning of the two principle managerial bodies, the Shareholders' Assembly and the Board of Directors, verifying the existence of procedures that regulate the functioning of these corporate bodies. The objective is to verify, from a qualitative point of view, whether the structure of governance adequately guarantees reconciliation of the interests of the different categories of shareholders (public and private), as local public service corporations increase their own shareholding basis (which can involve shareholders with financial, as well as industrial interests). Examination of the corporate governance structure of these corporations could cast light upon a substantial disparity between the powers attributed to the public shareholder of control and the residual powers held by other shareholders, due to golden share mechanisms.

The empirical study was conducted on a significant sample of public-private corporations operating in Italy, specifically, those operating in the utility sector (water, energy, etc.). The data was gathered through document analysis conducted on primary sources available at corporations and institutional bodies: Borsa Italiana SPA for listed corporations, Chambers of Commerce, and statutes and agreements between partners. To supplement the data thus gathered, a questionnaire on ownership and governance structure was administered to the aforementioned corporations. In order to analyze the procedures of governance adopted by each company, the structure of *corporate governance* was mapped, concentrating attention on two principle bodies of governance – the Shareholders' Assembly and the Board of Directors. In this way, we attempted to reconstruct the level of representation of different categories of shareholders attributed to each type of corporate governance structure. Utilizing the representation level as a tool to measure the degree of reconciliation of corporate interests, a scale was developed to compare systems and identify basic, common trends.

THE ADVANTAGES OF PUBLIC AND PRIVATE PARTNERSHIPS

The development of the externalisation of public services is based on different local government managerial solutions (i.e. institutions, foundations, associations, corporations, etc.). In this article, we will focus on public-private partnerships (PPPs). This method has become an important development in many European countries. According to Bovaird (2004) public-private partnerships could be defined simply by "...any working arrangements based on mutual commitment (over and above that implied in any contract) between a public sector organization with any organization outside of the public sector. Consequently, they will embrace public sector partnerships with both business and organizations in civil society (including community organizations, voluntary organizations and NGOs)" (p. 200). Managers in many public sector areas including education, energy supply, health, and water supply are concerned with PPPs

Bovaird (2004) presents three advantages of partnerships: economies of scale, economies of scope, and opportunities for mutual learning between partners. In theory, partnerships have the potential to increase resource efficiency, making better use of existing resources by reducing duplication and sharing overhead. They can add value by bringing together complementary services and fostering innovation and synergy (i.e. being able to develop a product with characteristics that would not have been available without a PPP). Finally, partnerships enable access to new capital (Dussauge and Garette, 1999; Doz and Hamel, 1998).

To explain the development of public services externalisation, several aspects must be taken into account: the financial aspects, and the political aspects. First, local governments have the opportunity to transfer financial responsibilities to their partners, notably in the case of the construction of major infrastructures - thanks to the outsourcing of public services. Indeed, one of the explanations is the negative combination of increasing public funds, economic slack (faced by most of the EU countries at present), budget constraints, and some weak possibilities of resorting to the tax system. Furthermore, for a public entity, a partnership with a private entity could be a means to gain access to private capital for massive investment, as well as to gain access to the expertise of these companies. Especially in highly technological sectors, the know-how and control of technical constraints by private entities can be advantageous to local governments. For example, "the exponential rise in interest in e-government has driven governments to work more closely with private companies in the ICT sector" (Bovaird, 2004, p. 201). Moreover, the outsourcing of public services can be a means by which local governments improve the economic efficiency of some of their services (i.e. when external costs are less than internal costs, or increased returns to scale, etc.) (Walsh, 1994). PPPs provide, in theory, a better risk allocation between partners.

Secondly, the decision to externalise public services cannot be a unilateral decision made by politicians; user expectations and public service needs (i.e. security, quality, quantity) must be included in the decision making process. Externalisation should be the solution to reconciling the different interests of internal and external shareholders. It becomes necessary to link the financial aspects of outsourcing choices with a pragmatic vision of their consequences - for both users and politicians. The goal is the improvement of the quality, performance and cost of the services. Thus, it is critical that each partner precisely define which type of partnership he will be involved in (Broadbent and al. 2003, Vaillancourt Rosenau, 1999).

There is an important diversity of meanings behind the general term PPP. As Bovaird (2004, p. 213) notes, "...this term differs greatly even greatly within a single country, never mind between countries and between public management systems and business systems". Linder (1999) examines the multiple meanings that the term, public-private partnership assumes in contemporary discussions. Linder presents six distinctive uses of this term: "Each use makes a claim about what partnerships are and conveys an understanding of their intended purpose and significance" (p. 42). Lowndes and Skelcher (1998) provide arguments about the growth of multi-agency partnerships which confirm this typology.

The creation of partnerships with public entities has positive ramifications for the local administrative partner, particularly when it is a corporation that is active in the services sector. In fact, in this case, beyond the possibility of reaching an adequate remuneration of invested capital, the industrial partner is usually interested in developing strategies of alliance in order to strengthen its own market position by enlarging its user base and realizing processes of specialization and economies of scale. The partner rationalizes this use of resources in order to reach higher levels of efficiency. Through partnership with one or more local governments, the corporation realizes, above all, an “earning” in terms of social legitimacy, along with a possible improvement in its market position.

In the Green Paper on public-private partnerships and community law on public contracts and concessions dated April 30th, 2004, the Commission of the European Communities proposed a broad definition of PPPs, as a widely-accepted definition of PPPs does not exist in Europe. The Commission of the European Communities states that “the term PPP is not defined at the Community level” (2004, p. 3). The PPPs often refer “to forms of cooperation between public authorities and the world of business which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service” (p. 3). However, this definition covers a large range of possible structures. Furthermore, the definition of PPP differs depending upon the country, which increases the difficulty in precisely defining PPPs.

In order to overcome these problems, the Commission makes a distinction between PPPs (p. 9): on one hand, “PPPs of a purely contractual nature, in which the partnership between the public and the private sector is based solely on contractual links”, and on the other hand “PPPs of an institutional nature, involving cooperation between the public and the private sector within a distinct entity”. This first category is close to the English PFI or the French delegation of public services. However, Institutionalised Public and Private Partnerships (IPPPs) involve the establishment of an entity held jointly by the public and the private partners. Local governments often utilize such structures to provide public services such as water, gas or energy.

IPPPs can be seen as the most developed form of PPPs because they involve the creation of a separate legal entity. The development of IPPPs mainly concerns lucrative sectors such as water or energy, as noted in France, Germany, or in Scandinavia (Greve, 1993). They also tend to develop in new UE member states (such as Poland and Hungary), but also in Africa and in some American and Japanese cities. However, there have also been different experiences with IPPPs in non-lucrative sectors such as social, recreational and cultural services. The financial aspects of IPPPs cannot be the only reason for their establishment and development. They are also a way for politicians to modernize existing managerial models and to conciliate private financing and public expertise while keeping direct control over the execution of services. The local government can be the main shareholder and control the main corporate bodies (such as the CEO, Board of Directors and Shareholders’ meeting).

An example of institutional partnership, the public-private corporation, is an ideal center for potential conflict between partners. Conflict may arise when social value – the satisfaction of needs in the administered community – is not adequately reconciled with

economic value – which should not necessarily be ascribed solely to the pursuit of profits. This does not mean that public and private interests are always in opposition and thus un-reconcilable; however, the creation of a system of governance and adequate planning is critical to accomplish each partner's objectives and to build rapport among partners.

CORPORATE GOVERNANCE OF PUBLIC AND PRIVATE CORPORATIONS

The concept of corporate governance is certainly broad and fragmented. It presents purely “practical” aspects and quite unitary theoretical dimensions. From the “applicative” point of view, the theme can be substantially traced back to attribution, within a certain corporation, of management functions (and of the connected responsibilities), as well as to implementation of “control” mechanisms over the activity of the same bodies on the part of the partners and, in different measure, of the other shareholders. From a theoretical standpoint, beginning in the 1990s, the same theme became the subject of many academic studies across multiple disciplines. The principle lines of research activity can be identified with reference to the functioning of stock markets and their impact on internal corporate management dynamics, or rather to the characteristics of corporate organizational structure and their effect on the “functioning” of the corporation.

In particular, scientific debate on the theme of corporate governance, from an economic perspective, has produced numerous definitions (Monks and Minov, 1995; Tricker, 1993; Dimsdale and Prevezer, 1994; Charkham, 1994; Lanno, 1995). These vary not only in relation to the theoretical basis used for framing the theme, but also in relation to the typology of a corporation and the geographical and cultural context of the authors involved. It is precisely these aspects or attitudes that define the sphere of investigation of a determined scientific discipline, as well as the precise category of corporation. Furthermore, these attitudes influence the theoretical bases for the analysis of the functional internal systems of a corporation, which reflect upon the current co-existence of diverse ideas and theories. Using the OECD definition as a starting point, it therefore appears possible to identify the system of corporate governance within the whole of the rules and procedures that discipline the functioning of the corporate bodies, delineating the roles inside the overall management process (from the definition of strategies and objectives, to the realization of the operative activity aimed at their achievement, to monitoring and control of the obtained results) which contribute to defining the sphere and breadth of the responsibilities of those who operate within the corporation as “interest holders” (OECD, 2004).

To confront the theme of corporate governance in local utilities corporations, it is necessary, above all, to clarify the boundaries of the investigation in terms of a typology of corporations. Like all corporations, those which supply local public services are complex systems - from both an organizational and functional point of view. In fact, within them, still more corporate bodies operate, each dedicated to specific functions, of which the activity is, on the whole, aimed at the creation of shareholder value. These corporations need a “system of functioning” which allows them to effectively pursue their own missions. The system should be defined by taking into consideration the

corporation's "internal" variables (particularly its decision making processes and operative characteristics), as well as the effects produced by the network of relationships that the corporation establishes with the other bodies operating within the same environment; in other words, the "norms" which regulate the context of reference to which the corporation must conform.

In particular, the shareholders (or "interest bearers") must be identified, as well as those who bring the capital (with constraint of risk or credit) and other resources (works, goods and services) necessary for the realization of the production process. Additionally, the receivers of the output produced by the corporation, the local community, should also be identified. Creating value for shareholders means not only guaranteeing an adequate remuneration of all the factors involved in the production process, but also realizing, through qualitatively and quantitatively adequate services, satisfaction of the particular needs of the local community. In fact, the citizens claim the right to receive a certain level of performance from corporations, thus exercising an "indirect" type of control over them through the choice of the entities or individuals (subjects) that are called upon to cover the political duties within local governments. These subjects, apart from the possible involvement of local government in the capacity of corporate owner, must guarantee satisfaction of local community needs through tools that can determine the assumption of a specific role within the system of governance of the corporations that provide public services.

For this reason, the relationship between the public service corporation and the community it supplies presents the peculiarity of involving, in the capacity of representative, the LG in the territory of reference. Thus, one must take into account the dual role assumed by public partners within the sphere of the local service corporation: owners of the corporation - subjects which participate more or less directly in the share capital of the corporate body, and guaranteed subjects – who, in the interest of the community, offer services according to technical, qualitative and economic standards which follow national and European Community regulations (Pallot, 1999). Already oriented to recent EU legislative changes, LGs have entrusted the production and supply activities of "economically relevant" public services to legally autonomous subjects. For this reason, preparation of these services involves many subjects, each invested with specific roles and among which relationships of "inter-dependence" exist. These relationships obviously reflect upon the internal governance structure of the corporation.

In general, with particular reference to the factors which influence this structure, it is possible to identify some characteristics of "rigidity":

- the modality of entrustment of legal ownership of the services prescribed by the national normative (public tender or direct assignment, according to the typology of the subject which is entrusted with the production of the services),
- the ownership structure of the public service corporation over which the LG is able to exercise control,
- the definition of the normative instruments of regulation of the relationships between the public service corporation and the LG (service contract), or rather the national discipline on the theme of corporate bodies, with particular reference to the norms relative to the models of administration and control (typology, functions and responsibility of the corporate bodies) to be applied

whenever the public service corporation is organized in the legal form of a joint-stock company.

Nevertheless, different areas of autonomy also exist. There is the possibility to define - through autonomous choices - the contents, characteristics and intensity of the relationships between LGs and public service corporations. In particular, we refer to the choice relative to the type of subject (corporation 100% publicly-owned or public-private corporation) to which responsibility for production and supply of services will be transferred. This choice is derived from consideration of both the economic and political character of the entity's corporate management connection, relative to the LG's degree of suitable direct legal involvement. Also considered are the possible forms of involvement of the private sector that the LG intends to promote. In particular, whenever the corporate connection of the corporation involves subjects with differentiated interests, it is necessary to achieve an adequate balance of power, which is immediately reflected in the governance structure of the corporation. For example, statute provisions or contract stipulations, which have as their objective the modality of appointment of the corporate bodies (particularly the administrative body), specify the breadth of the proxies conferrable to one or more administrators, as well as the modalities and mechanisms of control on the part of the partners in relationship to accomplishment of particular operations such as right of veto or the expression of opinions of acceptance (in the case of determined management choices).

In 2003, new measures related to the planning of corporate governance in public service corporations were introduced. Additionally, Italian joint-stock companies' corporate rights were reformed. Both occurrences impacted the choice of legal structure of the administrative and control systems to be adopted. Since both the functions attributed to the social bodies, as well as the mechanisms for exercising the activity of control over their operation differ, the adoption of the traditional model rather than the dualistic or monistic one is directly translated into the structure regulating the relationship between social bodies and partners.

ITALIAN EMPIRICAL EVIDENCE

The investigative sample

The empirical investigation of local public service corporations' systems of governance operating in Italy was conducted with specific reference to the corporations associated with FederUtility - the Italian Federation of Corporations operating in the sector of water and energy supply founded in 2005 by the "fusion" of two associations, Federenergia and Federgasacqua. The considered corporations are classified by FederUtility among 295 corporations associated with FederUtility.

Sixty-four corporations (approximately 22% of the corporations associated with FederUtility) were public-private corporations. Of the 64 corporations contacted, 45 corporations (approximately 70% of the total number of effectively mixed corporations) were included in the study. In some cases (approximately 30% of the cases), the participation of local governments in social capital is higher than 99% and the 19 corporations were excluded from the study. When present and possible to acquire, we

analyzed the Statutes and Agreements between partners. With these documents, it was possible to identify - beyond the characteristics of the administrative and control systems related to the functions of the corporate bodies - the modalities of regulation of relationships between public-private partners.

The predominant legal form of the corporations in the sample is that of joint-stock companies (43 out of 45 corporations). The corporations were located mainly in north-central Italy (in particular, Tuscany, Lombardy, Piemonte and Emilia Romagna). Homogeneous characteristics were identified which allowed us to group the corporations based on typology of the entities involved in the corporate partnership:

- 9 corporations in the sample are listed on the stock exchange and carry out the role of parent company in a large-sized corporate aggregation specializing in the management of local public services;
- 25 corporations are associated with, to varying degrees, at least one of the listed corporations just identified and are included in the consolidated report of the parent company;
- in 6 other cases, the partnership involves different listed corporations from the 9 public service corporations included in the sample, or rather corporations that are not quoted but that are, however, part of the corporate group;
- the remaining 5 corporations are associated with corporate bodies that are not involved in group structures, rather they are associated solely via a position or an individual.

In some cases, the transformation of corporate bodies of public capital was followed by merger processes among corporations operating in the local public services sector. In others (24%), the companies were constituted ex-novo into the form of mixed capital corporations. In most cases (73%), the corporations considered in the study assumed their current public-private corporation configuration after transformation processes of already existing 100% publicly-owned corporations. In few cases (4%), the corporations considered their current configuration after transformation processes of already existing 100% private-owned corporations.

Ownership structures and relationships between partners

Analysis of the equity composition of public-private corporations was carried out for “homogeneous” groups of companies, based on typology of the entities involved in the corporate partnership.

Regarding the 9 corporations listed on the Stock Exchange, the average participation of LGs is approximately 59% of the equity; in some cases this participation is held indirectly, through corporations controlled by LGs. Shareholders with large holdings (other than LGs) have on average about 3% of the equity. Corporate statutes impose maximum shareholding limits for all entities different from local governments or other types of publicly-controlled entities. The average value of the quota of floating capital on the market is equal to around 35% of total capital. In only one case did the local government hold an overall amount of less than 50% of the capital.

Regarding the 25 corporations in the sample participated in by at least one of the nine previously considered listed companies, a first analysis showed that on average 51% of the capital was directly controlled by LGs. In particular in 7 corporations the quota held

directly by LGs was lower than 40%. However, a deeper analysis of the “indirect” quota of public capital - the part of the capital which is in the hands of legally private corporations (specifically this deals with 9 quoted corporations operating in the sector of local public services) - shows that the LGs are, in reality, in charge of this capital, thus substantially increasing the quota of capital in the hands of LGs from 51% to 75%.

Regarding the composition of the share equity in the case of the remaining corporations (11), the quota of equity owned by local governments is, on average, equal to 58%.

On average, more than 60% of the equity of corporations in the sample is held by local governments in a direct way - through corporations that are controlled or participated in by consortiums of LGs or bodies representing the Local Governments (Mountain Communities, Territorial Area Authorities). In particular, the participation of local governments was less than 50% in only 7% of the cases and in 44% of the corporations in the sample the quota of capital in the hands of the Municipalities (directly or indirectly) was over 75%.

Furthermore, in around 29% of the corporations, public ownership of capital is “concentrated” in the hands of a single local government (13 corporations, of which 4 are quoted). However, in cases where the “public” quota of capital was held by multiple individual subjects (in some cases, a very large number), there were generally more localized Municipalities in the same Province or in more territorially contiguous Provinces. In most cases, an LG for the Province (usually the head Municipality, but in some cases also the provincial administration, the Territorial Area Authorities or other associative institutions) held the higher quota of capital in relation to that held by the other smaller public institutions. This LG exercises, on behalf of a part or all, the function of representation in the assembly.

The previous ownership structure is substantially derived from statute norms. Approximately 64% of the examined statutes bind, in favor of LGs, ownership of the majority shares of equity. In 7 cases the statute clearly identifies a single LG which, for the life of the corporation, must be guaranteed possession of at least 50% of the social capital. In the other cases, the reserve is, in general, managed by the LGs, often with specific reference to the possibility to hold quotas of capital indirectly through corporations (also consortiums) that are held or controlled. The responsibility of monitoring is usually attributed to the Board of Directors in order that the statute norms which bind the holding of the majority of equity on the part of the LGs are respected for the life of the corporation, with particular reference to the operations of transfer and ending of shareholding on the part of partners or in the case of increase in equity.

With particular reference to the relationship between partners, the desire to guarantee stability to the shareholding structure seems to be common and diffused; the instruments available can be traced back to the following Statute provisions:

- stock rights, in case of an increase in equity;
- drawing rights, in case of transfer or ending of a shareholding;
- approval of sale clauses, expressly provided in the case of entry of new partners.

Partner stock rights are recognized in article 2441 of the Civil Code (and cited expressly in 47% of the Statutes) in proportion to the quota of equity held at the moment in which the increase in equity is carried out. In the case of transfer or cession of a part of or all

of the holdings by one or more partners, drawing rights are guaranteed for the other partners. The possibility to underwrite the quota of a shareholder packet “on sale” is guaranteed, in proportion to their own holdings, as noted in 51% of the corporations. In cases where option rights are not exercised for the whole amount of the ceded shares, only some Statutes recognize the possibility to sell the rest to third parties, providing instead to recognize (for the subject proposing the sale) the possibility of withdrawing from the corporation. About half of the Statutes (47%) provide for approval of sale regarding the entrance of new subjects into the corporate structure. In particular, the directors are called upon to verify the possession (on the part of the buyer), the technical requirements, and the financial capacity necessary for guaranteeing achievement of the social objective.

The relationship between partners is further specified in partner contracts, which were underwritten by at least 20 corporations in the sample (44%), among which two are listed corporations. Data gathered shows that subjects involved in the stipulation of Contracts are in some cases public partners, in others public/private partners. Recourse to the contract instrument on the part of private partners, in the case of participation in capital of the same corporation, was rarer. In most cases, partner contracts include clauses for the attribution and designation of power, as well as for appointment of executive body members. Often, the private partner is assigned the designation of Chief Executive Office (CEO), although in some cases an expression of acceptance on the part of the public partner is necessary. Furthermore, none of the mechanisms for election of corporate bodies provide for the possibility of making a direct appointment. The partner contracts contain clauses that establish the number of administrators to be designated by each partner. In other cases, when the Contract involves subjects of the same “category” (only public partners or only private partners), it is essentially voting trust (or an agreement on how they will vote) that binds the parties at the Shareholders’ Assembly. Their position is planned and a unitary (unified) vote expressed via delegation of the vote to a single subject. In some cases, the Contracts attribute to the industrial partner a drawing right, for example in cases of assignment of services or work orders on the part of the public partners. Finally, contractual clauses relative to agreements connected to the dividends or tariffs can be present.

Choice of partner and services managed

In more than half of the corporations (64%), the partner was chosen through a public tender; nevertheless, the data was calculated on 70% of the corporations participating in the investigation. Generally, the motivation for this choice can be traced back to the fact that national regulations currently in effect allow corporations which select a private partner via the competitive process to obtain direct assignment by Local Government partners, in relation to the activity of supplying services to the user. This partner selection method allows for the creation of situations of competition between the subjects involved and the entrance of equity. This is especially relevant in cases where participation (in the corporate structure) of multiple LG entities is necessary in order to acquire technical and management skills relative to the entrepreneurial production of services. In fact, the competitive procedure, at least in theory, guarantees the possibility of “taking in to account the most economically advantageous offer” in realizing the “services to be supplied”.

Regarding the typology of partners, the empirical data shows how, in reference to the totality of the corporations in the sample:

- 67% of the corporations have, among their partners, businesses operating in the local public service sector;
- 31% of the corporations have, among their partners, businesses of a different type with respect to those above;
- 22% of the corporations have, among their partners, banks;
- 22% have made recourse to the public company;
- 13% of the corporations are participated in by other subjects that cannot be traced back to the preceding “categories”.

Furthermore, in about half of the corporations in the sample (47%), the corporate partnership involves a single “private” subject. In particular, the data also includes cases in which the corporation is has joint participated in and by other corporations made up of many subjects, or by regroupings of many businesses that exercise their rights derived from joint participation.

Regarding the typology of services managed, more than 80% of corporations in the sample are multi-utility businesses, operating contemporaneously in many public services. Usually, however, a part of the activity is entrusted to operative structures controlled and connected to the considered corporations.

In particular:

- approximately 71% of corporations in the sample operate in the water sector;
- 22% manage the networks for the distribution of gas;
- 13% manage the networks relative to the distribution of electrical energy;
- 27% distribute gas;
- 15% distribute electrical energy;
- 64% of corporations in the sample also operate in other sectors of local public services. In some cases, these are services which are connected with previously considered services (i.e. water distribution, when this activity is not carried out in a manner that is integrated with the other phases provided for by regulations of the water cycle, production of electrical energy and heat management). In other cases there are differentiated services: environmental service and the waste cycle (particularly urban and environmental hygiene), transportation, pharmacies, public lighting, traffic lights and cemetery services. Finally, some businesses also operate in “specialized” services, such as district heating, management of optic fibre networks/telephone communications, and management of alternative energy sources and informative systems.

Models of corporate governance and the composition of the corporate bodies

Ninety-one percent of the corporations in the sample are joint-stock companies which have adopted traditional (“latin”) governance systems that provide for the subdivision of duties (in some cases, with functions of accounting control) among three corporate bodies: the Shareholders’ Assembly, the Board of Directors and the Board of Auditors.

Approximately 18% of the Statutes analyzed contain a listing of matters specially attributed to the Shareholders' Assembly's sphere of power. This attribution of matters (beyond those in the Civil Code) can essentially be traced back to the approval of multi-year plans for the determination of management direction, the approval of financial operations, the ratification of stipulation of joint-ventures or agreements between the corporation and other subjects, and the cessation or acquisition of shares in other corporations. Furthermore, in several cases, the Statutes provide qualified majorities for validation of assembly deliberations, in cases of both ordinary and special assemblies. In particular, around 29% of the Statutes analyzed provided increased majorities for at least some matters under the power of the Ordinary Assembly, particularly approval of strategic planning and development programs, cession of owned assets beyond a certain amount, or the cession of a branch of the corporation. Regarding the Special Assembly, 44% of the Statutes provided for stronger majorities for operations concerning an increase in social capital, for early dissolution of the corporation, for modifications to the corporate mission, for merger or division and, in some cases, for modifications relative to the attribution of voting rights and issuing of corporate bonds or shares with particular privileges.

The analysis of the Statute clauses relative to the composition and functioning of the Board of Directors was conducted in reference to the following points:

- number of components of the executive body;
- attribution of powers of direct appointment by LG partners;
- presence of limits to the assignment of proxies by administrators;
- provisions of a qualified majority for the deliberation of particular matters.

Approximately 36% of the Statutes place a limit on the Board of Directors (between 3 to 14 administrators). In other cases, the statute regulations set a minimum and maximum number of administrators, delegating the Shareholders' Assembly to establish, each time, the numerical composition of the executive body. In these cases, there is the possibility of delegating the entire activity to one administrator, up to a maximum of 15 members.

The statutory attribution of direct powers of nomination of members of the Board of Directors to LG partners characterized 44% of the corporations in the sample. In particular, in 10 corporations (equal to about 22% of the sample) the power of direct nomination applies to the majority of the members of the executive body. In some cases this power was attributed in proportion to the quota of underwritten equity.

The mechanism of list voting, used for the nomination of members of the Board of Administration of assembly authority, in some cases presented "peculiarities":

- in several Statutes (and, in some cases, in the Contracts between partners) clauses are present which determine the number of administrators elected for each list, setting aside the number of votes effectively obtained in the assembly meeting;
- in some cases, local government partners are obligated by statute regulations (or contracts) to present a single list.

In reference to the statute norms which regulate the functioning of the administrative body, around 67% of the Charters contain special clauses which exclude the possibility

of attributing proxies on the part of the administrators in reference to determined matters, beyond that which is established by law. In particular, this regards the deliberations of the approval of annual and multi-year financial plans of management and investment (and their modifications), the decisions relative to the size of the company staff and actions in matters of occupational policies (plans for hiring personnel), the proposals of modifications of the Statute to be presented to the Shareholders' Assembly, the approval and modification of possible internal regulations and the nomination of the representatives of the corporation and of the companies held (when this authority is not attributed to the Shareholders' Assembly).

Usually, for these matters, as well as for deliberations essentially regarding the nomination and assignment of powers to the CEO or the attribution of particular duties to other administrators or to the top management, the favorable vote of a qualified (strong) majority of the members of the Board of Directors is required. In fact, in most cases, in reference to the acts of "ordinary administration" the Board is validly made up of the presence of the majority of the members and deliberates with the favorable vote of the majority of those present.

In some cases, the Statutes (or the Contracts between partners) assign the designation of CEO to the "private" partners, expressly excluding the possibility that this subject should be chosen on the designation of the local government partners. With reference to the powers attributed to the CEO, most of the Statutes do not contain the special listing, deferring all matters that can be delegated to the Board of Directors. In some cases, however, the matters are specified in the public-private partner contracts.

Finally, regarding the Board of Auditors, the mechanism of nomination is almost always traceable back to that established for the Board of Administration. In 35.5% of cases, the power of direct nomination of at least two members is attributed to the public partners. In particular, in 5 corporations the Board of Auditors also carries out the function of accounting control.

Only two corporations in the sample have adopted the dualistic ("german") system of governance, characterized by the presence (beyond the Shareholders' Assembly) of a Management Board and a Surveillance/Supervision Board.

CONCLUSIONS

During the past ten years the number of joint-stock companies operating in Italy in the sector of local utilities has increased a great deal. The legislative choices operating in matters of the modality of management of local public services and the expectations to be reached of the same operators, through private models that are slender and characterized by legal and managerial autonomy, higher efficiency and economy in the supply of services have weighed upon this direction in a determining manner. Against the success of the so-called "corporatization" (Reichard, 2002), however, the local governments continue to be, in most cases, the main owners. The realization of partnerships with private providers has been implemented in limited areas of public services delivery and most notably at the local level.

The analysis conducted on public-private corporations currently operating in Italy shows how each corporation is characterized by its own corporate governance system, prevalently modelled according to the traditional structure of administration and control. However, the division of authority between corporate bodies and the mechanisms of control over their operation vary according to the “context”.

One of the determining factors, governance system planning, can be traced back to the typology of partners involved with local government in the public service sector. In particular, the practice of attributing some powers to the industrial partner via statutes or partner agreement stipulations seems to be diffused specifically the choice of the managing director and the definition of his authority. In some cases this occurs at the time of establishment of the corporate body or, more frequently, at the time in which the social structure of the ex-municipalized or special company is enlarged and diversified via entrance of different partners from local governments. At the same time, however, a combination of other factors distinguishes the position of the industrial partner from that of other partners (i.e. forecasting of additional performance connected to the technical activity of production and supply of services and limited to the free transfer of share quotas). On the other hand, the position of public partner appears to almost always be characterized by the attribution of specific powers (direct nomination, expression of opinions of approval and in some cases true veto powers) which further define the recognition of a different “weight” within the social structure.

Within this articulated system of actors (public and private) the fundamental point appears to be the relationship between the local government and corporations. The local government must be able to balance opposite needs: to increase the autonomy and the growth and development of the corporation, while promoting harmonisation and integration of a well-defined network strategy (Kickert, Klijn and Koppenjan, 1997).

We may conclude that the term public and private partnership has different meanings and is characterized by diverse institutional models, but they can be considered as alternative to direct provision or contracting out. After the analysis of the characteristics of the institutional public and private partnerships in the Italian context, we realized that the corporate governance is one important tool in the hand of the public owner in order to steer and control the public and private corporations (Hughes, 1994; Walsh, 1994; Pallot, 1999; Neale and Anderson, 2000).

Corporate governance can be carried out with the following instruments:

- The definition of the quantity and the mix of endowment capital, deciding, therefore, not only the overall value of resources transferred to the corporation, but also the typology of choice, distinguishing between tangible assets or financial assets;
- Identification of the possible partners (public and/or private) with whom to share the corporate structure;
- Definition of the corporate statute, with which they can define the sphere of action of the corporation (objective) from the point of view of the range of services carried out, the territorial sphere of operation (local/regional/national), and the choice of the most suitable corporate governance model for shaping its corporate bodies in terms of powers and modality of nomination;

- Underwriting of agreement between the public and/or private partners in order to identify the obligations imposed by the controlled corporation (for example, in matters of inter-institutional reporting and the periods of time for transmitting information).

Giuseppe Grossi, Associate Professor in Public Management and Accounting, Department of Business and Social Studies, University of Siena: grossi@unisi.it.

APPENDIX

1) The investigative sample

		9 corporations listed on the stock exchange (20%)	25 corporations associated at listed corporations (56%)	11 other corporations (24%)	45 corporations (100% of the sample) +
ESTABLISHMENT	Ex novo mixed capital	1	8	2	11 corporations (24,4%)
	Transformation processes of existing publicly-owned corporations	8	17	8	33 corporations (73,3%)
	Transformation processes of existing private-owned corporations	-	-	1	1 corporation (2,3%)
RESPONSIBLE SUBJECT OF THE ESTABLISHMENT	Local Government	9	23	7	39 corporations (86,6%)
	Local governments and other partners	-	3	3	6 corporations (13,4%)

2) Ownship structure and relationship between partners

		9 corporations listed on the stock exchange (20%)	25 corporations associated at listed corporations (56%)	11 other corporations (24%)	45 corporations (100% of the sample) +
EQUITY COMPOSITION	Local Government	59% of the equity	75% of the equity	58% of the equity	64% of the equity
	Other subjects	41% of the equity	25% of the equity	42% of the equity	36% of the equity
EQUITY OWNED BY THE LOCAL GOVERNMENTS	Participation less than 50%	2	-	1	3 corporations (6,7%)

	Participation from 51% to 75%	7	7	8	22 corporations (48,9%)
	Participation over than 75%	-	18	2	20 corporations (44,4%)
PUBLIC OWNERSHIP OF THE MAJORITY QUOTAS OF THE EQUITY	Statutes bind, in favour of Local Governments, ownership of the majority quota of equity	4	16	9	29 corporations (64%)
DRAWING RIGHTS	Statutes bind, in favour of Local Governments, expressly provided in the case of entry of new partners	-	13	10	23 corporations (51%)
APPROVAL OF SALE CLAUSES	Approval of sale clauses expressly provided in the case of entry of new partners	-	19	2	21 corporations (47%)
STIPULATION OF PARTNER AGREEMENT	Presence of partner agreement	2	12	6	20 corporations (44%)

3) choices of partners and services

		9 corporations listed on the stock exchange (20%)	25 corporations associated at listed corporations (56%)	11 other corporations (24%)	45 corporations (100% of the sample)
CHOICE OF THE PARTNER	Public tender	-	10	11	21 corporations (44%)
	Direct assignment by the local governments	-		2	2 corporations (4%)
	Listed on the stock exchange	9			9 corporations (20%)
	No answer		7	6	13 corporations (30%)

TIPOLOGY OF PARTNERS	Public service corporations	1			30 corporations (67%)
	Other corporations	*			14 corporations (31%)
	Banks	*			10 corporations (22%)
	Public company	*			10 corporations (22%)
	Other subjects	*			6 corporations (13%)
TIPOLOGY OF SERVICES	Multiutility	9 corporations (100%)	23	6	38 corporations (84%)
	Monouility	-	2	5	7 corporations (16%)

4) Models of corporate governance and corporate bodies

		9 corporations listed on the stock exchange (20%)	25 corporations associated at listed corporations (56%)	11 other corporations (24%)	45 corporations (100% of the sample)
MODEL OF CORPORATE GOVERNANCE	Tradizional ("Latin")	9	24	8	43 corporations (91%)
	Dualistic ("German")	-	1	1	2 corporations (4%)
SHAREHOLDER'S ASSEMBLY	Statutes contain a listing of matters specially attributed to the Shareholder's Assembly's sphere of power	-	7	1	8 corporations (17,8%)
	Statutes contain increased majorities for the validations of ordinary assembly deliberations	-	8	5	13 corporations (29%)
	Statutes contain increased majorities for the validations of ordinary assembly deliberations	3	11	6	20 corporations (44%)
BOARD OF DIRECTORS	Fixed number of the components	4	8	4	16 corporations (35,5%)
	Direct appointment by the Local Governments	7	12	1	20 corporations (44%)
	Direct appointment by the Local Governments of the majority of the members	7	1	2	10 corporations (22,2%)
	Qualified majority for the deliberation of particular matters	3	14	5	22 corporations (48,9%)

	Special clauses which excluded the possibility of attributing proxies in reference to determined matters	9	18	3	30 corporations (66,7%)
--	--	---	----	---	----------------------------

REFERENCES

- Bovaird A. 2004. "Public – Private Partnerships: from contested concepts to prevalent practice", *International Review of Administrative Sciences*, no. 2, 199-215.
- Broadbent J, Gray A., Jackson P.M. (2003), "Public-Private Partnerships: Editorial", *Public Money & Management*, July, 135-136.
- Charkham J. 1994. *Keeping Good Company: A Study of Corporate Governance in Five Countries*, Oxford: Clarendon Press.
- Commission of the European Communities 2004. "Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions". <http://europa.eu.int/>
- Dexia Crediop 2004. "Local Public Companies in the 25 Countries of the European Union", Paris: Dexia Editions.
- Dimsdale NO. and Prevezer M. 1994. "Capital Markets and Corporate Governance", Oxford: Clarendon Press.
- Doz Y. L. and Hamel G. 1998. "Alliance Advantage The Art of Creating Value through Partnering", Boston: Harvard Business School Press.
- Dumez H. and Jeunemaître A. 2003. "Combinaison harmonieuse des vertus du public et du privé, ou mélange des genres? Les PPP nouveaux venus du management public, in "Politiques et Management Public", no. 4, 1-14.
- Dussauge P. and Garette B. 1999. "Cooperative Strategy: Competing Successfully through Strategic Alliances", Chichester: John Wiley.
- Grave C. 2003. "Public and Private Partnership in Scandinavia", *International Public Management Review*, no. 2, 59-69.
- Grossi G. and Mussari R. 2004. "La gestione dei servizi pubblici locali nella prospettiva economico-aziendale", Roma: Aracne.
- Gruening G. 2001. "Origin and theoretical basis of new public management", *International Public Management Journal*, no. 1, 1-25.
- Hall D. 2001. "Water in Public Hands a Necessary Option", www.psir.org
- Hood C. 1991. "A Public Management for All Seasons?" *Public Administration*, vol. 69, 3-19.

- Hughes, O. E. 1994. "Public Management and Administration," London: Macmillan.
- Kickert W. J.M., Klijn E. H. and Koppenjan J.F.F. eds., 1997. "Managing Complex Networks. Strategies for the Public Sector", London: Sage.
- Lane J. E. 2000. "New Public Management", London: Routledge.
- Lanno K. 1995. "Corporate Governance in Europe", CEPS Working Party Report no. 12, Brussel: Centre for European Policy Studies.
- Linder S.H. 1999. "Coming to Terms with the Public-Private Partnership A Grammar of Multiple Meanings", *American Behavioral Scientist*, no. 1, 35-51.
- Lowndes V. and Skelcher C. 1998. "The Dynamics of Multi-Organizational Partnerships: An Analysis of Changing Modes of Governance", *Public Administration*, vol. 76, 313-333.
- Monks R. A. G. and Minov NO. 1995. "Corporate Governance", Oxford: Blackwell.
- OECD 2004. "Principles of Corporate Governance", www.oecd.org.
- Neale A., Anderson B. (2000), Performance Reporting for Accountability Purposes: Lessons, Issues, Future, *International Public Management Journal*, 3: 1 pp93-106.
- Pallot J. 1999. "Beyond NPM: Developing Strategic Capacity, Financial Accountability and Management", no.3/4, 419-426.
- Pollitt C. and Summa H. 1997. "Trajectories of Reform: Public Management Change in Four Countries", *Public Money & Management*, no. 1, 7-18.
- Reichard C. 2002. "Marketisation of Public Services in Germany", *International Public Management Review*, no. 2, 63-79.
- Ryan C. and Ng C. 2000. "Public Sector Corporate Governance Disclosures: An Examination of Annual Reporting Practise in Queensland", *Australian Journal of Public Administration*, no. 2, pp. 261-289.
- Scharle P. 2002. "Public-Private Partnership (PPP) as a social game", *Innovation*, no. 3, 227-252.
- Torres L. and Pina V. 2002. Changes in Public Services Delivery in the EU countries, "Public Money & Management," no. 4, 41-48.
- Tricker B. 1993. "Corporate Governance," *Corporate Governance: an International Review*, no. 2, 1-4.
- Turnbull S. 1997. "Corporate Governance: its Scope, Concern and Theories", *Corporate Governance: an International Review*, no. 4, 180-200.
- Vaillancourt Rosenau P. 1999. "The Strengths and Weaknesses of Public-Private Policy Partnerships", *American Behavioral Scientist*, no. 1, 10-34.
- Van Ham H. and Koppenjan J. 2002. "Building Public-Private Partnerships. Assessing and Managing Risks in Port Development", *Public Management Review*, no. 1, 593-616.

Walsh K. 1994. "Public Services and Market Mechanisms. Competition, Contracting and New Public Management", London: Macmillan.

Wollmann H. 2004. "Local Government Reforms in Great Britain, Sweden, Germany and France: Between Multi-Function and Single-Purpose Organisations," Local Government Studies, no. 4, 639-665.

ABOUT IPMR	
IPMR	<p>The International Public Management Review (IPMR) is the electronic journal of the International Public Management Network (IPMN). All work published in IPMR is double blind reviewed according to standard academic journal procedures.</p> <p>The purpose of the International Public Management Review is to publish manuscripts reporting original, creative research in the field of public management. Theoretical, empirical and applied work including case studies of individual nations and governments, and comparative studies are given equal weight for publication consideration.</p>
IPMN	<p>The mission of the International Public Management Network is to provide a forum for sharing ideas, concepts and results of research and practice in the field of public management, and to stimulate critical thinking about alternative approaches to problem solving and decision making in the public sector.</p> <p>IPMN includes over 600 members representing sixty different countries and has a goal of expanding membership to include representatives from as many nations as possible IPMN is a voluntary non-profit network and membership is free.</p>
Websites	<p>IPMR: http://www.ipmr.net/ (download of articles is free of charge)</p> <p>IPMN: http://www.inpuma.net/</p>
ISSN	ISSN 1662-1387