

Chapter 11

Extending the stakeholder approach to the community: mechanisms for participative modernisation in public utilities

Carsten Herzberg¹

In collaboration with Yves Sintomer and Annabelle Houdret

1. Introduction: stakeholder value and community

This chapter extends the concept of stakeholder involvement to include the participation of citizens in corporate governance. Community involvement is considered as particularly important in the case of public utilities. For the purposes of this chapter, these are enterprises which are owned by public authorities and charged with the provision of services of general interest (SGI), such as water, electricity, public transport, waste collection, etc. However, although these enterprises are not owned by private interests, public utilities are organised as companies governed by private law, such as a plc, GmbH, SA, etc.²

In some European countries, the number of public utilities in private law status has increased. This means that, instead of following the neo-liberal doctrine of transferring the provision of public services to private companies (i.e. privatisation), in some countries, local governments

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1. This chapter has been written in the context of a project on democratic control of public utilities that is underway at the University of Potsdam. The project has received financial support from the German Thyssen Foundation. This chapter also refers to a project on citizen participation in water utilities. That project has been commissioned by the Water Department of Paris Municipality and is coordinated by Yves Sintomer, Annabelle Houdret, and the author of this chapter. For the purposes of the present chapter, reports from that project by Anja Röcke on water consumer councils in England and Wales, Ernesto Ganuza, Héloïse Nez and Julien Talpin on deliberative polling in the Spanish region of Andalusia, and Rémi Barbier and Clémence Bedu on a citizen jury in the French city of Nantes are used. The author wishes to express his thanks to all the colleagues involved in the project and to the foundations and local authorities for their support. Special thanks also go to the GOODCORP project for extending an invitation to join the debate on stakeholder concepts.
 2. Sometimes public utilities are also organised under public law, but this has changed in the last decades, with private law now the dominant form. This is why this article primarily considers the private form of business organisation for public utilities. Unless specifically mentioned, we refer to public utilities in private law status.

have opted for an alternative method, i.e. creating their own enterprises. Public utilities have flourished in Germany, the Nordic countries, and in southern European countries such as Italy, Spain, and to some degree Portugal (Aars and Rinkjob 2011; Grossi and Reichard 2008; Killian *et al.* 2006). In some countries where services have been privatised to a considerable extent, such as France, a debate on re-municipalisation has begun.

In face of the growing importance of public utilities, this chapter discusses whether there is a special need to include the community in corporate governance. I argue that public utilities differ from privately owned companies because they have a hybrid character (Koppell 2003; Karré 2011). On the one hand, public utilities often have to act according to market conditions and respond to competition,³ as most other companies do. For this reason, they have an interest in ‘keeping the shutters down’, i.e. keeping strategic information confidential in order to prevent competitors from profiting from this information. On the other hand, public utilities are owned by a public body. For this reason, there is also an interest in their democratic control. This chapter takes as its starting point that the tension provoked by those two arguments is not adequately balanced through the conventional understanding of stakeholder value. The original concept tends to focus on the representation of workers on the company board,⁴ whereas other stakeholders remain neglected (Freeman and Reed 1983; Parkinson 2003). In contrast, this chapter seeks to analyse how the community could be integrated in corporate governance. It is argued that the involvement of the community is different to participation by employees. Therefore, participative devices other than company board membership are also presented (Vitols and Kluge 2011) and the potential benefits of community participation evaluated. Furthermore, the chapter argues that conflicts of interest with other stakeholders such as employees have to be taken into account, because these could potentially weaken community participation and its positive effects.

3. Some public utilities are not subject directly to competition as they enjoy ‘in-house’ conditions or a natural monopoly. Although this is true for water in some European countries, managers tend, nevertheless, to maintain secrecy.

4. In countries with two-tier board systems, community representatives would sit in the top or supervisory board. In countries with one-tier board systems, community representatives would be included as non-executive members of the company board. This article relies mainly on experiences in Germany with a two two-tier system. Readers should be aware that the systems vary across countries. For an overview see Bohinc (2011).

Participation in public utilities is a relatively new research issue, especially in relation to countries in the Global North. In some Latin American and Maghreb countries, participation has been demonstrated to have a positive effect (Balanyá *et al.* 2005). In line with those findings, Hall and Lobina (2008), who compared different forms of corporate governance, state that citizen involvement leads to better service quality, including for those who are socially marginalised. However, in the countries in the Global North examined, the data is very fragmented and research is still at an early stage (von Braunmühl 2005).

In this chapter, the term ‘community’ is used initially in a general sense without differentiation. For these purposes, ‘community’ includes the participation of individual citizens, randomly selected citizens, members of associations, etc. Through a description of participative devices, the groups which participate will be identified. Later, to provide a clearer definition of ‘community’, different roles such as clients, users, and citizens will be specified (see section 5).

In the existing literature on the issue, two arguments for community participation can be identified. First, in relation to the lack of democracy mentioned above, it is argued that the growth of public utilities leads to an ‘oligarchisation’ of local democracy. In terms of ‘political equality’, it is problematic that only a minority of local councillors – those appointed to the board of the utility – have access to its meetings. Hence, both the councillors who are excluded and the community itself may have a common interest in the democratic opening of decision making in public utilities. NGOs fighting against the privatisation of utilities may also support this engagement. However, it should be noted, as discussed below, that this thesis on oligarchisation is not without its critics. Second, there are indications that community participation could improve the performance of public utilities. Following the example of the public administration, it is possible that the involvement of citizens might contribute to participative modernisation (Sintomer *et al.* 2008, 2012). Hence, we will explore whether such experiences could be transferred from local administration to public utilities. Which types of benefits can be expected? What are the limits that have to be taken into consideration?

The idea of this chapter is to combine the two issues: the question of democratic legitimacy and those of participative modernisation. In order to get answers to these questions, participative procedures used in relation to the provision of public water services are evaluated through

the framework of participative modernisation. This framework was developed by Sintomer *et al.* (2008, 2012) in the context of participative reforms in public administrations. In the absence of in-depth research, the evidence presented here is derived primarily from theoretical reflections. The central issue is to identify the types of effects which are associated – on account of their organisational structure – with particular types of participatory devices. In order to shed light on the question, the results of recent case studies have been integrated. In particular, data from two projects is used. First, the author has recently initiated a broader project on the democratic control of public utilities at the University of Potsdam. Second, prior to that project, relevant data was collected in the framework of projects on citizen participation in European water utilities (Sintomer *et al.* 2010a). In all case studies, data was collected through interviews with local stakeholders such as local mayors, managers, public employees, and citizens. In some cases, observations of participative procedures were also undertaken. This helped to establish an idea of the general dynamics of a particular procedure as well as information about participants.

In line with the arguments for community involvement specified above, section 2 starts with an explanation of ‘political equality’ and discusses the thesis of oligarchisation of local democracy through the expansion of public utilities. Then, in section 3, the argument of ‘participative modernisation’ is explained, setting out a framework for evaluation, which is applied in section 4 to devices for community participation in public utilities. Here, different types of involvement and their (potential) effects are discussed. Finally, section 5 considers the interests of different stakeholders, asking whether there is conflict among them that could hinder the development of an enlarged stakeholder concept. In the light of that analysis, section 6 provides an indication of the kind of legislative framework that might facilitate community integration in the stakeholder concept.

2. Is there a lack of democracy in public utilities?

The development of an enlarged stakeholder concept in this chapter begins with a discussion of the legitimacy of community involvement in public utilities. The main argument advanced is that public utilities differ from privately-owned enterprises by the very fact that they are owned by a public institution. Therefore, so the argument goes, a broad majori-

ty of local councillors – but also the community – should have some control of those utilities. However, this interpretation is open to challenge. Although some authors support the need for a democratic opening by stressing the ‘oligarchic’ character of public utilities, other approaches state that the local council (municipality) already has a broad influence. Therefore, before exploring specific examples of community participation, this section gives an overview of the theoretical debate on the public control of public utilities. The idea of ‘political equality’ is used here as the central criterion for comparison.

2.1 The value of political equality

‘Democracy’ is defined as government by the people, but it would in fact be difficult to organise democratic life if every citizen participated in important decisions. In most democracies this problem is solved by the election of representatives, who decide in the place of all. In this connection, the notion of ‘political equality’ as defined by Robert Dahl (1971, 2006) at least ensures that everyone has the chance to vote and to be elected. Consequently, in theory, everyone has the potential to be part of the government for some time. In parliamentary democracies, the government is determined by a majority of the political representatives, while the remainder of the elected representatives have the duty to control the government. To realise this aim, every representative has the same rights, that is, each one can demand answers and information on issues they wish to investigate, can contribute to policymaking by working in parliamentary commissions, and can propose amendments to be voted on in the assembly. In this connection, it can be argued that political equality is important not only in relation to the political franchise and the possibility to be elected, but also among elected representatives. Extending this further, it can be argued that political equality should also apply to public utilities on a local level, because they are owned by the municipality and therefore belong to the public administration. Hence, seen from the perspective of democratic legitimacy, there is no reason why public utilities should be controlled to a lesser extent than government departments.

The value of political equality has also become important for citizens outside of elections, because of developments in the notion of democracy. Beyond the mere election of representatives, citizens are increasingly called upon to participate directly in policymaking. The local level

in particular has become an arena for democratic innovations (Smith 2009). In some countries, such as Germany, referendums were established. In this way, citizenry itself can make decisions which are binding on local councillors. In France, for example, the Law Vaillant on community participation has strengthened neighbourhood councils. In other countries, participation increased under the umbrella of Local Agenda 21. This document, drawn up at the 1992 Rio de Janeiro UN conference, identifies municipalities as a key agent for sustainable development. Consequently, many cities in Europe discussed local strategies for improving ecology with their citizens by setting up working groups or other procedures for an ongoing dialogue. Perhaps the most compelling illustration of the spread of new forms of citizen participation is a procedure known as participatory budgeting. Here, citizens exercise control over the income and expenditure items of municipal budgets. The incidence of this form of citizen participation increased from a dozen municipalities in 2001 to more than 250 in all of Europe in 2011 (Sintomer *et al.* 2008, 2012). But what does all this mean in the face of a growing number of public utilities?

2.2 The limits of political equality

As already indicated in the introduction, in many cases, the providers of utility services have changed their legal form from public to private. For example, ‘Eigenbetrieb’ has become ‘GmbH’ and/or ‘AG’ (Germany), ‘ambito territoriale ottimale (ATO)’ has changed into ‘S.r.l.’ (Italy), ‘régie’ has been replaced by ‘SEM’ (France), ‘organismo autónomo’ has been transformed into ‘SL’ or ‘SA’ (Spain), etc. Hence, the overwhelming majority of public utilities is organised now under private law status.⁵ These changes are more than symbolic, because company law entails certain constraints which affect the possibilities for control by councillors and citizens engaged in local politics.

As regards the notion of ‘political equality’, three general theses can be observed in relation to the political control of public utilities. The first, the thesis of oligarchisation, states that political equality is reduced in public utilities, because only those elected officials who are appointed to

5. One exception may be France. Here, at least on the local level, public utilities are mostly organised under public law status. But in the end, the number of public utilities is not so high. In water services, for example, 80 per cent of water is provided by private companies.

the company board can obtain information on municipal enterprises. In many cases, this is just a small group, because – due to proportional representation – only the larger parties have the right to appoint members. In the German city of Potsdam, for example, of the 55 city councillors only five are entitled to participate in the company board’s meetings. All others are excluded from key information. They cannot determine prices (for gas, water, public transport, etc.) and cannot participate in the board’s discussions on the company’s future development. This perspective is challenged by theories based on the notion of ‘new public management’. Their central idea is that the local council defines objectives, while agencies – here, public utilities – are free to decide how to realise those aims (Pollitt *et al.* 2001). This approach, also known as ‘steering at arm’s length’, argues that ‘too tight political control over policy implementation may hamper rather than help the accomplishment of policy goals’ (Aars and Ringkjøb 2011: 831). Therefore, according to this approach, the company board is not considered as important as in the thesis of oligarchisation. According to a third approach, the creation of public utilities does not change anything in relation to democratic control (Thiemeyer 1989). Given the limited access to company boards, initial examination would appear to refute that interpretation. Observed more closely, however, this approach may also be congruent with the notion of oligarchisation. This follows when it is realised that local democracy has always been dominated by leaders and hence is by convention oligarchic. Under current arrangements, company boards generally have as members those individuals who have traditionally decided on local policy: the mayor or deputy mayor chairs the company board, the leaders of the largest political groups are ordinary board members, and the directors of service departments are replaced by the managers of public utilities.

Of those three interpretations, the present chapter relies on the thesis of oligarchisation. Of course, due to different legal regimes, generalisations for all of Europe should be made with some care. However, the basic assumption here is that – notwithstanding differences resulting from variations in the legal framework – public utilities in private law status generally tend to restrict and not promote democratic control. This approach will be illustrated now with the example of the German city of Potsdam by comparing the work of the municipal council (local parliament) with the logic of public utilities. Table 1 contrasts the different aspects of public control available in relation to decision making by municipal councils and public utilities. The table shows that political control is much greater if services are organised under the public law

Table 1 Comparison of access to local council and company board deliberations

	Municipal Council (public law status)	Public utility (private law status)
Meetings	All councillors and interested citizens	Public is excluded. Only councillors appointed to the board may attend
Non-public meetings	All councillors (even those which are not appointed to the municipal council's working commissions)	Only councillors appointed to the board may attend
Access to files	All councillors have the right to demand access to files	Only councillors appointed to the board may attend
Reporting to party colleagues	Permitted even in relation to confidential matters	Ambivalent situation, tendency not to report
Consequences for whistle-blowing of confidential information	As a rule, only a symbolic threat	General nervousness as board members are personally liable if they cause tangible or intangible loss or damage to the company
General orientation	Everything is public, unless expressly forbidden	Everything said in board meetings is confidential by reason of company law

Note: Based on observations in Germany.

status of local government departments and not public utilities. In this connection, the following points may be observed. The *meetings* of municipal councils are not only open to all councillors, but also to interested citizens and the media. In contrast, the company board meets behind closed doors. For example, according to German company law, this is a legal requirement and board meetings cannot be opened even if there is a political will to do so.⁶ Regarding the local council, councillors can also participate in the non-public parts of council's commission, even if they are not officially appointed to the commission. Access to documents is also limited in public utilities of private law status. In contrast, as a rule, councillors can demand to read internal files if they wish to inves-

6. Theoretically, in Germany board meetings in companies of less than 500 employees can be held publicly, but according to the present information on file no cases of this have been reported. If public utility has a public law status, however, parts of the meeting are held in public.

tigate a certain matter or to verify information given by the government of the municipality. Furthermore, it is not always clear whether those councillors appointed to the company board can report on the affairs of the public utility and provide information to other council colleagues. The exchange of views between councillors is generally considered important in exercising control of the government function. As a rule, all councillors should have the same opportunities to obtain information, but the limited access to the company board of a public utility restricts this possibility and undermines the notion of political equality. The legal situation and the specific information company board members can pass on to their council colleagues remain unclear. Members of a board are required by law to ensure the company's confidential affairs remain secret. In Potsdam, board members do not really know which kind of information constitutes a secret and which does not. Therefore, the fear of repercussions creates a general tendency to maintain secrecy about everything said in board meetings. Consequently, things that could be said publicly are silenced.

We have seen that there is a lack of political equality for elected representatives when we compare local councils with the company boards of public utilities. The inequality is stronger still if we look at community involvement, as citizens are excluded from board meetings. Furthermore, if we look at the new forms of citizen participation mentioned above, affairs of public utilities are mostly excluded. For example, in relation to participatory budgeting – currently the most emblematic symbol of citizen participation – Sintomer *et al.* (2008, 2012) state that citizens in most cities cannot make proposals for public utilities. As a result, two countervailing tendencies can be observed. On the one hand, we have a clear interest of citizens to become involved in local politics by frequenting unconventional forms of participation. On the other hand, the increasing prevalence of public utilities indicates a growing sphere that remains outside the scope of larger public control. Hence, the question remains: is there is a way to overcome the lack of democracy in public utilities?

3. A framework for 'participative modernisation'

The previous section argued that, compared to the possibilities which exist in relation to the public administration, there is a lack of democratic control over public utilities. One explanation for this could be that

democratic opening is limited by constraints of markets and competition. However, for the purposes of this chapter, it is presumed that this does not necessarily mean that all participation is impossible. In support of an enlarged stakeholder concept, it is important to show that not only the public administration but also public utilities could benefit from community involvement. Therefore, this section gives an introduction to the idea of 'participative modernisation'. After providing a brief overview of general reform approaches, it will expand the concept by presenting a framework developed by Sintomer *et al.* (2008, 2012). This scheme was established in the context of community involvement in public administration. It will be discussed here how it could be applied to public utilities. Later in this chapter, this framework will be applied to specific examples of citizen involvement in public utilities.

Pollitt *et al.* (2007) compare the notion of new public management to a chameleon. This means that there is no single route to achieve a superior functioning of public services. Since the first reform movement in the 1970s, the renewal of public administration has taken different shapes and orientations. In order to illustrate different reform approaches, a typology proposed by Bouckaert and Pollitt (2004: 183-194) is used here. For a certain period, the most common approach to reform was the privatiser type, which seeks to remove the bureaucratic mode of working. With this aim in mind, public services have been delegated to private companies or quasi-autonomous organisations, as was the case in Great Britain during the 1980s. In other countries, privatisations have been considered the best way to overcome the bureaucratic mode of working of the public administration. In the 1990s, however, Northern European countries in particular developed alternative approaches. For example, the marketiser type of reform relies on competition between public institutions. In order to reduce costs of production, performance indicators of different municipalities are compared. This means that, through a process of benchmarking between institutions, criteria for success can be identified. Finally, the moderniser type introduces logic and instruments from business management to the bureaucratic mode of the public administration. In some ways it can be said that the public administration has taken its cue here from the private sector, compacting hierarchies, strengthening the autonomy of departments, decentralising departments' resource management, changing budget planning from classical incremental budgeting to budgeting by product, etc. However, it has come to light that even when the appropriate instruments have been implemented, the public administration does not change its behav-

our so easily. For that reason, citizen participation has been discovered, and is used to facilitate institutional change. In their analysis of participatory budgeting, Sintomer *et al.* defined eight dimensions of participative modernisation. The discussion below sets out how these dimensions could be applied to public utilities.

Sintomer *et al.* (2012) considered that participation might improve cooperation between the different units and departments of institutions. Citizens do not have the organisational structure of the administration in mind when they articulate their needs. In many cases, in order to realise citizens' proposals, cooperation between different units is necessary. Even if public utilities are not considered as bureaucratic as public administrations, participation may here also promote transversal cooperation between business units or working groups; in this way, the company can act as a whole and not as a fragmented unit. Citizens also want problems to be solved within a certain time. This 'acceleration' concerns both public administrations and public utilities. Citizens put institutions under pressure to respond quickly. This might lead to an acceleration of organisational procedures. Furthermore, the involvement of citizens could lead from another perspective also to acceleration. If the views of citizens are considered in planning processes, for instance, the realisation of projects may be easier, because resistance from potential protest movements is potentially reduced. In some cases, citizens offer to support the realisation of proposals with their own manpower. Here, participation can result in service provision by citizens. One example of this is when citizens volunteer in public libraries. The discussion of whether volunteering is also likely in public utilities requires consideration of specific examples – we will return to this question after the presentation of cases in the following section. Obviously, participatory procedures could contribute to problem solving by widening the range of ideas. This is the case for participative procedures with workshop characteristics in which different stakeholders have time to discuss solutions to problems. As will be shown later, this form of participative modernisation is very important for public utilities. The expertise of citizens and associations might help to improve service provision. For example, environmental associations could provide useful knowledge for water companies, or cyclists' associations for the organisation of public transport. Some governments expect proposals for cost reduction to result from participation. It must be verified by case study analysis whether this is possible only within a certain type of participation – such as participatory budgeting – or if it can also be transferred to public utilities. Sometimes conventional ap-

proaches to modernisation, as indicated above, are blocked. However, citizen participation may promote structural changes and new working procedures, because, in order to respond to citizens' demands, institutions have to abandon their bureaucratic way of working. Public utilities can perhaps also improve their flexibility if they involve the community. If modernisation is to be successful, there must be at least some degree of control of the administration exerted by the participants. Institutions may be more attentive to realise their aims if the public is more vocal.

It is argued here that the effects of participative modernisation may help convince managers and other stakeholders to integrate the community in an enlarged stakeholder concept. For municipalities which follow the moderniser type of administrative renewal it will be much easier than for those which are utilizing in the privatiser type. In the first case the idea is to maintain the competitiveness of public services, and participative modernisation tries to strengthen this orientation. In contrast to this, participative modernisation would not be possible where governments tend to abolish public services. The idea of 'participative modernisation', however, is not beyond criticism. Agents of a radical participatory democracy contend that 'participative modernisation' does not really delegate power to the hands of citizens. From their perspective, participation remains consultative and it is always the government or the manager who has the final say. We will now test whether that assumption is true, or whether there are, in fact, participative devices that truly involve the community in the affairs of public utilities.

4. Community participation in water utilities

This section brings together the two sides of the coin involved in the community participation approach to an enlarged stakeholder model. Now that the need for a democratic opening of public utilities has been explained (section 2) and the framework of participative modernisation has been presented (section 3), specific experiences will be presented. What kinds of procedures allow the community to participate in the affairs of public utilities? What kind of effects can be expected? The following analysis takes, in turn, the devices of consumer councils, client forums, deliberative polling, and citizen juries, which are presented and evaluated in accordance with the framework of participative modernisation introduced in the previous section. All examples are taken from companies entrusted with the public supply of water. With the excep-

tion of one example, all are public utilities. Each subsection starts with a short description of the participative device itself. And here, as indicated in the introduction, it will be specified who exactly participates using the device, and the parts of the community which can be reached on that basis. As we will see, this depends significantly on the device that is used.

Since research on this issue is still at an initial stage, the presentation of results relies mainly on potential effects. Specifically, our discussion seeks to establish which kind of effect could be delivered by each instrument as a result of its organisational structure. In order to gain a more reliable impression of the real impact of each instrument, the predicted effects are compared with the first results collected from international research on water companies. This data comes partly from a project financed by Paris Municipality and coordinated by Yves Sintomer, Carsten Herzberg, and Annabelle Houdret (2010a, 2010b). Where reports relating to that research are used, the text mentions the names of the relevant researchers. The other evidence is gathered from an ongoing project on public utilities realised by the author of this chapter. But before beginning our analysis of participative devices, some words about water services in Europe must be said.

4.1 The organisation of the European water sector

The water sector in Europe is mainly located at the local level of political structures. In most countries, the municipality itself organises these services (Finger *et al.* 2007). There are only two exceptions. One of these is France, where concessions are very common. This means that the service is provided by a private agency for a certain period, usually between 8 and 25 years, but ownership remains with the municipality. In contrast, in England, water services are completely organised by private companies. The market is shared between about a dozen private companies, which are regulated by the national agency Ofwat. Thus, from the overall European perspective, privately-owned companies have relatively little impact. However, it must be noted that even if private sector companies do not constitute the majority, they are indeed active in some countries either in public-private partnerships or in their own right. This is the case in Germany, Denmark, Portugal, Spain, etc. But in these countries, as already indicated in the introduction, the most important development is that public services have changed their form of business organisation and now operate as public utilities. In the context

of the ‘moderniser’ type of administrative reform – which introduces the logic of private business organisations to the public sector – the entities delivering public services are no longer governed by public law and have become private law bodies. Therefore, the theses on oligarchisation of local democracy have acquired greater importance, as has the question of a democratic opening of public utilities with a view to fostering political equality.

As for the legal framework, the Water Framework Directive⁷ establishes some common guidelines. The directive also promotes participation in general, and, hence, may be relied on to support an enlarged concept of stakeholder participation in the field of water. In practice, however, community involvement is more commonly implemented in relation to river and lake management than to domestic water supply. The Directive also provides that the pricing of water services has to cover the real costs of production. Hall and Lobina (2008) observe that this has led to higher prices in some countries, because subsidies have been disallowed. At a national level, the legal framework differs from country to country and reforms are currently underway in many countries in particular in relation to public-private partnerships. Moreover, the reform of European company law, on which this book focuses, can be seen to reflect changing concepts of the company and its role in the provision of public services. The conclusion will discuss how law could promote an enlarged stakeholder concept in that regard.

4.2 Community participation on company boards (Germany and France)

One of the central struggles in relation to the company boards of companies has been to gain employee representation. Some European countries require this form of participation, while others do not. Through their participation on the board of a company, employees are in position to influence company policy on crucial questions, and can take part in decision making. Furthermore, they have access to important information. Clearly, therefore, access to company boards is a crucial element in any stakeholder value concept.

7. Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327, 22.12.2000, p. 1.

Theoretically, there is no legal obstacle to letting the community participate on the company board of a company. In public utilities, the company board mainly consists of councillors. Boards are usually small groups, the idea being to facilitate a favourable environment for discussions. In practice, the number of board members varies. In Germany, for example, the company board of a public utility in a midsize city commonly has between 6 and 18 members.⁸ Boards have already been enlarged for employees, so some further seats could presumably be allocated to the community. Like employees, of course, the community would never have a majority of seats on the board. More critical than this, though, is the question of who participates. As there are only a small number of seats, it is difficult to open boards to individuals as interested citizens. Their legitimisation would be problematic. Instead, the participation of associations, especially those which are experienced in environmental or consumer matters, would appear an adequate solution. Their legitimacy would derive from the fact that, as associations, they already constitute an 'accumulation of interests'. Their integration would clearly produce effects in the fields of 'expertise' and 'problem solving', because associations have acquired specific knowledge in their specialist areas. They could provide input to the company board on specific issues such as the environmental consequences of technical measures, or they could advise on standards and exercise control of a company's environmental or social performance. Consumer associations may also be capable of advising on cost reductions, because they have an interest in ensuring that customers pay fair prices for water or other services provided by the public utility.

Although there is not a huge wealth of data available, it appears very realistic to presume these effects. The main challenge is to engage the political will of the municipality's political leaders. Participation on a company board means the sharing of real power. There are not many public utilities in which associations can participate, and if they are allowed to participate, restrictions usually apply. In Paris Public Water Company, one of the most participative public utilities in Europe, associations form part of the board, but they have only an advisory role. In the German city of Münster, the board of the 'Stadtwerke', a public utility providing multiple services: water, energy, public transport, etc.,

8. In large cities, such as Cologne, the number of seats on the company board may be greater. However, in all cases, in comparison with the local council itself, only a minority of political representatives will have access to such a forum.

also integrates the community. Of the 18 seats on the board, a certain number are designated for individuals. These are nominees of the political parties and it can be assumed, therefore, that mostly they are party members or individuals close to a party's interests. Consequently, there is no opportunity for the independent mobilisation of community participation on company boards.

4.3 Water councils (England and Wales)

The general idea of a consumer council is to act as a watchdog organisation. Independent institutions are tasked with controlling the conduct of companies providing services of general interest. Their remit covers pricing policy, the quality of services (for example, water purity standards), consumer opinion, etc. In order to realise these aims, watchdog organisations need to be free of government influence, have their own resources and access to crucial information, and in all cases the organisations must consist of competent members. If these conditions are present, consumer councils can not only exercise control, but also contribute to problem solving, because their members are specialised in the field. Furthermore, the expertise of consumer councils could also be used to develop proposals for cost reductions. How do the water consumer councils for England and Wales respond to this ideal?

In her case study on the water councils of England and Wales, Anja Röcke (2010) points out that the context for community participation in water companies in England and Wales is quite different to the situation in other European countries. Over recent decades, the water sector has been radically transformed as a result of neoliberal policies. Municipalities lost their responsibility for water and public utilities were replaced by private companies. In this context, more than 1 600 public utilities have been replaced by 10 regional private sector providers (Röcke 2010). The Department for Environment, Food and Rural Affairs (Defra), a department of central government, is now responsible for water politics in general. In addition, the market is supervised by a regulatory agency, Ofwat (the Water Services Regulation Authority). In this context, a non-departmental body, the Consumer Council for Water (CC Water), was established in 2005 in accordance with the Water Act 2003 (Röcke 2010). The organisational structure of CC Water is quite complex. It has a national board of about eleven members, consisting of a chair, a chief executive, four independent members, and representatives of the coun-

cil's regional sub-boards in England and Wales. The chair and the chief executive have part time jobs; ordinary council members are paid for 2-3 days per month (CC Water 2011). Government institutions appoint council members, but they are usually independent people, such as respected figures in the area of science or health policy. The board meets several times a year, the meetings are open to the interested public, and minutes are published online. The Council's budget for actions is about £6.14 million (around 7.3 million Euros) (CC Water 2010).

In its annual review, CC Water documents the results of its efforts. In 2007-8, it ensured that three regional water companies invested more than £90 million (around 107 million Euros) in infrastructure, and at times it also convinced companies to maintain stable prices (CC Water 2008). Furthermore, the council can point to its success in relation to consumer complaints. Therefore, on the basis of CC Water's own account set out in its annual reviews, it is realistic to presume effects in relation to 'expertise', 'problem solving', and 'cost reductions'. Due to the private ownership of the water companies, however, the influence of the council is limited. Therefore, the companies only make the compromises that are favourable to their interests. The council has no power, only a consultative influence. Its main strategy is based on communication with government, regulatory agencies, and companies. In short, the council cannot fundamentally change water policy; it can only, as Röcke (2010) states, prevent excesses.

4.4 Client forums (Münster, Germany)

Client forums are tasked with advising companies on certain issues of service delivery, mostly determined by the companies themselves. Although their numbers remain limited, these forums are the most widespread device in Germany and in Europe or community participation in companies' affairs. Client forums are not an exclusive device of public utilities, because private sector companies also use this method of consultation. In contrast to consumer councils, the idea is not to exercise control, but to help the company to improve its products.

In the German city of Münster, the public utility 'Statdwerke Münster', a provider of multiple services including energy, water, and public transport, has recently started such a process. Through the medium of public announcements, the utility invites all interested users to an open meet-

ing twice a year. In general, between 25 and 35 members of the public attend these three-hour meetings. At the first meeting, held in April 2011, participants could speak freely on topics of their choice. They selected the issues of pricing policy, strategy of energy policy, public transport, sponsoring, customer service, and recommendations for reducing energy consumption (Stadtwerke Münster 2011). On each of these issues a working group developed specific recommendations, which were first documented in a chart and later in the minutes of the meeting. Some of the proposals were directed at cost reductions. Also, a manager reported that community expertise gave him useful advice. Initially, the CEO had been advised by an external consultant on how to design a user-friendly bill, but this format was criticised by all the customers. Consequently, the manager stated, ‘if the users say that this is too complex, I would be better off listening to those who have to pay the bill’.⁹

Overall, client forums have the potential to deliver a broad variety of modernisation effects. In addition to providing citizen expertise and proposals for cost reductions and encouraging the acceleration of procedures, forums could also, if integrated in a broader strategy of company modernisation, contribute to transversal cooperation between the different units of the company. This is the case if a citizen proposal concerns not only one office of the company, but also the cooperation of different services. It should be noted, however, that in contrast to company boards – and to a certain degree in contrast to consumer councils – participation in client forums is completely controlled by the company itself, which in some cases may be less attractive to the community.

4.5 Deliberative polling (Andalusia, Spain)

Seen conceptually, deliberative polling has a stronger influence. It is not seen as mere consultation on the improvement of products, as is the case with client forums. Deliberative Polling® was developed by political scientist James Fishkin (2003) at Stanford University and has mainly been applied in the context of political decisions by government. The idea is that ordinary citizens express their opinions after having a deeper discussion of a specific topic and listening to different standpoints. Therefore, a randomly selected representative sample of citizens is invited to

9. Interview with the CEO of Stadtwerke Münster on 13 January 2012.

meet in workshops for a few days. In order to determine if opinions have changed, participants must respond to questionnaires twice, once before and once after the workshop. If different groups block a political decision, deliberative polling can be used to identify new arguments. The following information about Andalusia is taken from the research of Ernesto Ganuza (2011) and Heloise Nez and Julien Talpin (2010).

In the Spanish region of Andalusia, the general water strategy has spurred political conflict over the use of water. In this context, it must be stressed that Andalusia is a warm region in the south of Europe, and, as a result, water is limited and constitutes a valuable resource. Due to demands of the European Union, the Andalusian Government had to implement a new law defining the strategy for water exploitation in the region. The general problem it faced was the presence of two opposing viewpoints preventing a solution. On the one hand, there was the agricultural point of view, which took an economic perspective on the use of water, in this case that the exploitation of water should serve to increase societal wealth. In contrast, the environmental point of view regarded water as a resource for future generations. In order to obtain a clearer view of this conflict, the Andalusian Government assigned the organisation of a deliberative poll to an academic research institute (Ganuza 2011, Nez and Talpin 2010). First, 1 500 randomly selected inhabitants from all parts of the region were contacted and asked to respond to a questionnaire on water policy. Then, 150 of the participants – who seemed to be most representative based on age, sex, and social group – were invited to a three-day workshop. In small groups, the participants discussed water strategies and listened to experts representing the two opposing positions on water policy. After the meeting, they responded to further questionnaires in order to determine if the discussion had changed their opinion. In general, two types of results can be expected from this method. First, if the deliberative polling shows a clear preference, government gains a better understanding of the kind of solution it has to pursue. In this way, deliberative polling can contribute to ‘problem solving’. Second, if the results of a deliberative poll increase the acceptance of solutions, it can lead to the acceleration of procedures, because resistance can be reduced.

The real effects of Andalusian deliberative polling have not been so clear. One reason for this was that the Government hesitated to use the results in public debates. One positive effect, though, was that the 150 participants became much more informed about the politics of water. On the

other hand, one of the disadvantages of the random selection method is that people outside the sample cannot participate. This constitutes a real limit to community participation in the affairs of public utilities.

4.6 Citizen jury (Nantes, France)

Like deliberative polling, the *citizen jury* is a dialogue-based device for community participation. The participants are also selected by a representative sample. The objective here is not to observe the transformation of opinions, but to obtain detailed information on the solution to a problem. Here too, participants meet for a few days, gather in working groups, and listen to a variety of opposing arguments. In contrast to deliberative polling, however, participants try to reach to a consensus. This does not mean that they declare their preference for only one solution; they can also propose alternatives. In all cases, the output of a citizen jury is a detailed report, often written by the moderators of the process but approved by all participants. The following information about Nantes is taken from a case study report by Clémence Bedu and Rémi Barbier (2010).

In 2009, the urban intermunicipal government of Nantes organised a citizen jury. The intermunicipal government is generally responsible for water policy in its area. The government fixes the prices and standards, and decides which operator is to provide the water services. At present, under the existing concession, one public utility and two private sector companies are contracted to provide these services, which is a very common situation in the French context. As regards community involvement, French law requires that in municipalities with more than 10 000 residents a consumer council composed of local councillors and representatives of local associations has to be installed. This council evaluates the price policy for all public services, including water. However, in contrast to the meetings of the Consumer Council for Water (England and Wales), the public is excluded from these meetings of the French consumer councils. Typically, local residents are not aware that such an institution exists, and even the formal members lack the motivation to attend the meetings. Therefore, Nantes intermunicipal government decided to collect proposals for a better participative policy. The main questions, as Clémence Bedu and Rémi Barbier (2010) stated in their research report, focused on how the work of the consumer council could be made more attractive. Also, how could a broader public be included?

Could this be done through a different participative device? With these objectives in mind, 15 participants were invited to a citizen jury which met over the course of three weekends. Ten of the participants were randomly selected, and the remaining five were members of local associations. The work of the citizen jury included the phases of education, expert listening, and deliberation. For this, not only presentations but also interactive methods such as theatre role-plays were used. Finally, the group prioritised its proposals through a process of voting and reports detailing the results were drawn up by the members (Nantes Metropole, Dem'eau and Cemagref 2009).

Like deliberative polling, the citizen jury can lead to an 'acceleration of procedures' and 'problem solving', because the government has the opportunity to hear a detailed report in which the 'citizens' expertise' comes out. If the citizen jury is organised around financial questions, this method can also lead to 'cost reductions'. In Nantes, however, the jury mainly contributed to problem solving. Although the jury proposals were at first rejected by the councillors, who considered the report to be too critical, at a later stage, a joint commission consisting of councillors and jury members discussed proposals for improving participation in the consumer council and in the area of water in general.

4.7 Overview of effects

Although there is still a gap between real and potential effects, the cases presented generally show that community involvement can produce favourable results. In this section, some criteria that facilitate effects will be highlighted. Naturally, it is not helpful to oversimplify and ignore problems, but for analytical reasons it makes sense first to discuss the potential effects – the problems will be discussed in the following section. This information may be helpful for those who are interested in the implementation of participative devices in public utilities. For that reason, this subsection provides some guidelines for the implementation of participative devices.

Taking a look at Table 2, some comments can be made concerning the effects of participation on modernisation. Again, it must be remembered that at this stage of research, the links between specific participative devices and types of effects constitute, first and foremost, hypotheses. It is the task of future research to validate and develop them, because, as

Table 2 Potential effects on participative modernisation by device

	Board representation	Consumer council	Client forum	Deliberative polling	Citizen jury
Transversal cooperation	–	–	X	–	–
Acceleration of procedures	–	–		X	X
Service provision by citizens	–	–	–	–	–
Provision of expertise by citizens and associations	X	X	X	–	X
Problem solving	X	X	–	X	X
Cost reductions	X	X	X	–	X
Structural changes	–	–	X	–	–
Control by citizens	X	X	–	–	–

Note: X = effects can be expected; – = no effects can be expected.

this section has shown, the devices do not automatically lead to their predicted effects. Taking these caveats into account, the following comments can be made. First, among the selected devices, the most widespread effects concern the ‘expertise of citizens and associations’ and the potential for ‘problem solving’ and ‘cost reductions’. This impact is possible if participatory devices offer a space for deeper, ongoing discussions, as is the case with deliberative polling, citizen juries, and consumer councils. Of course, this is also possible in the small groups of company boards. Second, broader effects of modernisation, that is, the integration of ‘transversal cooperation’ between internal company units and ‘structural changes’, are likely if participation is an ongoing process and not isolated to single events. As citizen juries and deliberative polling are very complex and may only be organised in specific and one-off situations, they may not encourage a structural change in companies’ internal structures and performance. This is in contrast to client forums, which are intended to meet frequently. Furthermore, it can be expected that proposals developed by client forums will be diverse and demand cooperation between different offices of the company. Such proposals

may also foster ongoing procedural and structural changes. Third, it must be noted that 'control' is likely to be a rare effect of community participation. Control is only possible if participative institutions have a certain autonomy and the right to access crucial company information. This is most often the case in relation to participation on company boards, as a result of rights conferred by company law. To some degree, consumer councils may also control companies' performance, but their influence is limited by their external status. Fourth, it has been observed that 'service provision by citizens' does not appear to result. It is possible that the private law status of the service provider inhibits citizens from becoming concerned, in other words they do not feel concerned if an enterprise lacks the capacity to realise its task. Fifth, and finally, it is reasonable to presume that one device alone will not contribute much to a democratic opening: Experiences of participative modernisation in the public administration have shown that community participation has to be accompanied by other changes to structure as well as changes of attitude amongst the agents concerned (Sintomer *et al.* 2008). Applying this experience to public utilities, this means, for example, that the overall orientation of a company will not change simply through the organisation of a single client forum. It makes a difference, however, if client forums are embedded in a general strategy of transparency and trust. In this case, for example, the forum could be complemented by reports on sponsoring placed on the company's website and large-scale company boards including politicians from all political groups. Additionally, as will be shown in the next section, it is important that the attitude of key agents – such as employees and managers – towards community participation is consistent with this line of thought.

The effects on participative modernisation demonstrated here may be relevant not only for political actors but also for managers in public utilities as an encouragement to join the debate on enlarged stakeholder concepts. However, as already indicated, there is still a divide between the potential and real effects of participative modernisation. In other words, companies could profit much more from community involvement than they have until this point. What are the reasons for this?

5. Enlarging the stakeholder approach

In order to improve the effectiveness of the enlarged stakeholder approach, the following section will examine whether there are conflicts

between different stakeholder groups that inhibit the impact of community involvement. In other words, what changes are necessary to facilitate and improve community participation? Moreover, who is ‘the community’? In answering these questions, we will see that the community itself may also contain opposing interests, which influences its relationship to employees and other stakeholders. In order to understand better this relationship a conceptual distinction of different community roles will be proposed.

We start our reflection with the person who may be in the centre of power in public utilities: the manager. Some scholars have shown that the characteristics of managers in public utilities have changed (Edeling 2003). Previously, the service was typically headed by someone with technical/engineering skills. The idea was to deliver good quality and to ensure that everybody had secure access to water, energy, and other services. Today, as a result of changes over the last two decades, public utilities are steered by managers and guided by economic principles. In times of limited financial resources and criticism of bureaucratic modes of administration, public utilities have to prove their economic efficiency. However, given their focus on economic issues, these managers may be less open to community participation. In the city of Potsdam, to cite an example from a previous section, the manager considered himself to be the ‘big boss’. It was clear that he used his autonomy, as much as possible, to decide alone. He collaborated with the company board and party groups only where necessary, and would not voluntarily permit others – especially the community – to gain real power. This would not be in keeping with his self-definition as a manager. In these circumstances, perhaps it is necessary to change the legal status of public utilities in order to achieve community participation – we will come back to this point in the chapter’s conclusion – but at this point a different proposition should be made. Namely, during university degree programmes in business administration, future managers could be instructed in participative devices. As has been done recently in the case of public administration, managers could be shown that companies can benefit from community involvement, as this chapter demonstrates. Therefore, familiarity with participative devices could be included as requirement for new managers. Consequently, managers would consider participation a qualification that could further their professional careers.

For the implementation of new participative devices, managers need to know more clearly whom should they involve, and who is to be regarded

as the community. Until now, this chapter has defined citizens, associations, and other groups of civil society as the community. However, for a better understanding of this matter, it has to be realised that the participation of the community relies on different roles (see also Bogumil *et al.* 2001; Sintomer *et al.* 2008, 2012). In this connection, it was the idea of new public management to speak about members of the public as *clients*. In this discourse, attention is centred on good service quality and prices. Furthermore, clients would like to have easy access to services, and in keeping with this concept they should have the choice between different providers. Admittedly, this is not always possible in relation to services of general interest such as water, which can only be provided by the company that has been commissioned by local government to do so. However, this generally does not change the fact that public utilities treat citizens as clients. In some countries such as France, however, the French term *client* is replaced by *usager*¹⁰ if services are provided by public administrations or publicly-owned companies. The differentiation is much more than nominal. The term *client* defines a relation based on an exchange of money for services (telephone services, for example), while the term *usager* implies that public administration is also responsible for those who have no money to pay for services. Giving this example from France, we would like to remember that low income people must also have access to basic service – a question which gets easily neglected if consumers are only considered as clients in economic terms. Developing this distinction, we would like to propose in addition to clients and usagers the role of citizens which is much more political. The central idea, here, is that citizens feel responsible for society as a whole and not only for particular interests. In fact, there could be a conflict between the roles of client and citizen. Whereas clients tend to focus on low prices, citizens might be receptive to prices that adequately cover environmental and social costs.

Differentiation between various roles is crucial to the relationship between the community and employees. The latter group is expected to defend worker rights: adequate wages, stable employment conditions, health and safety at work, etc. In general, employees support successful companies, because they seek to convert company profits into wage in-

10. There is no English analogy for the French word *usager*. Therefore, we use here the French term in order to develop the different conceptual roles of clients, usager and citizens which we consider crucial for the understanding of community participation in public utilities.

creases and to promote long-term job security. However, employees and unions have not expressed any particular interest in promoting the participation of civil society in companies' affairs. One explanation for this could be that their relation to the community is ambivalent and depends on the role at issue. To clarify, the notion 'role' does not necessarily refer to different persons. What is important here is the capacity or status according to which one acts.

It is presumed here that employees can benefit from community participation if that participation functions through a *citizen* perspective. In their reasoning, citizens integrate the interests of others. For example, as members of company boards they may argue for long-term job security because they take account of all the local people employed by the company. In contrast, the client point of view does not consider the welfare of employees, the company, or society as a whole. Clients would like to secure the best conditions for themselves. Therefore, they are more likely to further the aims of the company and its employees if they are invited to participate in forum discussions on service and product quality. Here, for example, employees could learn from clients that water quality is poor in some parts of the town or at certain times of the year. This information is very useful, because it is the task of employees to ensure water quality. Similarly, one can imagine that clients may help employees to develop new products. Consequently, this could contribute indirectly to job security, assuming that the new products are successful.

As has been argued above, employees can clearly benefit from community participation if the community participates in the appropriate role and in the appropriate forum. Ideally, citizens would participate in strategic questions, and clients in the discussion of products. Therefore, it is crucial for an enlarged stakeholder concept to coherently link the different roles using suitable participative devices. For example, associations with an interest in political steering could be integrated into company boards, as has already begun in Paris Water Company. Here, associations pursue the role of citizens concerned with the general good. Similarly, client forums – as the name suggests – should be open to those who are interested in improving products and services. These devices are mainly consultative, and therefore it is less likely that they can impose solutions that are harmful to employee interests.

6. Conclusions: A legal framework to integrate the community

This chapter has discussed the procedures by which the community could be integrated in an enlarged stakeholder concept. In support of that concept, it has been argued that there is a lack of democracy in public utilities. Given that these bodies constitute part of the public administration and are responsible for services of general interest, the community should have the opportunity to participate in their affairs to the same extent it can where services are provided directly by local government. In order to convince other stakeholders, especially managers, of the benefits of community involvement it has been demonstrated that this could enhance the modernisation of public utilities. In order to detail the positive effects, different forms of community involvement have been analysed. From this it can be concluded that positive effects can be encouraged most effectively if the relationship between different stakeholders is regulated. In particular, the relationship between employees and the community in its different roles (citizens, clients, users, etc.) needs to be considered when participative devices are implemented.

In order to organise the coherent integration of stakeholders, it would be beneficial to establish a suitable legal framework. A first step would be to recognise that public utilities are different to private sector companies. Acknowledging their public character helps stress the public interest involved. Although the community is currently excluded from those utilities, integration of the community, as argued in this chapter, would be a legitimate aim in terms of political equality. A starting point for any legal proposals should be the relationship between company boards and the community. Table 1 (see section 2 above) could be helpful here as it compares access to local councils and company boards from the perspective of political equality. The table demonstrates that it makes a crucial difference whether public services are provided by local government departments or by public utilities. Therefore, the analysis clearly points in favour of some forms of democratic opening. For example, the participation of environmental and social associations on company boards would be beneficial. Furthermore, increased access to information could be given to individual citizens and consumer councils. Moreover, the analysis of consumer councils, deliberative polling, and citizen juries has shown that these external organisational devices need to be equipped with specific legal rights, and that discussions should be linked with decisions. Otherwise, there is a risk that such devices have no impact on public

utilities. In contrast, no additional legal framework is needed to encourage client forums. Managers themselves have an interest in establishing these devices, and it is highly likely that the number of client forums will increase in the future.

In light of these reflections, an initiative at the European level would be very useful. The proposal advanced here is that public utilities should be subject to a specialised legal regime which permits more democratic opening. This law could establish the participation of NGOs and community organisations on company boards in a voting capacity. Furthermore, all interested citizens should have the right to easily access information. In the same way as they are required to produce annual financial reports, public utilities should have the duty to inform the community – through reports published online – on questions of pricing and in relation to large infrastructure projects. Consequently, before major infrastructure projects are undertaken, the community should be consulted. This principle is already part of urban planning laws in some countries and could be applied also to public utilities. It would then be for public utilities themselves to determine whether consultation is realised by public assembly or other forms of dialogue-oriented participation (deliberative polling, citizen juries, etc.). Independently of this, consumer councils should be established at the national and sub-national levels in order to ensure consumers' rights. This could be important if, for competition reasons, public utilities cannot give complete information on prices.

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