Nationalisation as a Response to Failing Public Service Providers: Challenges and Alternatives

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Recent discussions across the European Union have reignited interest in nationalisation as a potential resolution for struggling public service providers. This approach would involve the compulsory transfer of privately-owned companies performing essential public functions into state ownership. While the UK case of Thames Water has received attention, similar discussions have emerged in several EU Member States concerning utility providers, transport networks, and other critical infrastructure.

This paper will consider the Thames Water case. It will also discuss why nationalisation is not necessarily an easy fix. Modern trade is supported by Bilateral Investment Treaties (BITs) and these require compensation to be paid to shareholders from their country whose shares are expropriated. Shareholders may also claim unfairness on human rights grounds even if they are not of a nationality that benefits from a BIT. Domestic shareholders such as pension funds may expect to be compensated on the same footing as foreign shareholders.

We consider these difficulties and also propose a roadmap for cases involving struggling public service providers.