



# **The future of public employment in central public administration**

## **Restructuring in times of government transformation and the impact on status development**

*Study commissioned by the Chancellery of the Prime Minister of the Republic of Poland*

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**Country codes**

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BE	Belgium	Kingdom of Belgium
BG	Bulgaria	Republic of Bulgaria
CA	Canada	Canada
CZ	Czech Republic	Czech Republic
DK	Denmark	Kingdom of Denmark
DE	Germany	Federal Republic of Germany
EE	Estonia	Republic of Estonia
IE	Ireland	Ireland
EL	Greece	Hellenic Republic
ES	Spain	Kingdom of Spain
FR	France	French Republic
IT	Italy	Italian Republic
CY	Cyprus	Republic of Cyprus
LV	Latvia	Republic of Latvia
LT	Lithuania	Republic of Lithuania
LU	Luxembourg	Grand Duchy of Luxembourg
HU	Hungary	Republic of Hungary
MT	Malta	Republic of Malta
NL	Netherlands	Kingdom of the Netherlands
AT	Austria	Republic of Austria
PL	Poland	Republic of Poland
PT	Portugal	Portuguese Republic
RO	Romania	Romania
SI	Slovenia	Republic of Slovenia
SK	Slovakia	Slovak Republic
FI	Finland	Republic of Finland
SE	Sweden	Kingdom of Sweden
UK	United Kingdom	United Kingdom of Great Britain and Northern Ireland
US/USA		United States of America

## EXECUTIVE SUMMARY

1. The study of public administration has long concentrated on the state as a sovereign authority with dedicated personnel. This notion of state and the need for a specific category of public employees with specific working conditions arose gradually and contingently during the Renaissance and Reformation. The civil service status was closely linked to the state as a sovereign power and the rule of law doctrine as well as to the principle of legality. The purpose of a specific status and working conditions were also to achieve fairness and equity, to implement the merit principle and to protect public employees against arbitrary administrative decisions.
2. Traditionally, a hierarchical and formalised organisational structure, clear and rigid career paths, lifetime tenure, full-time employment, seniority, advantageous pension systems and rigid remuneration systems were introduced in order to reduce as far as possible the risk of excessive political influence, corruption, misconduct, the exercise of private interests and instability of government. Consequently, the traditional argument for a specific organisational structure was to produce a certain ethical status for civil servants who should be committed to the public good, neutrality, impartiality and to observing confidentiality and displaying expertise. In many countries, civil servants were therefore working in hierarchical organisations, had very specific recruitment procedures, specific ethical obligations, little mobility, varying working conditions and specific social security systems.
3. Moreover, the answer to the question, who should be given a civil service status was always linked to the task of exercising public powers and safeguarding the general interest of the state. Thus, the concept of the civil servant was always based on a traditional nation-state philosophy. Nowadays, the concepts of sovereignty, nationality, citizenship, exercising public powers and safeguarding the general interest have changed. Recent developments indicate a change in the pattern and exercise of state authority from government to governance; from a hierarchic or bureaucratic state to governance in and by networks, outsourcing, public-private partnerships and hybrid organizations. So far, the change of government has an impact on the status of its personnel. However, little systematic work so far has been carried out on the link between “change management” and “status change”.
4. Today, more Governments shy away, through politics or law, to impose any particular conception of a specific public service organisational and employment structure. This modernist trend towards more neutrality and more moral restraints opens central public employment for employment concepts in the private sector. This trend as such bears risks as employment in central public administration has a role model and is very innovative in some HR areas in some Member States (for example as regards equality, equity, fairness, anti-discrimination, combination of private- and professional life).

Despite prevailing perceptions about the superiority of private sector practices, at least in some areas, the private sector can learn from the public sector. We advise to better promote innovative best-practices in the field of employment and working conditions.

5. The nature of work, work ethos, values, the composition of the workforce and age structure are changing. It is still unclear how these changes affect the structure and the status of the public workforce. Overall, the process seems to be heading towards a process of “normalization” as the concept of “leviathan” (and the civil servant as a servant of the monarch, state, government etc. ) is slowly being replaced by the concept of the civil servant as a servant of the citizenry.
6. One – so far neglected - effect of public management reforms during the last years is that the national administrations no longer have a single, coherent paradigm or conceptual framework. Two concepts central to traditional public administration are now disappearing. One is that government acts as a single, unified employer. The other is the idea of a unified civil service. Whereas once the majority of public employees were subject to the same statutes and working conditions, today the number is declining
7. The notion of public employment includes different categories of employees, often different categories of public law (state civil servants, judges, diplomats, police officials, military personnel) and labour law employees. Often, public personnel status is governed by constitutions (in some countries), different statutes and by different regulations. It is also subject to different social dialogues. Moreover, public employment is linked to state and administrative structures. However, it cannot be proven with facts that decentralized countries have higher public employment percentages (in comparison to the total employment). Nor can it be proven that Governments with more pro-market approaches (or alternative: critical attitudes towards too many state tasks) have smaller public sectors.
8. Overall, changes and reforms concern the size, structure, composition, working conditions and the status of the public employment. The Central Public Administration is diminishing, becomes more decentralised and fragmented, more diversified, less specific and more aligned. Moreover, pressure is imposed on the working conditions.
9. In all Member States the process of public employment reduction is in progress. Reductions in public employment are carried out in almost all Member States after long years of a steady increase in public employment. Thus, one could argue that public services have become overstaffed and excessively expensive anyway and the present trends reflect a movement to the former status quo. Still, the public tasks as such are rarely being reduced. Therefore, one important question arises: is “doing more with less” feasible?

10. Despite the overall trend towards reducing public employment, many Member States attempt to increase public employment in certain sectors (such as ICT, security, education, health). However, it is often difficult for them to find the right experts on the labour market because of the problems with attracting staff for public service jobs or simply because of budgetary constraints or recruitment freeze. Therefore, the number of Member States which have started to shift and re-allocate their own staff is growing. Hence, one of the future challenges will consist in placing right persons in the right positions at the right time
11. All countries pursue strategies and restructure public management and administration to make them more effective and efficient in terms of service delivery, while at the same time to ensure that reforms contribute to fiscal consolidation plans by reducing public expenditure. Currently, there is a risk that the staff will not be perceived as assets any more, but rather as costs. The challenge is to implement workforce productivity improvements that ensure a balance between costs and the quality and continuity of service.
12. The majority of Member States reduce civil service employment to a greater extent than other types of employment. Overall, there is a tendency to concentrate civil service employment in the core areas/sectors such as in ministries, police, judicial sector etc. The Member States increasingly stop employing civil servants with a specific status in the health sector, university sector, education and in the agencies.
13. Almost all Member States maintain a duality (or even more categories) of employment categories between public law employees and labour law employees. However, the percentage of labour law employees is rising and the percentage of public law employees is decreasing. Only few Member States have established a uniform status system. No country is abandoning the public law status category.
14. There is a trend towards fragmentation of the workforce at the central, regional, local and semi-public level. While in the past almost all public employees had a public law status, now this number is decreasing. Today, the majority of Member States employ different categories of staff with unlimited contracts or fixed-term contracts. Some Member States employ different categories of public employees for the same professions (for example as civil servants or public employees with unlimited or limited contracts in the education, health and research sectors).
15. Alignment trends take place between public law and labour law employees as well as between civil service, public employees and private sector employees. This process is also supported by the EU law. At the same time, a new class of ad-hoc and fixed-term employees is likely to emerge in the central administrations of certain Member States. So far, public attention has focused almost exclusively on the alignment trends between the public and private sector.

16. The Member States seem to employ more public employees in civil service positions. Generally, there is no evidence that public employees carry out the tasks in a way that differs from that of the civil servants. This trend raises two questions: one of them relates to the fairness of treating employees differently if they carry out the same tasks but under a different status; the other one relates to the legitimacy of the civil service status and specific working conditions as such. Why do we need civil servants if they do not differ from other public employees?
17. The answer to the question about the tasks that should be carried out by civil servants is becoming more difficult as the boundaries between the public and the private sector are becoming “blurred” and “exercising public power” is more difficult than ever to define. Still, the discussion is surprisingly similar as regards the interpretation of Article 45(4) of TFEU and the case law of the Court of Justice as regards the question which positions fall under the exception clause of Article 45 of TFEU.
18. In the end, it is not so much about the question whether the Member States should maintain a public law status or not, whether they should have a specific civil service or not or whether they should have a core or broader definition of civil service. It is more important to have rules, working conditions and ethics-/trust mechanisms in place so as allow the Member States to have efficient, effective, impartial and democratic public administration. The latter can be achieved by labour or public law mechanisms. The status question is still linked to national tradition and national structures.
19. Civil Service employment is not only a subject of reforms and constant changes but also of – often irrational – criticism. In all Member States common accusations that the central administrations are not innovative, not ready for reform and suffering from reform inertia are clearly wrong. Contrary to this, reforms have led to many changes. However, central public administration cannot be effectively reformed against the background of popular images, beliefs and assumptions. Instead, reforms should be based on facts and a rational discourse.
20. Despite many changes that are taking place in many countries, in the eyes of the public the civil servants work in an environment which is clearly separated from the private sector. In some countries the civil servants are perceived as a protected group set apart from the outer world. This assumption needs to be qualified:

First, employment and working conditions differ widely amongst the Member States. While some Member States offer distinct employment and working conditions for certain categories of staff, the working conditions of others are more or less aligned with those of civil servants, public employees and private sector employees.

Second, almost all Member States maintain a number of specific employment features for certain employment groups in the field of job security, recruitment



procedures and pay systems. Moreover, the link between pay and performance is still different than in the private sector. Like this, also some perverse developments in the private sector could be avoided (for example compared to the investment and banking sector, sports, culture, media etc as to the application of performance based rewards and merit based-principle).

Third, the differences between civil servants and other public employees as well as between public and private employees in terms of their status, working time, pay, pensions, holidays, recruitment and competency requirements are, however, lower than they were previously.

Fourth, without any doubt, the future will see the emergence of a growing paradox. On the one hand, growing doubts about the need for employees with a specific status and specific working conditions will lead to the alignment of working conditions with the private sector. On the other hand, alignment may be linked to the deterioration of working conditions. As a result, defending and defining good working conditions will re-appear as one of the most important agenda points in HR Management and the social dialogue in the years to come. Therefore, we suggest to discuss the costs and benefits of preserving distinctive features of public service employment. For example in terms of job security.

Fifth, perceptions that the central administrations should be seen as a “haven” of job security need revision. In fact, the civil servants in Germany, France, Spain, Ireland and Luxemburg still enjoy a very high job security. However, in many countries, also civil service employment can be terminated for different reasons.

Sixth, in some countries, (severe) salary cuts lead to an increase in the number of low paid employees. Moreover, workforce reductions combined with the same volume of services to be delivered will lead to increased workloads and higher work intensity (and possibly higher sickness rates). In addition, training opportunities are being reduced and moving up the career ladder is made more difficult due to the austerity programmes in many countries. All these developments may impair the attractiveness of public sector employment and lead to greater challenges in recruiting the “most talented”.

Seventh, in some cases, there is also a adverse correlation between structural, organisational and austerity measures such as workforce downsizing operations, employment reductions, partial or total freezing of recruitment and promotion, freezes on the departmental operating budgets, restructuring of personnel, outsourcing, staff movement to agencies or to sub-national levels of government, wage cuts, pension cuts etc. and the impact on morale, commitment and performance of personnel.

Eighth, we cannot confirm an overall trend in the wider public and private sector towards using of more fixed-term contracts at the central public administration level (as it is the case in the public and private sector). Generally, the proportion of employees under fixed-term contract varies significantly and is not linked to the type of HR system. In the majority of countries the unlimited contracts are standard. Moreover, some Member States are reducing fixed-term employment to a greater extent for budgetary reasons. However, other Member States increase fixed-term employment for exactly the same reasons (and reduce the number of unlimited contracts).

Ninth, overall, the working and employment conditions are still better at central public administration level than elsewhere in the public sector. Yet, there is a widening gap between the different Member States of the EU in this respect.

21. The financial crisis and implementation of austerity measures strongly affect the public workforce. The majority of the restructuring programmes and austerity measures effects are not analysed in-depth. In the future, the Member States are advised to engage in an open and fruitful discussion on the effects of different restructuring policies and instruments at the national level. For example, no analysis of the links between the most important public management and HRM trends and the degree of politics and unethical behaviour has been carried out.
22. The impact of intergovernmental developments (also as regards the EU law) in the public employment restructuring area is getting stronger in the context of the economic crisis. While Article 153 of TFEU does not apply to the pay, right of association and right to strike (Article 153(5) of TFEU), other international political developments (also at the EU level) allow for interventions in these fields.
23. In a number of countries flexibilisation and decentralisation have been taken to the extreme and have brought about many challenging outcomes. In the meantime, there is a growing awareness that too much flexibility and decentralisation may be detrimental and an unlimited mobility of officials may also adversely affect competence building, mutual trust and long-term commitment. Today, there is an increasing awareness that the right proportion between flexibility, organisational stability, decentralization and coordination as such solution may be helpful to organizations.
24. The flexicurity reforms have also shown varying degrees of success and failure. On the one hand, no doomsday scenario of the demise of the European welfare state can be identified (in most Member States). On the other hand, working conditions seem to have deteriorated in many public administrations. Yet, introduction of flexicurity in the national public services has a totally different meaning compared to the private sector. In fact, it is difficult to measure the flexicurity impact on the politicizing of HR policies, public service motivation and public ethics.

25. Overall, it is noteworthy that there is very little discussions about the effects of the flexibilisation process and the introduction of the flexicurity concept at the central administrative level. Therefore, we propose to study more closely the effects of implementation of flexicurity concepts in the national central administrations. What has occurred so far? What are successes and failures? What are good practices? Is the situation comparable or different compared to the private sector? And what are the future trends?
26. Especially those countries, which implement hasty restructuring programmes, do not always carry out evaluation of the impact of these measures on the public workforce. So far, many of the current reforms produce unintentional side-effects and new dilemmas. We agree with the OECD that there is little empirical research into which public administration reforms bring about efficiency and productivity gain (...). Although reductions in operational expenditure are “expected to have a positive impact on the short-term budgetary aims of government, they may also work to the detriment of government’s long term capacity for service delivery”. Next, “fiscal consolidation plans normally involve reductions in staffing levels and in compensation of public employees, a situation that can have a significant impact on the motivation, engagement and commitment of public servants and leadership – which of course affects the quality of service delivery” (OECD 2012).
27. The focus on budgetary constraints also means that the era of enthusiasm for great and ambitious reform projects has probably come to an end. If a question is asked about the effects of many reforms in the past, quite a number of people might say that while it sounded good in theory, it mostly did not work so well in practice. Also the expected cost savings and enhanced individual and organizational performance have not always materialized. Thus, there are good reasons to believe that we are entering a period of consolidation and refinement of reforms with a stronger focus on the analysis of the reform effects. Therefore, we propose to have more discussions within EUPAN about the outcomes of public employment restructuring reforms.
28. To this end, and in order to gather more evidence on successful restructuring cases and good practices, we propose to set up a voluntary Observatory for Innovative Public Service Employment Restructuring measures. This Observatory could be established on the EUPAN webpage ([www.eupan.eu](http://www.eupan.eu)), integrated in the new MTP (under the point “Resilient Public Administration”) and should allow all Member States (and the interested public) to upload and to consult innovative cases in the Member States as well as in the European Commission. Here, role models could be the OECD Observatory of Public Sector Innovation (<http://www.oecd.org/governance/oecdobservatoryofpublicsectorinnovation.htm>) or the Eurofound observatories (<http://www.eurofound.europa.eu/emcc/>).

## 1. INTRODUCTION

Generally, politics should not try to form the character or cultivate the virtue of its citizens, for to do so would be to “legislate morality”<sup>2</sup>. Therefore, Government should provide a neutral framework of rights within which people can choose their own values and ends. Most political parties share the modern idea of a neutral state that protects individual rights although they may disagree about what rights are fundamental and what political arrangements the ideal of neutrality requires. Still, liberals invoke more strongly the idea of neutrality when attempts are made to bring more morality in the public sphere.

Things are different as regards state employment. Here, for a long time, all political groups shared the idea that Government should not be neutral, but, instead, interfere strongly in employment issues. State employment as such was loaded with “moral discussions” and the need to have neutral, loyal and impartial state servants.

In fact, Governments’ employment frameworks are very ambitious<sup>3</sup>. For good reasons. They want employment systems that guarantee observation of the fundamental values, administrative law principles and ensure a focus on effectiveness, efficiency and accountability. The government policies must ensure equal treatment and fairness while also rewarding individual efforts. The government employment structures should be diversified and representative while ensuring the merit principle and the equality of chances. The governments’ employment policies must be attractive and competitive with respect to the private sector policies while managing tax payers money as prudently as possible.

Over the past decades, the public employment policies have changed tremendously. More and more, Government is withdrawing from interfering in public employment issues. This can be seen best in trends towards the alignment of working conditions between civil servants, other public officials and employees in the private sector. Today, public employment is increasingly underlying the influence of the market, individual interests and the social partners. This trend is consistent with other trends, for example, in the field of education, medicine in which - as Sandel claims – money can buy almost anything<sup>4</sup>.

Should the market “rule” public employment, too? Are we heading towards a privatisation of Government? Or, have the governments become too ambitious in their efforts to reach all of the (above mentioned) conflicting objectives? Has one target become more important than others, for example, the need to manage the public employment policies as efficient as possible? Is public employment still different from the private sector employment? Should it be? And if so, which HR-policies, sectors and which categories of staff are concerned? Do we still need a broad definition of civil service and specific working conditions for many employees or is a narrow definition sufficient, and specific employment features are only

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2 Michael Sandel, *Public Philosophy*, Harvard University Press, Cambridge, 2005

3 OECD, *The State of the Public Service*, Paris 2009, 9.

4 Michael Sandel, *What Money Cannot Buy*, Farrar, Strauss, Giroux, New York, 2012

needed for those public employees who interfere in the human rights (for example judges) or carry out important government policies of the day? And how important is (administrative) law as such in the future?

Discussions on the importance of (administrative) law did not play a major role during the heyday of New Public Management reforms. The New Public Management theories were dominated by the economic, political and organisational discussions. One reason for this may be that although administrative law was mostly seen as a constraint that blocks policy choices and reform policies, the reform of the public law status was seen as a complicated issue and the need to reform was never seen as a political priority (with some exceptions such as the Netherlands). However, despite all reforms that were taking place, nobody was really interested in discussing one of the cornerstones of the classical public service – the public law status. In fact, the public law status remained one of the core principles of all administrative systems in Europe.

In the meantime, the concept of New Public Management has lost a lot of its appeal as the focus on “too much” managerial thinking (and a too strong focus on rational choice theories) is also revealing many negative effects. Still, after the New Public Management euphoria there is as much disagreement about the successes and failures of New Public Management reforms. According to Pollitt, “NPM is neither a general panacea nor a general failure”<sup>5</sup>. The COCOPS (*Coordinating for Cohesion in the Public Sector of the Future*), a public management research consortium grouping eleven universities from ten different countries, made a meta-analysis of all the academic empirical data evaluating the impacts of the NPM reforms in Europe.

COCOPS concern is that, highly surprisingly, many academic writings, governmental works or consultancy evaluations do not focus on the outcomes obtained by the implementation of NPM reforms. Most of them consist of a description of the reforms implemented and the impact on activities and processes. Only 27% of the studies referred to outputs and outcomes and less than 9% analyzed the final outcomes of the reforms engaged. Notwithstanding that it is highly unwise of having spread those kinds of reforms through most of the OECD countries without having a clear understanding of their impact, it is hard to assess the results today due to the lack of empirical analysis. Pollitt discusses the “difficulties around the attribution of outcomes to particular reforms, i.e. a particular effect (let us say reduced waiting times for services) might have been caused by a given reform; or they might have been caused by something else (more staff and resources) or by some combination of both”<sup>6</sup>. Political time is not fitting with the reform life-time: while a NPM reform was introduced by a government, it is highly possible that some years after the reforms a political change will occur which modifies some elements of the reform.

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5 Christopher Pollitt/S.Dan, “The impact of New Public Management (NPM) Reforms in Europe”, COCOPS European Policy Brief, 2011, p.9.

6 Ibid., p.4.

Nonetheless, in almost 50% of the cases the NPM reforms improved the situation of the reformed services, a significant amount of NPM reforms did not have the outcomes expected or worse, the situation deteriorated. This result is interesting as such as many Member States implemented NPM like reforms throughout the last years.

So, what are the effects of public management reforms on the public employment apart from popular wisdom that the number of bureaucrats is getting less? And what are the effects of public employment restructuring policies? As regards the efficiency of national public budgets, on good governance policies, ethical government, motivation and commitment of employees, the degree of politicisation within the government apparatus? These questions are highly sensitive for many Member States.

In all Member States opinions that public management differs from the private sector management are widespread. The ongoing discussions about the existence of a specific public sector motivation and a public service ethos also imply the existence of differences between work in the public and private sector. Moreover, the importance of administrative law and administrative principles are unquestioned as one important role of administrative law is also to protect citizens and public employees against unlawful state practices. Thus, the concept of administrative law is linked with the idea of democratic values protection. On the other hand, many claim that the public employees should not be treated differently to private sector employees, and the public administration and administrative law as such are easily identified as having perverse consequences. Also all Member States share the opinion that the concept of the state and democracy as well as values, principles and the role of law as such are changing.

Today, discussions about the differences between public and private sector management, public and private employees and public and private sector motivation are entering into a new phase. In all Member States a traditional government is transforming into “governance”, although this concept does not necessarily mean that we are taking a step forward towards solving problems and offering better solutions<sup>7</sup>. In fact, the term “governance” is as vague as the term New Public Management<sup>8</sup>. Furthermore, the “evolving models of government are not intrinsically liberal or conservative, effective or not effective – they are simply different and new and thus require some careful thought on the part of those who care about good governance and well-functioning public administration”<sup>9</sup>.

One effect of public management reforms, so far neglected during the last years, is that the national administrations have no longer a single, coherent paradigm or conceptual framework. Two concepts central to the traditional public administration are now disappearing. The first one – the government acts as a single, unified employer. The other one – the idea of a unified

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7 Laurence E. Lynn jr., *The Persistence of Hierarchy*, in: Mark Bevir (ed.), *Handbook of Governance*, SAGE, Thousand Oaks, 2011, p. 218-237.

8 See Mark Bevir (ed.), *Handbook of Governance*, SAGE, Thousand Oaks, 2011

9 Elaine Ciulla Kamarck, *Public Servants for Twenty-First-Century Government*, in: John Donahue/Joseph Nye (eds.), *For the People, Can We Fix Public Service?* (2003), Brookings Institution, Washington D.C. p. 134.

civil service. Whereas once the same statutes and working conditions applied to perhaps 80 to 90% of national public employees, today this percentage is declining<sup>10</sup>. Generally, these changes may have a number of positive effects after all; “the problems of the old ‘one-size-fits-all’ approach are well documented and real. However, they will also fundamentally alter the concept of civil service and further fragment government”<sup>11</sup>. No doubt, the future will see the emergence of a growing paradox. On the one hand, various factors (e.g., growing financial and demographic pressures as well as value changes) will continue to put pressure on the national public administrations to continue with radical reforms. On the other hand, the pace of change and growing uncertainties about the reform results will generate more discussions on the need to preserve traditional values, to keep the identity and the status of civil servants and to maintain some specific features that are different to the private sector. Moreover, Member States will be asked more frequently about the effects of the reforms in general.

During the last years, reforms were implemented everywhere and at great speeds. Portugal is one of the most recent examples (after the reforms implemented starting in 2008) where indefinite period employment contracts or fixed term contracts have become the common pattern of public employment. Moreover, life-time employment was restricted, career structures modified, remuneration systems altered, recruitments “frozen” and public employment drastically reduced. However, despite all drastic changes, there was no transition to a system based on labour law. All employment contracts are still concluded under public law and are subordinated to the public interest, to the constitutional principles of equal access to public administration, merit and impartiality. Consequently, administrative courts are responsible in cases of disputes.

Overall, the current reform process in the national civil services can be identified as a change and opening-up process of the national public administrations. Instead of being separated from the society and citizens, there is a trend towards blurring the boundaries between public and private spheres as well as between civil servants, public employees and private sector workers. Physically, the walls between the civil service and the labour market are also coming down. Almost all Member States have started to facilitate recruitment procedures, reform or even abolish careers, reduce internal hierarchies, support more mobility, delegate more responsibilities to the line managers and align the working conditions between civil servants and other public employees. The public tasks are increasingly carried out by non-state bodies and more tasks, which have traditionally been performed by the civil servants, are carried out by other public employees or private service providers.

In the field of public employment, it is useful to distinguish between the different reform motives, reform priorities and reform pressures: in most of the Member States, there is a “primary budgetary motive, with the need to cut public expenditure; second, an economic motive with the aim of making public services more modern and efficient, also with greater mobility between the public and private spheres; third, a political motive within the debate on

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10 David H. Rosenbloom/Robert S. Kravchuk/Richard M. Clerkin, *Public Administration – Understanding Management, Politics, and Law in the Public Sector*, 7th edition, Mc Grawhill, Singapore 2009, p. 546.

11 *Ibid.*

redesigning the role and size of the state and privatization/outsourcing of public utilities; and finally, we might mention a demographic motive given the emerging population pressures. Other motives may also be discerned. The global context and the role in particular of international organizations, such as the IMF but also the EU and the European Central Bank (ECB) should also be taken into account and may explain national differences currently observed throughout Europe<sup>12</sup>. Finally, in the media and at the political level the public services are reported to be too expensive, inefficient, too big, over-regulated, and ineffective.

The downside of the present situation is that the discussions about the need to preserve distinctive features of the public sector are not satisfactory and the public employees are perceived as cost factors rather than positive contributors to effective public organisations. In all Member States, accusations that the public services are not innovative, not ready to reform and suffering from reform inertia are clearly wrong. On the contrary, the reforms have led to many changes.

However, despite the many changes that are taking place in numerous countries, in the public opinion the civil servants work in an environment which is definitely separated from the private sector. In some countries the civil servants are perceived as a protected group apart from the outside world. Actually, the customer and citizen orientation has increased, and working conditions have been aligned with those in the private sector. Nowadays the differences between public and private employees in terms of their status, working time, pay, pensions, holidays, recruitment and competency requirements are lesser than they were previously.

If the traditional bureaucracy is slowly disappearing, what will happen to the bureaucrats, the civil servants? The decline of classical bureaucratic systems and the changing values and societal norms in the European societies reveal the urgency of a new discussion: How is public employment changing in times of government restructuring and changing into Governance? What are the effects of changing employment patterns? Is a specific public law status still needed? Should there be less differences between public and private sector employment? If not, for whom and in which sectors should distinctions be upheld? Do we live the emergence of an entirely new European public employment model?

As we will see later on in this survey, the study of the “status” is not a purely technical and legal issue as it seems for many observers. It is rather a fascinating quest for what is likely to emerge in the future. The changing concept of State, Democracy, Government and Public Management raises the question about the legitimacy of the classical “statute” and the role, tasks, ethos and employment conditions of the state employees. Today, the central administrations are under pressure to change and they seem to be evolving – but into what? And where are we going? These are just a few questions that will be addressed in this study.

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12 Daniel Vaughan-Whitehead, Public sector shock in Europe: Between structural reforms and quantitative adjustment, in: ILO, Public Sector Adjustments in Europe - Scope, Effects and Policy Issues, Geneva, 2012 (not yet published)



## 1.1 Methodology – limitations and restrictions

The fact that 25 Member States and the European Commission contributed to the study, confirms a great interest in this subject. However, a number of limitations should be taken into account when interpreting our findings.

Comparative Public Administration research is indeed difficult<sup>13</sup>. As such, the public administration is complex and the public employment is becoming ever more fragmented and diverse. Moreover, common definitions about “public service”, “civil service”, “central public administration and “status” are manifold. The European Public Administration Network has never engaged in a systematic review of the existing definitions, apart from establishing a language glossary many years ago, and of the impact of public management reforms on different categories of staff (with the exception of top-executives).

Even if there is basic agreement on dependent variables in the field of public service and public employment reform, they are not easily researched in different languages and administrative cultures. Moreover, the existing national arrangements are in a constant process of change and it seems that change is happening at ever faster speeds. If, decades ago, public administration was a synonym for stability, today it is a symbol for hasty change.

Problems with definitions, language and measurement have already been discussed widely in one of our previous studies (“Civil Services in the EU of 27 – Reform Outcomes and the Future of the Civil Service”, 2010). In this study, it was necessary to clarify the term “Central Public Administration” as our intention is to compare public employment and status reforms on the central level. There is no space here to discuss the various challenges in defining the term in the EU27 (soon EU28). Therefore, the interested reader may consult the annexe to this study which provides for a deeper discussion as regards the term. As regards the term *civil service*, it is mostly defined more narrowly than the term *public service*. Broadly speaking, it concerns the collective administrative personnel of the government which is employed under a distinctive legal regime or statute. Despite this common understanding, the following discussions illustrate that different definitions of the term civil service still apply when analyzing the situation in detail. For example, some Member States apply a unified approach to the term civil service (all public employees can be considered as civil servants), whereas other Member States apply a classical civil service definition. In these cases the civil service law applies only to a part of the public workforce or even only to the federal or regional civil servants etc.. Again, other Member States define the tasks of civil servants more broadly than others.

We should also highlight the difficulties with the term “Status” which has a different understanding in many countries. In Germany and in France, the term is connected to a long standing administrative history (which goes back to the 18<sup>th</sup> century) and is a philosophical

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13 Marleen Brans, Comparative Public Administration: from General Theory to General Frameworks, in: Guy Peters/Jon Pierre, Handbook of Public Administration, second edition, SAGE, Thousand Oaks, 2012, p. 511-532.

concept which is linked to the “Rechtsstaat” (Rule of Law) and “le principe de légalité”. We will discuss the different aspects of the term “status” in chapter 2.

Other challenges relate to the lack of attractiveness of doing research in a field which is often considered to be very complex, technical and dominated by legalistic approaches. Rhetoric also contrasts (old-fashioned) civil service systems with new (good) managerial reforms and the transformation power of new concepts. For example, introduction of ICT is still seen (in a very modernistic perception) as having the potential to transform government, to save huge amounts of money and to create enthusiasm for its reform potential. In fact, our understanding of reform outcomes takes a different direction. Our main hypothesis is that the present reform trends in the field of public employment, status development and government transformation as such can be positively or negatively effective or ineffective. Secondly, reforms may have an impact not only on the main goal but also on some other goals. In other words, they may have positive or negative side-effects, paradoxical effects or they may not have side-effects at all.

Also in this study, the availability and reliability of data were a sore point in the development of this comparative work. Overall, comparative data is scarce but it is also vulnerable to change and manipulation. Due to the difficulties involved in obtaining reliable data and carrying out applied empirical research, many theories reflect personal opinions, images and perceptions. According to Bouckaert and Pollitt, “There is a growing fashion for the authors of academic texts to ‘confess’ their own perspectives and likely biases”<sup>14</sup>. Often, some countries are praised as being reform-oriented countries, whereas others are seen as reform laggards although it remains unclear as to the basis on which these judgements and value statements are based.

In fact, in our field independent data sets do not exist. Because of this, collecting comparable data within EUPAN is of utmost importance. EUPAN has many unique possibilities to generate, update and to compare new and important data. However, also in our study, the quantity and the quality of the data which we received varied to a great deal. As long-standing researchers in the field, we have developed a sense for “problematic” data. However, as such we depend on the data as presented to us.

As such, other developments look brighter. Compared to the situation in the past, the collection of data (not only within EUPAN) has greatly advanced and even enable us to compare definitions and practices. Thus, today, the problem is rather the management of the huge amount of the existing data.

In this study, we also observe different and distinct reform paths amongst similar countries with similar administrative traditions. For example, the current reform paths in France, Spain, Belgium and Germany seem to differ widely. The results in this study illustrate the important

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14 Christopher Pollitt/Geert Bouckaert, *Public Management Reform: A Comparative Analysis*, First Edition, 2000, p. 22.

influence of traditions, national ideas and political developments on the design and structure of national public employment systems and civil service reforms. Moreover, we agree that there is a connection between the culture of a nation or region, the way management in civil services is structured, how reform pressures are perceived and how reform priorities are adopted<sup>15</sup>. Therefore, the study contrasts with “the belief in the early 1990s that the worldwide trend of public management reforms in the Western administrations would tend to converge to one single, common, universal “new public management” pattern”<sup>16</sup>.

On the other hand, we can also observe so-called Europeanisation and convergence trends. For example, high-performing and “privatised” countries (like for example in Sweden) challenge the whole concept of a specific civil service and the traditional legitimacy of specific working conditions as such. Most of the countries are moving towards similar directions, although the trend as such is characterized by a high degree of fragmentation and no clear best-practice model. Path-dependency is prevailing in a context which is also influenced by the impact of EU-law and the current financial crisis. In fact, the tremendous pace of change is challenging the experts who have difficulties in understanding how and why the public services are changing<sup>17</sup>.

In 2012, the Chancellery of the Prime Minister of the Polish EU Presidency commissioned the European Institute of Public Administration to undertake the present study as a follow up of the work carried out under the Polish EU Presidency in 2011 and the Danish EU-Presidency in the first semester 2012. Data used in this study were collected through questionnaires, discussions and validations during one workshop in the EUPAN Human Resource Work Group under the Danish EU Presidency on 3 May 2012.

This Polish request implements the resolutions adopted by the 57<sup>th</sup> meeting in Warsaw and the 58<sup>th</sup> meeting of the Directors-General with responsibilities for the reform of the national Public Services during the meeting under the Danish EU-Presidency which asked for an opportunity to discuss these questions and for a further exchange of experience on employment status developments in the Member States. They, therefore, appreciated the announcement of the incoming Cyprus Presidency that a part of the 59<sup>th</sup> DG-meeting in Nicosia should be dedicated to a presentation and discussion of this subject under the Cypriot EU Presidency in the second semester of 2012. The purpose of this study was to analyse and compare the current reforms at the central administration level. The main objective is to identify reform outcomes in status reforms in the central public administrations of the EU Member States. We have studied the situation in 26 countries, only the United Kingdom and Romania did not contribute to this study.

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15 Kuno Schedler/Isabella Proeller (eds.), *Cultural Aspects of Public Management Reform*, Vol. 16, JAI Press, 2007.

16 Walter Kickert (ed.), *The Study of Public Management in Europe and the US*, Routledge, London and New York, 2008, p. 2.

17 Arthur Benz, *Status und Perspektiven der Politikwissenschaftlichen Verwaltungsforschung*, in: *Die Verwaltung*, Nr. 3/2003, p. 369.

The study focused on different, but interrelated issues:

- Specificities of employment terms in the central public administration in comparison with the public sector in general and in the private sector. Are there some specificities left? What is the rationale for them?
- Ratio of public status and private status personnel. Do the inherent differences in the status matter in performing work? Are they changing? Is there a trend towards the abolishment of the civil service status?
- Recent trends in status reforms. How do those reforms work in practice and what have been the main impacts on working conditions at the workplace level?
- Recent evolution of flexibilisation trends in the central public administration: How does the concept of flexibility and flexicurity work for central public administration function?

All Member States are invited to contribute to the study through their input, discussions and workshops, and, finally, discussions during the 59<sup>th</sup> meeting of the Directors-General in December 2012 in Cyprus. This study should also contribute to more discussions on meaningful concepts (such as good governance), classifications and the possibility to deliver best-practices. This kind of international and comparative study has its main added-value for the practice of public administration but should enable both researchers and practitioners to investigate a broad range of ideas about what constitutes the future of public employment and civil service employment. As this study shows, the work on the issue has not come to an end.

## 2. THE DEFINITION OF STATUS IN THE MEMBER STATES OF THE EU

The wording “Status” is not understood in the same way in all Member States of the EU. First, it can be interpreted as a constitutional and legal “status” principle. In his *Elements of the Philosophy of Right* (1820), the philosopher Hegel gives a characteristic epitome of the traditional civil service stating, that” the civil [servant’s] relationship to his office is not one of contract [...] the civil servant is not employed, like an agent, to perform a single contingent task, but makes this relationship [to his work] the main interest of his spiritual and particular existence [...] the task which the civil servant has to perform is [...] a value in and for itself”. Hegel strongly alludes to a moral ethos, according to which civil servants serve their people out of duty and obligation.

Second, status can be interpreted as a social standing in relation to other professions. For example, whereas many Member States consider civil servants as (public) employees, traditional bureaucracies consider civil servants as having a different status than (public) employees. For example, strict sensu, German civil servants are not employees. The latter is important as EU law is, generally, applicable to the term “employees”.

Third, it can be interpreted in terms of a specific public service ethos and a number of ethical principles. As regards this definition, all Member States share the same conviction: Public Officials should follow a specific Public Service Ethos with specific values and principles.

In the following we will discuss all three definitions.

It seems strange for many ‘western’ observers, but the adoption of a civil service law “was one of the most important and most discussed elements of the EU policy in the wider area of administrative reform in the pre-accession period. With respect to the European principles of administration, a civil service law was seen as basic mechanism for protecting the impartiality and for promoting the professionalism of civil servants that is necessary to guarantee legal certainty as well as accountability of civil servants as individuals exercising state authority. Also the EU accession policies required the existence of a civil service law, stability of the law over time, full implementation of the law, and a clear definition of boundaries of the civil service vis-à-vis politics, private sector employment and potentially other forms of public sector employment.

Interestingly, a number of those Member States who acceded the EU in 2005 (for example Poland) opted for narrow definitions of the civil service, as the scope of the civil service law is largely restricted to officials who exercise state authority. By contrast, employees in the wider public sector – for example, in education, health, and the armed forces – were subject to separate legislation. The Polish situation is noteworthy, as the law distinguishes tenured, nominated civil servants and “civil service employees”, who are within the scope of the civil service law but otherwise subject to ordinary labour law contracts. Yet, the number of nominated and thus full-fledged civil servants is relatively low. This also means that legal

accountability of the civil service is ensured but that many of the management tasks to be discussed below apply to only a very small proportion of officials.

The amount of regulation also differs amongst the EU Member States. For example in Germany civil servants are regulated by a combined total of 30 laws and regulations. All German Länder have their own civil service laws (and regulate all civil service matters on their own, excluding the legal status of civil servants which is regulated at the federal level for all German officials). Other countries have only one civil service law which is applicable to all civil servants in the whole country.

Overall, Public employment is becoming more diverse. In the meantime, almost all Member States provide for dual public employment systems (with the exception of a few countries) and distinguish between (different) public law employees and labour law employees. Many countries employ different categories of civil servants and different categories of labour law employees. In addition, one can distinguish between employees with a high degree of job security (life-time tenure and/or unlimited contracts) or with limited job security (employees with fixed-term contracts, ad-hoc contracts or seasonal contracts). Moreover, employment is linked to the administrative structure on the central level, regional level, local level and agency level.

In almost all Member States the percentage of civil servants in relation to other public officials is decreasing. In addition, a third employment group, namely public employees under fixed-term contracts is slowly emerging.

**Table 1. Different categories of staff by Member State and EC in the central public administration**

<b>Member State</b>	<b>Category 1</b>	<b>Category 2</b>	<b>Category 3</b>	<b>Category 4</b>
Austria	Public law status, 61.2%	Labour law status, 38.8%		
Belgium	Public law status, 77%	Labour law status, 22.7%	Mandatory management staff, 1.6%	
Bulgaria	Public law status, 63%	Labour law status, 37%		
Cyprus	Public law status, 72%	Labour law status, 28%		
Czech Republic	Public law status 0%	Labour law status 100%		
Denmark	Public law status, 26 %	Labour law status, 73%	Individual contracts or terms determined unilaterally by employer, 1 %	Special Labour law (support staff), 7%*
Estonia	Public law status, 91% *	Labour law status, 2% *	Non-statutory staff 4%	
European Commission	EU Officials 68%	Other servants of the EU 28%		

Finland	Public law status 87%	Labour law status 13%		Public law status, "State workers" ("non-titulaires" with a specific status working mostly in the Ministry of Defence): no more recruitment under this status 1.8%
France	"Titulaires" 68.9%	"Non-titulaires" 15.1%	Public law status, "Military" 14.2%	
Germany	Public law status 28.3%	Labour law status 31.1%	Military 40.6%	Contract workers, 0.60%
Greece	Public law status, 81.68%	Labour law status, 7.65%	Fixed-term contracts under private law, 5.97%	
Hungary	Public law status, 90%	Labour law status, 10%		
Ireland	Public law status, 100%	Labour law status, 0%		
Italy	Public law status, 16%	Labour law status, 84%		
Latvia	Public law status, 45%	Labour law status, 55%		
Lithuania	Public law status, 100%			
Luxembourg	Public law status 66%	Labour law status 34%		
Malta	Public law status, 100%			
Netherlands	Public law status 90%	Labour law status 10%		
Poland	Public law status, 5.6%	Labour law status, 94.4%		
			Public law status - employees (employment contract in public functions), 75.6%	Public law status - Limited Executive Tenure, 1.6%
Portugal	Public law status - civil servants (appointment), 14.1%	Labour law status - individual employment contract, 8.6%		
Slovakia	Public law status, 90.40%	Labour law status, 9.60%		
Slovenia	n.A	n.A		
			Other personnel 1.9%	
Spain	Public law status, 77.07%	Labour law status, 21%		
Sweden	Public law status, <1%	Labour law status, >99%		

Missing: Romania, United Kingdom

Malta, Ireland, Slovakia, Estonia, Greece, Finland, France and the Netherlands still have high percentages of public employees with a public law status at the central level. However, the number of countries with lower civil service figures is increasing: for example, the percentages are only minor in Poland, in Sweden and in Italy, approx. 25% in Denmark, 28 % in Germany (military personnel excluded) and 45% in Luxemburg. More recently, the number of public law employees in the Dutch central public administration seems to be decreasing, too. Moreover, whereas in the past public law provisions applied to most public employees, today, in more countries labour legislation applies partially or in full to both employment relations.

When comparing civil service employment on the organizational level, diversity increases even more. For example, in the Finnish Ministry of Finance, all of its 389 employees were civil servants in 2011. By comparison, in Austria, the percentage of civil servants in the different categories differs a lot: whereas there are more than 90% civil servants in the groups of law enforcement (93.2 %) and military (92.3%), there are only 45.6% civil servants in the administrative service and even less (36%) in the group of teachers.

Despite these differences, in all Member States civil servants, whether referred to as *fonctionnaire*, *ambtenaar* or *Beamte*, are responsible for carrying out public policies whilst ensuring public efficiency, legal certainty, independence, and stability. Moreover, in all Member States the legitimation for the creation of a civil service is the need to have a specific group of public employees who carry out important government policies. This group of professional civil servants should be doing more than merely fulfilling functions in the field of exercising state powers and safeguarding the general interest of the state. They should exercise their role with a certain sense of integrity – a public service ethos.

The definition of who should be a civil servant has always been linked to the question of the special nature of the duties and the specific tasks concerned. Whereas some Member States have clearly defined provisions for the tasks that should be carried out by civil servants, other national laws and regulations only provide for general provisions. In the United Kingdom the civil service has a dual meaning. “First as a government institution the term is applied generally to the civilian officials of the Central Government. Secondly it stands for a spirit of vocational service to the State, of dedication to the service of the community”<sup>18</sup>. In the United Kingdom a civil servant may be defined as a “servant of the Crown (not being the holder of a political or judicial office) who is employed in a civil capacity and whose remuneration is wholly paid out of monies provided by Parliament”<sup>19</sup>. In the United Kingdom, the legal regime of civil servants is regulated by a number of codes. There exists no civil service law (only a draft which was proposed in 2008). Thus, the United Kingdom is the only country in the EU where civil servants are not regulated within the public law framework.

## 2.1 The public law status

The status can be interpreted as the standing of a person before the law. The latter is still a more classical interpretation of the civil service status. It has developed because of the existence between a specific bond between state servants and the state. For a long time, the existence of specific statutes, regulations, working conditions and career patterns were justified with the specific link between Public Servants and the State. In the past, a number of countries adopted a general regulation applying to all state civil servants because of the specific duties and obligations of state employees when implementing governmental policies. As a consequence, public employees are still treated differently to private sector employees.

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18 Edgar Norman Gladden, *Civil Services of the United Kingdom 1853-1970*, Frank Cass, London 1967, p.1.

19 *Ibid.*, p. 3.



According to the definition of the World Bank<sup>20</sup> “several criteria continue to distinguish civil servant status from other employment arrangements. These criteria can be summarised as follows:

- (1) Civil servants are appointed by decision of an authorised public institution in accordance with the civil service law. A decision by a representative of the State to appoint a civil servant must conform with the established rules that structure the hiring process.
- (2) Once appointed, there are many constraints on dismissal. This is because civil servants are not simply employees of the state; they also have a constitutional role. The intent of civil service legislation is to balance the requirement that these employees are responsive to the government of the day, with the parallel requirement that they respect and maintain state institutions over time. In other words, additional job security is provided in order to prevent short-term political pressures from leading to inappropriate personnel changes.
- (3) There are more constraints on the actions of civil servants than on other groups. Again, this is because of the strategic and constitutional role of civil servants. The Labour Relations (Public Service) Convention, 1982 (No. 151) provides details of the fundamental labour rights of civil servants (the right to organise, to participate in consultations or negotiations in relation to their terms of employment and to settlement of disputes). Article 1 of the Convention states that its provisions apply to “all persons employed by public authorities” but permits exemptions for “high-level employees whose functions are normally considered as policy-making or managerial, or ... employees whose duties are of a highly confidential nature.”
- (4) There are more civil servants being employed by central government than by subnational government (in some cases only central government employs civil servants). There are many other employment arrangements in the public sector that provide something akin to civil servant status, under judicial career laws etc. However, common usage requires that civil servant status refers to employees within civilian central government, or subnational government. The judiciary can often be employed under arrangements that also provide constitutionally-based constraints on dismissal, but are rarely known as civil servants<sup>21</sup>.

Staff employed on a public law basis are generally appointed by a unilateral official act on the part of the administration. One of the most classical model – according to the above mentioned definition – is the German model with clear distinctions between civil servants and other public employees.

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<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/0,,contentMDK:20133489~menuPK:286310~pagePK:148956~piPK:216618~theSitePK:286305~isCURL:Y,00.html> (last time checked on 19 September 2012).

21 Ibid.

**Table 2. Differences between civil servants employed under public law and employees under private law contract in German public administration**

Civil servants	Public employees
Public law (Civil Servants Act)	Private law
Official announcement (Ernennung durch Hoheitsakt)	Common labour law
Regulation through law	Regulation through contract and labour legislation
“Obligation to provide welfare rights” principle (Alimentationsprinzip)	Mutual exchange principle (Gegenleistungsprinzip)
No right to strike	Right to strike, sometimes restricted for some categories of staff
Loyalty and neutrality	No obligations set by law
Job for life	Unlimited contract or limited contract
Career system	System with other organisational characteristics
Special pension schemes	General pension scheme

The relative importance of public law and labour law employees varies a lot from one Member State to another. In Greece, Spain, Romania and (on the federal level) in Belgium the primacy of public status employment is even laid down in the constitutions. Overall, since its origins in the late 18<sup>th</sup> century, the public law status has survived in almost all national public service systems. In this way it would be fair to say that this traditional element of a classical civil service is one of the few traditional principles which has endured over time (and differently to other established principles like for example the prohibition to go on strike, the career principle and the life-time principle).

**Table 3. Civil servants’ legal status by type of administrative system in the EU**

(Frequencies in parenthesis)

		Public law status	Civil law status	Total
Type of civil service structure	Career structure	100 (18)	0 (0)	100 (18)
	Non-career structure	67 (6)	33 (3)	100 (9)
	Total	89 (24)	11 (3)	100 (27)

Source: Christoph Demmke/Timo Moilanen (2010), *Civil Services in the EU of 27*, p. 53.

Private law based employees are generally employed on the basis of a contract of employment between the administration and the employee concerned. However, in eight EU countries public employees are also offered a public law status, i.e. in Cyprus, Estonia, France, Hungary, Luxembourg, Malta, Poland and Portugal

**Table 4. Public employees' legal status by type of administrative system**

(Frequencies in parenthesis)

		Public law status	Civil law status	Total
Type of civil service structure	Career structure	41 (7)	59 (10)	100 (17)
	Non-career structure	13 (1)	87 (7)	100 (8)
Total		32 (8)	68 (17)	100 (25)

N.B.: Information on Italy and the Netherlands is missing.

Source: Christoph Demmke/Timo Moilanen (2010), *Civil Services in the EU of 27*, p. 53.

In some Member States, a clear preference for employment under public statutes can be seen. This is evident in the Netherlands, Finland, France, Slovenia, the Netherlands, Malta etc. where almost all civil service staff are employed on the basis of a public law statute. In the countries like France and Belgium, where the official policy has been that civil servants are normally employed in accordance with public law, one can also observe that this official policy is not always applied in practice. In France, for example, a high percentage of all civil service staff are established civil servants who have tenure (*fonctionnaire titulaire*), but within the civil service (especially the civil service in the local and regional authorities and in the hospital sector), non-established staff are also employed in both public-law and private-law based employment patterns, such as unestablished civil servants (without tenure), and auxiliary and temporary staff. In Belgium, especially in Regional and Community administrations, a large number of contractual staff is employed. The same is true in Spain at the level of the Autonomous Communities and in the local administrations.

In several countries, this special status covers a larger proportion of central government employees<sup>22</sup>. If a global comparison is to be made of the respective forms of public status and private contract posts, there is a clear overall tendency for labour law contracts to be given much greater scope at the local authority level than at the central level. In several Member States, the differences between civil servants, public employees and private sector employees are still very marked, also in terms of rights and obligations.

<sup>22</sup> Luigi Bordogna, *Industrial Relations in the Public Sector*, European Foundation for the Improvement of Living and Working Conditions, Dublin, 2007.

## 2.2 Status as social or professional standing

The widespread public scepticism about the innovative power and (lack of) flexibility of public institutions and numerous clichés about civil servants and public organisations imply that there are sharp differences between public and private organisations and between civil servants and private sector employees. At the same time, one has to acknowledge that the public and private organisations include many different organisations.

Until today, it is widely assumed that public management differs from private sector management. Therefore, all Member States believe that some groups of civil servants should also be treated differently because of the existence of specific public sector tasks and objectives – which need to be safeguarded. Moreover, many people believe that specific personalities/characters are attracted by public jobs. Merton (1940)<sup>23</sup> was actually the first scientist to analyse the connection between personality and bureaucratic structure. According to him “...the bureaucratic structure exerts a constant pressure upon the official to be methodical, prudent, disciplined. (...). An effective bureaucracy demands reliability of response and strict devotion to regulations....”<sup>24</sup>

In fact, the process of alienation of the individual's personality starts with a demand for control by the organisation. This is implemented by an official through the rule compliance, with an emphasis on correctness. As a consequence, individuals become defensive, rigid and reliable. Subsequently, this behaviour (rigidity, slowness, resistance to change, attachment to rules, excessive discipline, need to control) was called “bureaupathic” behaviour (Thompson).

Merton demonstrated that certain bureaucratic structures indeed influence behaviour.

- *Seniority and career*: “The career structure supports an overconcern with strict adherence to regulations.”
- *Espirit de corps*: “There is a sense of common identity for all those who work together in a bureaucracy. They share the same interests and there is relatively little competition in so far as promotion is based on seniority, and group aggression is thus minimised. This esprit de corps may lead, however, to personnel defending their entrenched interests rather than assisting the higher officials or clients of the organisation.”
- *Process of sanctification*: “There is a tendency for certain bureaucratic norms, originally introduced for technical reasons, to become rigidified and “sacred”.”
- *Impersonality*: “The personality of the official is “nucleated” about the norm of impersonality. This, in association with the bureaucrat’s tendency to categorise all matters of concern to the organisation, frequently causes the peculiarity of individual cases to be ignored. Since the client inevitably tends to be convinced of the special features of his own problem, he often objects to such treatment. This gives rise to charges of the bureaucrat being arrogant and haughty in his behaviour.”

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23 Merton, Robert K., Bureaucratic Structure and Personality, in: Shafritz, Jay M./Hyde Albert C., Classics of Public Administration, The Dorsey Press, Chicago, Illinois, 2.Edition 1987, p. 111

24 Merton, in: Shafritz/Hyde, *op. cit.*, p. 112

According to this concept, a traditional bureaucratic structure produces a bureaucratic personality which can be defined by the following:

- Subordination: a willingness to comply fully with the orders of the superior;
- Compartmentalisation: confidence in expert judgement and a need to restrict one's concerns to one's own area of specialisation;
- Impersonalisation: a preference for impersonal or formal relationships with other individuals;
- Rule conformity: a desire for adherence to rules, regulations and standard operating procedures.

Merton's explanations supported the view of the entrepreneur as an innovator and individualist and the civil servant as a conformist and someone avoiding innovation. At the same time, the notion of a bureaucratic personality and the belief that adult personality socialisation develops through work organisation emerged.

Another argument why public organisations produce certain types of personalities is related to the long and complicated hiring and recruitment procedures in national public services. These procedures were increasingly considered to "interfere with the selection of highly motivated individuals" who were easily lost for private organisations.

After the Second World War, however, more authors claimed that these traditional views were not correct and that civil servants and public organisations differed from each other and also showed a high degree of flexibility. For example, Kohn (1971) found in his empirical analysis that officials were "more intellectually flexible, more open to new experience, and more self-directed in their values than are those who work in non-bureaucratic organisations."<sup>25</sup>

In the following, the traditional view of the rigid bureaucrat is increasingly called more and more into question.<sup>26</sup> Allinson concluded in his study (1984) that the "traditional image of the bureaucrat, with his dissatisfaction and insecurities reflected in pathological behaviour patterns, is not generally applicable."<sup>27</sup> The rigid bureaucrat concept is a false image.<sup>28</sup> According to Allinson, the average bureaucrat is "probably engaged in non-managerial clerical work, relatively satisfied in his job, (...) well adjusted individual who has found his niche in the organisational world. He is amenable to a degree of autonomy and will use his discretion as long as he is given a clear indication of what is expected of him... He understands the need for rules, documentation, standard procedures and specialist skills, and may well be more capable of exercising the self-discipline necessary in their use than the most

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25 Christopher W. Allinson, *Bureaucratic Personality and Organisation Structure*, University of Leeds, 1984, p. 39

26 Allinson, *op. cit.*, p. 40

27 Allinson, *op. cit.*, p. 114

28 Allinson, *op. cit.*, p. 39

prone to criticising him (...). Thus the popular view of the modern bureaucrat may be an injustice.”<sup>29</sup>

As in the case of Allinson, Goodsell revealed that “the empirical evidence reviewed to verify the “bureaucratic mentality” does very little to assure us that it actually exists. Bureaucrats have not shown to be less flexible and open-minded than non-bureaucrats, and they do not appear more rule oriented. Indeed, much evidence points to little difference between bureaucrats and ordinary people.”<sup>30</sup> In his polemic “The Case for Bureaucracy”, Goodsell presented interesting socio-demographic information and data about the average civil servant. He concluded that the average civil servant is in fact not much different to other citizens. In reality, average civil servants are middle aged, middle class, represent different religions, political and educational backgrounds and include both males and females (but the composition of the sexes is different according to functions and positions/senior positions). Goodsell concluded that “bureaucrats are ordinary people”. They teach children, manage forests, program computers, chase speeders, arbitrate labour disputes, calculate benefit-cost ratios, inspect meat, enforce environmental permits, conduct research, negotiate contracts, prepare laws, fight wars, etc. “ Within a point or two, bureaucrats as a whole are identical with the general public in their concern about crime, drugs, the environment, welfare, and the condition of the cities. Their views are similar close on capital punishment, premarital sex, school bussing, and fundamentalist religion. Overall, comparability outweighs contrast....”<sup>31</sup>

Today, the discussions about the (non-) existence of specific public service features endure. Public service motivation (PSM) theory refers to specific elements that motivate individuals to seek and continue employment in the public sector. Perry and Wise define it as” an individual predisposition to motives grounded primarily or uniquely in public institutions” (Perry & Wise, 1990). “Although some have suggested that prestige may be a factor for the desire of public service, this also applies to those working in the private sector. The theory of public service motivation assumes that there are other motives unique to public employees, mainly that the public employee places the mission of the organization and the betterment of society over financial rewards, when compared to private sector workers. (...). In 1996, Perry developed a tool to define and measure PSM, a set of 35 statements relating to an employees predisposition to seeking work in and remaining in the public sector. These items are associated with six dimensions related PSM: attraction to public policy making, commitment to public interest, social justice, civic duty, compassion, and self sacrifice. Respondents state their level of agreement or disagreement for each of the 35 items on a five point scale. Employees that score high on the scale show a greater level of PSM (Perry, 1996)”<sup>32</sup>.

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29 Ibid.

30 Charles E. Goodsell, *The Case for Bureaucracy, A Public Administration Polemic*, Third Edition, Chatham, New Jersey, p. 123

31 Ibid., p. 114

<sup>32</sup> <http://papedia.wikispaces.com/public+service+motivation> (last time checked on 29 October 2012). See also Perry, James L. 1996. “Measuring Public Service Motivation: An Assessment of Construct Reliability and Validity”. *Journal of Public Administration Research and Theory*, Vol. 6, No. 1: 5-22; James L. Perry, Annie Hondeghem, *Motivation in Public Management: The Call of Public Service*, Oxford University Press, 2008

Despite the ongoing discussions on the (non-) existence of public service motivation, only few experts discuss how these differences develop in different public sector organisations and different administrative cultures and, if existing, where and how these justify the existence of specific employment features for public officials. And, on the other hand, what happens to public service motivation if differences between public and private sector employment are getting less.

Another question relates to the (non-) existence of a specific public service ethos and public service motivation. Is a civil servant more ethically minded if he/she has a high level of public service motivation? Is a civil servant different because he/she works for a public service organisation. Is a bureaucrat different because he/she is a bureaucrat?

There has been an ongoing discussion in the scientific community for many decades about the differences between public and private organizations and the impact on individual workplace behaviour, the status, work motivation and character traits. While some scholars claim that there are no such differences others have developed detailed frameworks for analyzing differences among public and private organizations. One theory, as formulated by Benn and Gaus in 1983, suggests three factors to define the degree of publicness or privateness of an organization: affected interests (are benefits and losses carried by individuals or the public); access to the respective facilities, information or resources; and agency. These three dimensions can each produce individual and sometimes even contradicting results when applied to measure different organizations. Another theory for defining public organizations focuses on their impact on the public interest. This is following a distinction between so called 'commonweal' organizations which further the public good and business organizations which primarily benefit their owners. But the definition of what exactly belongs to the public good or interest proves to be rather difficult. Many different perspectives on what constitutes the public interest can be found just by looking back at the great rulers in human history. Also, most of the organizations – including business firms – somehow affect the public interest (Rainey 2003, 65).

According to several scholars public organizations relate differently to their environment and react to different circumstances in a unique way. Firstly, public organizations face a high degree of complexity in their day-to-day business due to their accountability to a variety of highly interrelated stakeholders. Involved groups, such as politicians, interest groups, and citizens, often display a wide range of interests which all need to be catered for. In contrast, private organizations usually work for a much more homogenous and smaller group of stakeholders.

Secondly organizations need to uphold a high degree of permeability, to be able to adjust to changing demands of citizens. Private sector managers are not necessarily required to take notice of input from constituents. Thirdly, public organizations are exposed to a high degree of instability following elections and subsequent changes in political direction. This requires public managers to apply short-term thinking in order to achieve quick results and to secure

appropriations in the future. Fourthly, public organizations normally enjoy the absence of competitive pressure in their field of work. Another suggestion is that public organizations differ in their organizational goals. In contrast to the private sector they are obliged to respect accountability and equity as their goals in order to achieve their collective purpose. Public sector organizations often have multiple goals caused by the multitude of stakeholders they serve.

In “Government is different”, Appleby noted the differences among organisational structures within the public sector, “government administration differs from all other administrative work.....”<sup>33</sup> For example, a ministry works in a totally different work climate and under different parameters than a police station, a judicial court, an inspection body or a local authority. Ministries, in particular, have special tasks and duties which differ from those in the private sector. For example, offering services to citizens (clients) may not be one of the most important priorities of a ministry, but this is the case for most of the private companies.

Therefore, the professional standing of a governmental official is specific in many countries. In some countries, governmental officials still enjoy a different prestige and reputation.

On the other hand, many experts in the field argue that there has been too little sound analysis of the real differences between public and private organisations (and public and private sector employees) and point to the growing difficulties in identifying clear differences between the two sectors in times of outsourcing, public-private partnerships and consultancy. In fact, clear demarcations between public and private organisations are difficult and therefore oversimplified distinctions between public and private organisations are misleading. Interestingly, the position that public organisations are different was always in striking contrast to the opinion of major public administration experts such as Herbert Simon and Max Weber who all “stressed the commonalities among organisations and have suggested that public agencies and private firms are more alike than different.”<sup>34</sup> For example, Weber applied his concept of bureaucracy to private organisations, too. Simon was of the opinion that it was false to assume that “public and non-profit organisations cannot, and on average do not, operate as efficiently as private business.”<sup>35</sup> Simon was also convinced that public employees were not distinct from private employees. In “Administrative behaviour”, Simon wrote “I used to think that organisation was important, but now I think that it is much more a matter of personality. The important thing is the man. If he has drive, ability, imagination, he can work in almost any organisation.”<sup>36</sup> These findings are logical. Many people in both types of organisations virtually perform the same functions “managers, secretaries, computer programmers, auditors, personnel officers, maintenance workers,” etc.<sup>37</sup> Or more concretely,

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33 Paul Appleby, *Government is different*, in: Jay M Shafritz, / Albert C Hyde., *Classics of Public Administration*, The Dorsey Press, Chicago, Illinois, 2004, p. 134

34 Hal Rainey, *Understanding and Managing Public Organizations*, San Francisco, 2003, p. 48

35 Hal Rainey, *Understanding and Managing*, *op. cit.*, p. 49

36 Herbert Simon, *Administrative Behaviour*, New York, 1947, P. XV

37 Hal Rainey, *Understanding and Managing*, *op. cit.*, p.60



“A government-owned hospital, for example, obviously resembles a private hospital more than it resembles a government-owned utility.”<sup>38</sup>

Arguments *for* maintaining a specific civil service status that differs from an ordinary employment contract are often based on the assertions that most of the public and private sector organisations are different.

Proponents of maintaining differences between public and private sector employees argue that work in the public service is specific and – by nature – different from work in the private sector. Consequently, civil servants should also be treated differently because they:

- Are given considerable power and responsibilities;
- Set legal and normative standards for citizens;
- Have a responsibility to provide leadership;
- May intervene directly in the basic rights of citizens, e.g. police;
- Are financed and paid from the public purse in order to carry out work for the public.<sup>39</sup>
- Have different values, ethos and (public sector) motivation.

Therefore, civil servants bear special responsibilities for the public. They exercise public powers on behalf of the country. They spend public money for important government projects. They raise taxes. They hunt down criminals. They protect people. They take decisions which have an impact on the fundamental rights of citizens. They decide on health and on risk protection. The level of power or responsibility awarded to the public officials can be seen as requiring the imposition of some specific duties, rights and obligations for carrying out that role properly. For all these tasks, it is important that the public servants exercise their role properly, and act lawfully, honestly and loyally without acquiring any personal advantage. In short, this means that they must have a specific ethos because the exercise of public tasks requires fairness and leadership as regards a number of principles (equity, equality, non-discrimination, impartiality, loyalty and neutrality). In particular, experiences in many former communist countries show that the public service can be used as an instrument for the political elite. In order to avoid this, clear and distinctive ethical obligations are needed for all public employees.

For proponents of “differences” amongst public and private sector organization, the specific tasks also require specific working conditions and in some case a specific legal status or legal status which links the person to the state. In particular, those employees who are directly participating in the exercise of powers, who are intervening in the fundamental rights of the citizens, who spend public money and who are safeguarding the general interest of the state (or of other public authorities) should have a specific status which binds them to the public interest. Following this argument, it is important to define clearly those categories and posts

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38 Hal Rainey, *Understanding and Managing*, *op. cit.*, p. 58

39 National Centre for Social Research/Centre for Research into Elections and Social Trends, *Guiding Principles: Public Attitudes towards Conduct in Public Life*, January 2003, p. 22

which fall within these categories. Some Member States have done so for work in the ministries, agencies, courts, police, fire prevention, defence sector, etc.

Opponents of a specific civil service status argue that the tasks of civil servants are not more specific or more valuable than those carried out in the private sector. In addition, critics of traditional civil services point to the disadvantages of traditional career civil services. Their arguments can be summarised as follows. First, even if public tasks are specific, this does not require a specific civil service status or specific legal contractual status. For example, any specific requirements can be easily arranged in an ordinary employment law contract (which is often based on collective agreements). The terms “essential functions of the state” and “safeguarding the general interest” are difficult to interpret. Second, it is also not possible to argue that civil servants carry out more important tasks than private employees. Are doctors, workers in chemical companies, nuclear power station employees, farmers, bank and biotechnology staff not carrying out public interest tasks? Third, many current reform trends reveal an enormous paradox in many Member States with a specific career system. In these countries, working processes, working conditions and organisation structures are different in private and public organisations. However, there is very little evidence that the actual behaviour of public employees differ from those working in the private sector. In addition, traditional career models suffer from many well-known shortcomings. But what is then the point of having public employees who are treated differently than other employees? Fourth, the public service is often seen as an apolitical apparatus which is supposed to be neutral when implementing government policies. However, more and more civil service critics agree that this classical model of public service was shaped in a world that no longer exists. Today, the national public services has become much more complex and the separation between the state and the private sector is diminishing through the creation of agencies, public-private partnerships, quangos, outsourced and decentralised authorities, inspection authorities, etc. Consequently, the general development is that the public sector is becoming increasingly intermixed with the private sector. Government is developing into governance. Fifth, in some Member States, the constitution provides for an obligation that public service tasks should generally be carried out by civil servants with a special status. In reality, however, more and more contractual employees are also being employed in these countries. So far, the evidence suggests that these employees do not perform differently from civil servants. At present, therefore, it is becoming more difficult to justify why civil servants should be treated differently at all. Are these employees really in need of specific ethical obligations? Would these groups perform worse or differently if they were just the same as anybody else? Six, in a growing number of Member States, changes in the national civil service and also in HRM reforms also derive from the simple conviction that, as far as most of the civil service is concerned, there is no longer any cogent reason for considering the public function performed by the state to be of greater value than the functions designated to the private sector,<sup>40</sup> so no greater value is attached to the public interest than to the private.<sup>41</sup> However, this popular conviction challenges not only career systems, but also the traditional justification for a

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40 See Christoph Demmke, *Civil Services between Tradition and Reform*, EIPA, Maastricht 2004.

41 *Ibid.*

specific civil servant status and specific ethics. When the state ceases to be above society and stands alongside it, a special relationship between public servants and the state seems superfluous. In addition, this makes civil servants with a specific legal status dispensable, as all you need is a public manager, technician, office worker, lecturer, specialist or secretary who also have to respect the law (and contractual provisions) like everybody else. While it is true that civil servants work with a view to protecting order, life and freedom, they have only taken on a job different to an employee working in a bank or a chemical plant who is fulfilling an equally valuable function in his or her job (which is essential to ensure the stability and preservation of the social system). A doctor working in a private hospital, therefore, performs just as important a function as a public servant such as a police officer or tax official. In addition, it would be difficult to argue why teachers (if they are civil servants) should be civil servants with specific ethics in one country if they perform well in other countries without that civil service status. Seven, specific structural and organisational differences between public and private employment are not important for upholding specific ethical requirements and for carrying out public functions properly. For establishing an efficient and effective civil service it is more important to ensure good working conditions, an appropriate administrative culture, openness, accountability, fairness and legal correctness, etc. For example, the fact that Sweden has a very low level of corruption seems to justify this opinion that working conditions and culture are more important than specific structures and questions of status. Eight, in many Member States, civil servants are more expensive than other public employees<sup>42</sup>.

### **2.3 Status as public service ethos**

Finally, the status can also be interpreted in terms of public service ethos. All Member States accept that public employees are important for numerous reasons: public institutions protect our countries from external and internal threats. Governments also employ means – such as the threat of violence – that affect the fate of all of us. Public authorities and specific groups of public employees (judges, police officials, military personnel) may interfere with personal rights. Public officials provide means and goods – such as health care, employment opportunities – that are valued by most of the citizens. Finally, public officials at all governmental levels exercise control over money granted to the government by the Parliament elected by the citizens. It is especially in the times of budgetary constraints that the public service is accountable for the efficient, effective and ethical management of such funds.

Consequently, public officials and public institutions have many opportunities to significantly affect the wellbeing of our societies. Therefore, we want their actions to be guided by specific values that prevent them from acting unethically. “Because in a democracy officials and institutions are supposed to act in our name and only on our authority, we want their actions to conform to the moral principles that we share”<sup>43</sup>. Therefore, most of the Member States share the opinion that work in the public sphere is specific, requires a specific public service

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42 Christoph Demmke, *Are Civil servants Different because they are Civil Servants?* Maastricht, EIPA, 2005

43 Amy Gutmann/Dennis Thompson, *Ethics and politics*, Thompson/Wadsworth, Fourth Edition, 2006, p.x.

ethics and working conditions. Therefore, civil servants and/or public employees can be distinguished from private sector employees because of different ethical principles. For example, Swedish public employees are required to know a number of principles and understand their importance for the work in their agencies, and in their encounters with citizens and other parties. Officials must also be prepared for situations where these principles come into conflict with each other, and they must use good judgement in approaching these situations and taking action<sup>44</sup>. These principles include the following:

- Democracy - all public power stems from the people, universal suffrage, representative democracy and parliamentary system;
- Legality - public power shall be exercised under the law;
- Objectivity, impartiality and equal treatment - equality of all persons before the law. Government agencies and courts must treat all persons equally;
- Free formation of opinions and freedom of expression - Democracy is founded on the free formation of opinions;
- Respect - public power shall be exercised with respect for the freedom and equality of every person;
- Efficiency and service - public sector activities must be conducted as inexpensively and with as high quality as possible, given the resources available.

All of these principles are as modern as they are traditional. The most important principle in all Member States is the duty to respect the law and to serve the common good (and the principle of democracy), with the two being, at times, conflicting principles. Civil servants shall fulfil their tasks in an impartial and fair manner, and take into consideration the common interest. Other European-wide principles concern specific rules as regards the acceptance of gifts, the duty to take an oath, duties to treat certain issues as confidential or secret, duties to declare income, assets, etc.

In most of the Member States of the EU, there is furthermore a duty of good faith or loyalty on the part of an employee of the civil service towards their employer. However, the importance of this principle varies among the different Member States. This is particularly true with regard to loyalty to the constitution.

The purpose of ethical principles is to ensure an impartial public service which is based on the rule of law. Thus, the purpose of a public servant is to represent the public service ethos. This legitimacy has never lost its meaning. Traditionally, the special status of a bureaucrat and specific duties and obligations should both guarantee the neutrality of the civil servant and make him a loyal server of the state. Consequently, civil servants have different (and often, stricter) duties and obligations than private sector employees. Still, all national civil service laws contain a number of detailed and specific duties and obligations for civil servants and also of the employers. One good example is the civil servants act in Slovenia which regulates a number of important principles such as the principle of equal access (in Article 7), the

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<sup>44</sup> Swedish Council for Strategic Human Resources Development, Shared values for civil servants, Stockholm, no year.

principle of legality (in Article 8), the principle of professional conduct (in Article 9), the principle of honourable conduct (Article 10), the principle on the restriction and duties in respect of the acceptance of gifts (Article 11) and the principle of confidentiality (Article 12).

In some Member States, specific obligations are even laid down in the respective constitutions or may be otherwise directly derived from them. Article 103, para. III of the Spanish Constitution, for example, cites the safeguarding of the impartiality of civil servants in exercising their functions; according to Article 98 of the Italian Constitution, civil servants only serve the nation; and Article 269, para. I of the Portuguese Constitution commits civil servants to ensuring the common good. In Germany the obligation of neutrality is one of the central principles on which the civil service is founded and is constitutionally enshrined in Article 33, para. IV of the Constitution. An indirect expression of the obligation of neutrality is given in Article 103, para. I of the Greek Constitution, according to which civil servants are to execute the will of the state and serve the people. In Luxembourg, the duty of civil servants to observe neutrality can be indirectly derived from the oath, which Article 110 requires they swear. The general obligation to perform tasks in a neutral fashion is expressed in concrete form in the various individual duties of the official. The neutrality of the public servant is safeguarded on the one hand against financial influence, and against political influence on the other. Measures relating to the former include bans on the taking of bribes and the acceptance of gifts. More and more, rules and regulations are also increasing in the field of conflicts of interests, post-employment, ancillary activities and multiple employment etc. Overall, in the field of ethics, Holders of public office and civil servants are regulated much more strictly than other public and private employees.

The focus in most of the Member States, however, is not only on the neutrality of the public employee with respect to financial influence, but also with respect to political influence – the aim being to safeguard the stability of the administration and provide a shield to the political forces that shape the life of the state. For example, in the past years many Member States have been particularly active in the field of regulating post-employment issues. Therefore, despite all the differences that exist, all Member States agree that traditional principles (principle of impartiality, principle of legality etc.) and specific ethics rules and standards are necessary for civil servants. Justifications for specific principles and rules are the same in all EU countries.

Thus, public officials have maintained many traditional (bureaucratic) principles, standards and ethical obligations. Even traditional principles like the German *Fuersorgepflicht* or *Alimentationsprinzip* have never been changed. This is remarkable given the enormous changes that have taken place in other areas during the last years. In fact, the trend towards post-bureaucratic structure may even lead to the adoption of more rules and ethical obligations that govern the behaviour of civil servants. Thus, despite all ongoing reform trends in the past and efforts to deregulate HRM policies, specific rules as regards duties and obligations have become more numerous in the field. Instead, it is a field of re-regulation and mostly in the field of ethics, conflicts of interests, anti-discrimination, diversity, accountability, performance management, transparency and citizen orientation.

The public ethos is not only a one-way direction in which the employers want their employees to abide to certain rules, values and principles. On the other hand, evidence exists<sup>45</sup> that people choose a public sector job for a various set of reasons. A specific public service motivation and extrinsic motivation are almost equally important drivers for a preference for public sector employment. This alone justifies that different employment conditions should be offered to public sector employees (including employees at the central administration level) than to private sector employees. Moreover, the existence of different motivational motives and public service motivation is important for other reasons: For example, if civil servants are motivated through different (intrinsic and/or extrinsic) incentives than private sector employees it would be also important to design different motivation policies for the different sectors. For example, in the field of pay.

## 2.4 Conclusions

More countries consider that the social or professional standing of civil servants should not be different from that of private sector employees. As regards the latter, too little research has been carried out so far on comparative public service motivation. It is not yet clear as to whether and how motivation differs within the public service, civil service, between different governmental levels and different categories of staff. It is also unclear as to whether and how public service motivation differs from the core governmental level, to agencies, semi-public bodies to public private partnerships (and also into the private sector). So far, the concept has been applied far too homogenously and does not reflect the growing differentiation within the public service. Moreover, international research is only about to start. The concept as such was for a long time dominated by US approaches<sup>46</sup>. However, it may well be that different administrative cultures and public service systems have a different influence on public service motivation. Moreover, it is far from clear whether a strong public service motivation is something positive or whether it may also contribute to unethical conduct<sup>47</sup>. Having different motivational motives than in the private sector does not mean that public servants are better employees or that they act more ethically<sup>48</sup>.

The impact of public management and public employment changes on workplace behavior is subject to many studies. In the meantime, societal and individual values have changed. More and more, values and principles clash. This changing process calls also into question the traditional legitimacy of the public service ethos. Still, this process is full of ambivalences, as it is not clear how new values support an impartial and depoliticized public service..

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45 See the discussions in the Public Personnel Policies Group during the EGPA-Conference in Bergen on 4-8. September 2012; <http://egpa-conference2012.org/list-of-papers/psg-iii-public-personnel-policies/>

46 Pablo the Alonso/Gregory Lewis, Public service motivation and job performance: Evidence from the federal sector, in: *American Review of Public Administration*, Vol. 31, No. 4/2001, pp. 363-380; Gene A. Brewer/Sally Colman Selden/Rex L. Facer II, Individual conceptions of public service motivation, in: *Public Administration Review*, Vol. 60, No. 3/2000, pp. 254-264; David Houston, Public service motivation: A multivariate test, in: *Journal of Public Administration Research and Theory*, Vol. 10, No. 4/2000, pp. 713-727.

47 Ibid.

48 Ibid., p. 171.

### 3. THE STATUS IN THE COURSE OF TIME: REFORM FACTORS AND REFORM PRESSURES

In *Civil Services in the EU of 15* Bossaert *et al.* stated that “the civil service is without the section of the politico-administrative system of the Member States of the European Union (EU) which has been most influenced by the respective national traditions and histories and which for a long time was least affected by European Integration”<sup>49</sup>. While it is still true that the national public administrations are strongly influenced by national traditions, (political) structures, national reform pressures and reform priorities, central public administration is undergoing continuous changes despite its strong traditional heritage. Moreover, EU law and policies have an impact in the policy areas which fall under national competence, and the financial crisis forces the European Council to take measures that lead to an extension of economic and monetary policies into social policies and which are applicable to public administration.

Although ICT and electronic Government have a tremendous impact on work process and the relationship between Government (and its employees), stakeholders and citizens, there is little evidence to suggest that it also has an impact on the composition of public employment (except the fact that it supports a further reduction of low-profile jobs and the general employment of low-qualified personnel). In the past, ICT enthusiasts predicted the end of bureaucracy, the emergence of citizen government and huge efficiency gains as a consequence of electronic government<sup>50</sup>. In this study, we remain more cautious as to the effects of ICT and digital government on the public employment status. Without neglecting the potential for electronic government, it is unlikely that it will have a huge transformative power affecting the composition of the workforce.

Pressures for reform are coming from other sides such as political and media pressure because of a negative image of the “bureaucrats” and budgetary constraints. Since a number of years, the separate legal position of civil servants has been a periodically recurrent topic on the political and societal agenda in many Member States (in the Netherlands starting in the 50s, in the UK in the 60s, in Germany in the 70s, in Sweden in the 80s, in Italy, Denmark and in Austria in the 90s and – more recently since 2008 in Portugal).

During the accession phase in 2005, almost all new Member States adopted a specific civil service act (until today with the exception of the Czech Republic where the adoption of a civil service statute was postponed by the Parliament until 2015). Poland introduced only a small elitist civil service for nominated civil servants. Only, the UK did not provide for a public law status. However, during the last years discussions were unfolded on the need to adopt a specific civil service statute. In contrast to almost all other EU Member States, there is no

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49 Danielle Bossaert *et al.*, *Civil services in the EU of 15*, European Institute of Public administration, Maastricht, 2001.

50 Helen Margetts, *Electronic Government: A Revolution in Public Administration?*, in: B.Guy Peters/Jon Pierre (eds.), *The Handbook of Public Administration*, SAGE Handbook, 2nd edition, Los Angeles, p. 447-463.

specific employment status for civil servants in Sweden. The Swedish public employees are subject to the same labour market regulations as private employees. Irrespective of the sector, the legal status of employment is therefore similar and all Swedish employees, in both the private and public the sector, have legally guaranteed rights to collective bargaining as well as industrial action (strikes).

More recently, in Germany, the latest *Föderalismusreform* led to a decentralization of almost all important civil service issues such as pay and pensions. However, the competence to regulate the “status” was kept at the federal level. Consequently, the classical civil service status was not abolished although employment and working of civil servants and public employees have been aligned in many *Länder*.

In Portugal, one of the major structural reforms concerned the public employment regime. “It started in 2006 with the introduction of the possibility of dismissing public employees engaged after that date and the setting up of a special mobility scheme. The most important change occurred in 2008 when about 80 per cent of public employees with permanent jobs were transferred to public functions with open-ended contracts. According to the law these public employees continued to be protected from dismissal, but could be put into ‘special mobility’”<sup>51</sup>.

### 3.1 Status in the historical context

In Europe, knights were the first civil servants. Later on, civil servants were servants of the kings, queens, Lords and Royals; they had no rights and could be dismissed at any time. Although most of them belonged to the elite, they were paid at the good will of the monarch. Civil servant positions were bought, acquired or sold. Nepotism and corruption were normal. In all existing systems, servants at central governmental level were supposed to be loyal (in the beginning to the Monarchs), to pledge allegiance and to obey the royal orders. Their main task was to collect taxes, to exercise police tasks, to prepare and manage wars and to protect the Monarchy. This historical role of (civil) servants as dependent instruments of the monarchy explains why later civil service concepts focused so much on rules, procedures and rationality. In fact, the objective was to make civil servants independent from particular and personal interests.

The public law status originates from the French revolution aiming to establish and guarantee a democratic society based on the principles of the French Revolution (Schulze 2004, 39). In Germany the introduction of the public law status was inspired by the philosopher Friedrich Hegel. In the *Elements of the Philosophy of Right* Hegel stated that “the civil [servant's] relationship to his office is not one of contract [...] the civil servant is not employed, like an agent, to perform a single contingent task, but makes this relationship [to his work] the main

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51 Helena Rato, Portugal: Structural reforms interrupted by austerity?, in: ILO, *Public Sector Adjustments in Europe - Scope, Effects and Policy Issues*, Geneva 2012 (not yet published).



interest of his spiritual and particular existence [...] But the task which the civil servant has to perform is, in its immediate character, a value in and for itself”<sup>52</sup>.

Hegel’s idea of the civil servant and the state as such was conceptualized as a Leviathan which stood above the society and citizens. Its main role was to protect the society by enforcing regulations to achieve fairness and to balance the diverging egoistic interests within the society.

The purpose of a specific status and working conditions were also to achieve fairness and equity, to implement the merit principle and to protect public employees against arbitrary administrative decisions. Weber suggested that civil servants should administer without fight, passion and emotion. Therefore, they should be treated differently to the private sector employees. Moreover, communication should be “dehumanised” by eliminating feelings like hate and other irrational and emotional elements. The civil servant should not do the task of a politician: fighting!<sup>53</sup> Instead, one of the most important obligations of civil servants is to exercise their functions impartially and rationally.

In Europe the emergence of centralized civil services is closely linked to the emergence of the Republican State (firstly in France) and the Nation State (especially after the Congress of Vienna in 1815)<sup>54</sup>. In France, the public law status was “invented” during the French Revolution in order to link the civil servants to the State and not to the Monarchy<sup>55</sup>.

Bekke and van der Meer<sup>56</sup> define modern civil service systems as depersonalised systems which differ from traditional modes of government. The most important changes included introduction of merit principles (including entrance examinations, job tenure, career service, political neutrality) which were adopted – as a moral guardian to democracy – and which should shield employees from politically inspired employment actions. “In all cases, and particularly in Great Britain, France, Prussia and Spain, the emergence of a central state in combination with the centralisation of authority is considered an important explanatory factor in the growing reliance of rulers of both military and civilian officials. The multiplication of government tasks and the increasing level of administrative specialisation eventually made the separation of the personal and the administrative household of the ruler inevitable (...). It was initially an organisational division, but it also symbolised a profound change in the authority relationships. Civil servants gradually evolved from personal servants in the service of the ruler into servants of the state”<sup>57</sup>. “Changes on the continent were actually realised as a

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52 Gottfried Hegel, *Elements of the philosophy of right*, Cambridge University Edition, 1991, pp. 328-336 (§ 287-297).

53 Max Weber, *Politik als Beruf*, Reclam, Stuttgart 1999, p. 32.

54 Hagen Schulze (2004), *Staat und Nation in der europäischen Geschichte*, Beck, p. 39.

55 “Le premier souci des républicains, dès la fin des années 1870, est de s’assurer des sentiments favorables des fonctionnaires à l’égard de la République : la fonction publique”, <http://diffusion.vie-publique.fr/decouverte-institutions/institutions/approfondissements/histoire-fonction-publique.html>

56 We used the older version : Hans A. G. M. Bekke/F. M. Van Der Meer (2001), *Civil Service Systems in Western Europe*, Edward Elgar.

57 *Ibid*, p. 276. See also Frits van der Meer (ed), *Civil Service Systems in Western Europe*, Edward Elgar, 2011.

consequence of the “Napoleonic” wars and conquests. Politico-administrative renewal was either imported or renewed...”<sup>58</sup> (...) “Instrumental in effectuating these changes was the establishment of the Rechtsstaat or in Anglo-Saxon terms the rule of law (...). Step by step the legal position of civil servants in all countries was formalised and standardised (...) Merit instead of privilege was becoming the guiding principle”<sup>59</sup>. The status of the civil servants evolved into a protected status with many specific employment features that differed from ordinary employment patterns.

As such, the creation of a modern centralized civil service is a response to the emergence of the liberal state which was based on the rule of law. Despite this common frame, many civil service systems differed and had specific national reform trajectories. At the same time, criticism emerged in relation to the (often perceived as inflexible) protected nature of the civil service. Consequently, civil service criticism is strongly linked with the emergence of a specific and elitist civil service. Both are at least two hundred years old.

Ironically, one of the first *modern* European civil services was not set up in Europe, but rather in India by the East India Company, distinguishing its *civil* servants from its *military* servants<sup>60</sup>. As early as 1793, the British government developed a civil service code for the territory of India “under which officials received reasonable if not lavish pay and conditions of service. The important question of promotion was regularised in accordance with the rule of seniority as laid down in the Charter Act of 1793. It was regarded as a safeguard against favoritism and unfairness...”<sup>61</sup> In order to prevent corruption and favoritism, promotions within the company were based on examinations. The system then spread to the United Kingdom in 1854 (based on in the Northcote-Trevelyan report which was published more than 150 years ago)<sup>62</sup>.

Lifetime tenure was first introduced in Bavaria in Germany in 1805<sup>63</sup>. Later on the so-called *Alimentationsprinzip* was established which obliged civil servants to devote their whole personality (and full working time) to the public employer. On the other hand the public employer was obliged to take care of the civil servant (and his family) for their whole life (from here stems the request to have specific pension systems for civil servants). In Prussia, the “Allgemeines Landrecht für die Preußischen Staaten” from 1794 contained 19000 paragraphs<sup>64</sup>.

Elsewhere, different cities in Italy (and later on the State of Italy), different regions in Spain and parts of the Netherlands invented their own civil service models and further adapted them

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58 Ibid., p. 277.

59 Ibid., p. 278.

60 Edgar Norman Gladden, *Civil Services of the United Kingdom 1856-1970*, Frank Cass, London, 1967.

61 Edgar Norman Gladden, *A History of Public Administration*, Vol. II, Frank Cass, London, 1972, p. 251.

62 Stafford Northcote/C. E. Trevelyan, *The Organisation of the Permanent Civil Service*, Parliamentary Papers, Volume XXVII, 1854.

63 Matthias Pechstein/Rudolf Summer, *Beiträge zum Beamtenrecht*, Tübingen, 2007, p. 58.

64 Hagen Schulze, *Staat und Nation in der europäischen Geschichte*, op. cit., p. 96.

to regional and national tradition, culture and political needs. More and more, in all European societies it was believed that civil servants were linked to the authority of the state and could not be compared to other public employees or employees in the private sector.

In his well-known lecture on Politics as a Vocation delivered in 1919<sup>65</sup>, Max Weber defined the role of the public officials in the following manner: "The honour of civil servant is vested in his ability to execute conscientiously the order of the superior authorities, exactly as if the order agreed with his own conviction. This holds even if the order appears wrong to him and if, despite the civil servant's remonstrances, the authority insists on the order. Without this moral discipline and self-denial, in the highest sense, the whole apparatus would fall to pieces".

According to Weber, the essence of administrative behaviour is to follow legally given orders. Following this, at a minimal level, administration was considered to be good and ethical if civil servants achieved the implementation and enforcement of the existing laws and policy goals of the Government of the day. Moreover, ethically good or acceptable behaviour was also defined in terms of law obedience, impartiality and standardization.

Consequently, almost all Member States designed their public organisations in specific ways as they expected that certain behaviour on the part of civil servants would result from specific organisational features. Traditionally, a hierarchical and formalised organisational structure, clear and rigid career paths, lifetime tenure, full-time employment, seniority, advantageous pension systems and rigid remuneration systems were introduced in order to reduce as far as possible the risk of too much political influence, corruption, misconduct, the exercise of private interests and instability of government. Consequently, the traditional argument for a specific organisational structure was to produce a certain ethical status for civil servants who should be committed to the public good, neutrality, impartiality and to observing confidentiality and displaying expertise. In many countries, civil servants were, therefore, working in hierarchical organisations, had very specific recruitment procedures, specific ethical obligations, little mobility, varying working conditions and specific social security systems.

Since the notion of social services did not exist for a long time<sup>66</sup>, most of the existing 'civil services' were tax services, military and judicial services and police services. Consequently, the most important task of the state sector was to *control* society rather than to *serve* society. The "Leviathan" (T. Hobbes) stood above society and the governments were – until the 1970s – more concerned with the implementation of programmes than with the evaluation of their outcomes. Moreover, citizens were not allowed to question government authorities at all. Within this bureaucratic structure, where the public service was closed off and separated from society and citizens, it was not possible for civil servants to have the right to strike or the right to engage in collective agreements relating to working conditions. In other words, civil

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65 Max Weber, *Wirtschaft und Gesellschaft*, Volmedia, Paderborn, 1922, pp. 219-227.

66 For instance, until the 1950s only a few countries had anti-poverty programmes, or initiatives in the field of food safety, social security or environmental protection.

servants were seen as a different category of staff. Because of the specific treatment of civil servants, public perceptions arose of civil servants having different personalities, being motivated by different incentives, working less hard than employees in the private sector, being more security-minded, more rule-oriented and not very innovative.

However, despite the growing (and often justified) criticism, one should not forget that the emerging modern concept of bureaucracy and civil service was by nature a “republican” concept that was designed as a counter concept to the traditional and charismatic power structure of the monarchist and medieval times. As such, the bureaucracy as described by Weber was believed to be an instrument of power which was based on the principle of rationality. Its task was to enhance the stability of the state while limiting the influence of the (political) class. Yet, bureaucracy was not only supposed to be a new form of rational power - it was also believed to be more efficient and more ethical than any other organisational form until the 19<sup>th</sup> century. In fact, traditional administrative behaviour was often dominated by individual treatment, politicization, corruption and the “spoils” system.

In the 20<sup>th</sup> century, (sometimes terrible) experience has shown that administrators are not neutral machine-like cogs. Moreover, trends towards the delegation of more responsibilities to managers have also increased individual decision-making powers. Weber also overestimated the dominance of rational behavior in organizations and neglected the role and importance of emotions at the workplace which is still widely under-researched in the public sector. Moreover, ethically good or acceptable behaviour should not be defined only by focusing on obedience to rules, the status and specific working conditions but encompasses also such issues like justice and fairness, leadership, ethical culture and the broader social context of behaviour. In reality, work in the public sector is more individual, value-laden, emotional, pluralistic and more unpredictable than ever. Excessive adherence to the status and rules may be problematic as such as has been illustrated by many authors<sup>67</sup>.

### **3.2 From public administration to public management and to governance - the implications for the public status**

After the Second World War, the tasks of the state evolved (especially in the social and education sector) and more and more people were recruited as civil servants. Consequently, public employment reached a new peak in the late 1970s and early 1980s. However, as a consequence of broadening the public sector, it also became less clear why civil service positions should be treated differently to those in the private sector. In fact, citizens, media and politicians have expressed more and more dissatisfaction with the public sector in general and campaign against the bureaucrats and expensive, slow, inefficient, and unresponsive bureaucracies. As a result, it has become increasingly difficult to argue why certain features of the traditional public services, such as pay, social security, working conditions, working

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<sup>67</sup> Guy Adams/Danny L. Balfour, In the face of administrative evil: Finding basis for ethics. In Jay M. Shafritz/Albert C. Hyde, Classics of public administration, Sixth Edition, 2008, p. 566; Philip Zimbardo, The Lucifer effect: Understanding how good people turn evil, Random House Trade Paperbacks, 2008.

time, the right to strike and social dialogue, etc., should be distinct from those in the private sector.

Today, as a consequence of growing criticism against the classical bureaucratic systems, no national administration represents the classical bureaucratic model anymore. In fact, the trend is clearly towards post-bureaucratic systems.

**Table 5. Traditional bureaucracy: post-bureaucracy continuum score by EU Member State**

0% = traditional bureaucracy, 100% = post-bureaucracy

Member State	Score
Greece	7.2
Luxembourg	7.2
Cyprus	9.8
Ireland	13.6
Portugal	16.3
France	16.3
Germany	16.6
Belgium	18.6
Spain	19.1
Romania	19.8
Italy	20.4
Hungary	22.9
Austria	23.7
Lithuania	24.3
Poland	27.7
Bulgaria	28.9
Malta	29.3
Slovenia	29.5
Estonia (*)	38.8
Latvia (*)	40.2
Netherlands (*)	47.1
Slovakia (*)	51.0
Finland (*)	53.4
United Kingdom (*)	64.1
Denmark (*)	68.2
Czech Republic (*)	73.0
Sweden (*)	81.4
Mean	32.2

(\*) Non-career system country

Source: Christoph Demmke/Timo Moilanen, *Civil Services in the EU* of 27, 2010

As we have seen, for a long time, discussions about the “status” were closely linked to the legitimacy of the civil service, hierarchical steering, obedience, loyalty and the rule of law. These values and principles have a long history. However, in the course of time, other values and principles have become more important: efficiency, decentralization, responsabilisation, openness, “citizen orientation and – even more - performance. “To say that public organizations are under more pressure than ever to demonstrate performance is a cliché, but like many clichés, it is grounded in reality”<sup>68</sup>.

In the meantime, more Member States also share the opinion that work in central public administrations is just an important profession like any other important profession. And, it is not of a higher value than other jobs (see chapter above). Also perceptions of administrative behavior have changed: Today, work in the public service is also much more complex and no longer dominated by the principle of rationality and hierarchy as Weber predicted. Moreover, most of the work carried out by the public servants should serve a variety of masters, but foremost the citizenry (and not exclusively the state (Leviathan)).

To state that the times of the traditional bureaucracy are over is tempting. In fact, it is highly unlikely that the traditional bureaucracy is coming back. However, it cannot be excluded that specific principles and aspects may return to the agenda. For example, the current trend towards decentralisation and fragmentation has resulted in new discussions about the need for a new public service ethos and more centralization and coordination in HR management, at least in some countries. Recently, the Member States have started adopting a model that balances centralized and decentralized delivery of human resources – shared services<sup>69</sup>. Still, little is known about successes and failures of this instrument.

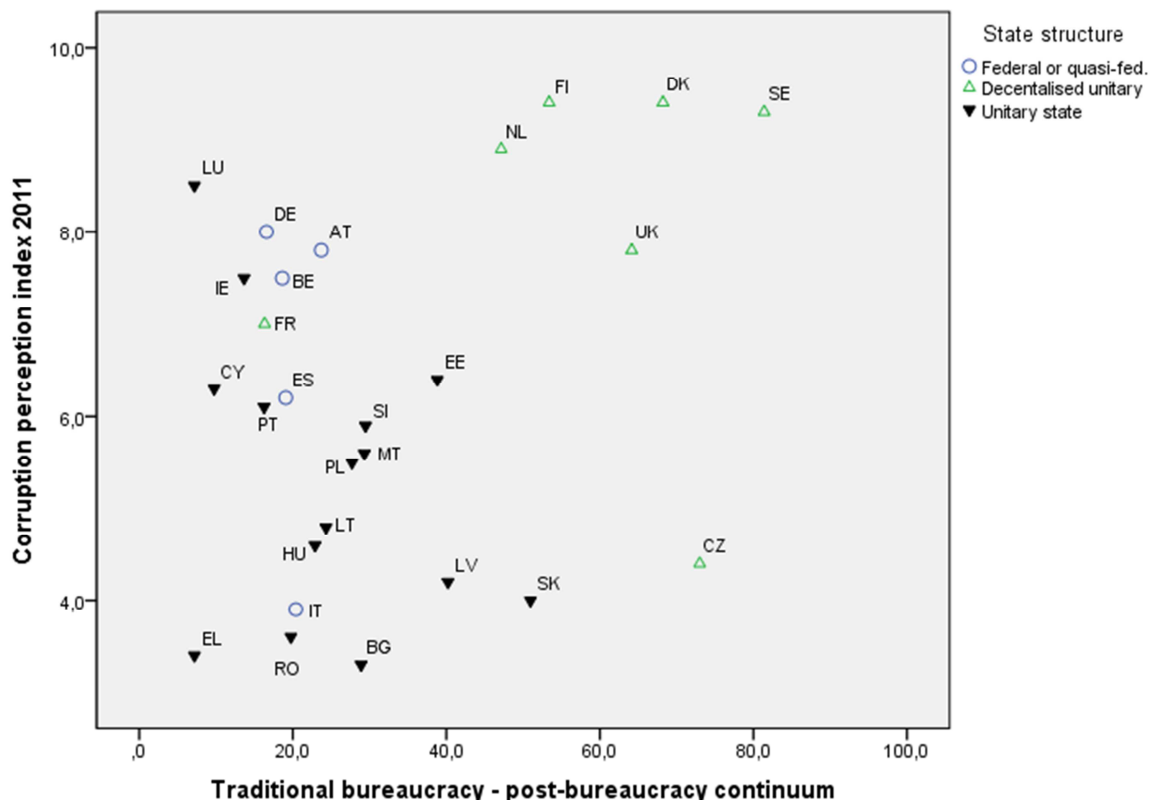
Much depends on the outcomes of reforms. In fact, many post-bureaucratic reforms in the national civil services do not show clear and positive results. Whereas some reform trends produce improvements, others simply bring about alternation or even deteriorations of working conditions and reform results. Thus, the reform outcomes do not indicate that the post-bureaucratic times are much better - in many cases they are simply different. The future will be a constant strive towards finding the right balance amongst competing values and principles: between standardisation and citizen-orientation, flexibility and the need for stability, autonomy, individualism and fairness, centralisation and decentralisation, secrecy and openness, hierarchy and responsabilisation, the call for new rules and deregulation, individual performance and equality etc.

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68 Donald P. Moynihan, *Identifying the Antecedents to Government Performance: Implications for Human Resource Management*, in: Peters/Pieere, *Handbok of Public Administration*, op cit, p. 71.

69 Sally Coleman Selden/Robert Wooters, *Structures in Public Human Resource Management: Shared Services in State Government*, in: *Review of Public Personnel Administration*, Vol. 31, No. 4, December 2011, p. 350.

**Figure 1. Relationship between the traditional bureaucracy - post-bureaucracy continuum and the corruption perception index**



However, despite new uncertainties as to the effects of new NPM-reforms, most of the experts agree that also classical bureaucratic career systems have not reached their main objective at all. One of the main reason for the establishment of specific civil service systems and the need for a civil service status was to shield governmental employees from the influence of individual interests, reduce corruption and shield public employees from potential conflicts of interest. However, in the meantime, evidence has shown that classical civil service systems are not less corrupt and less politicized than “aligned” systems. In fact, the underlying reasons for corruption are less linked to institutional structures but instead to administrative culture, working conditions, leadership styles, fairness perceptions etc.

On the other hand, in those Member States where the differences between the public and private sector employment have been abolished or almost abolished, the legal status of public employees has little or no impact on the loyalty of the civil servant. This is because it would be wrong to assume that a public law status and specific organisational structures and working conditions automatically have a direct impact on individual behaviour. However, some Member States share the opinion that there is a direct link between the special status of civil servants, job security and principles such as loyalty, neutrality and impartiality.

### 3.3 The change of work and work ethos - from the status to virtual workplaces?

Also work has changed in many aspects. However, despite all popular assumptions, it would also be wrong to question the role and the importance of the office as the place where work is being carried out. As Bartmann states: Despite the many changes that are taking place there is little evidence that the office as such disappears and being replaced by virtual workplaces<sup>70</sup>.

Thus, many reported changes as regards the entering into virtual worlds are also exaggerated. The office as the symbol for classical bureaucracies is alive and still doing well; the principle of hierarchy has not been abandoned; expertise is still valued; the principle of rationality is not given up and replaced by any other form of emotional intelligence; law is still the most important steering instrument in the field of public administration; old bureaucratic features are still existing and mostly often replaced by modern management features which have created a new accountability and performance management bureaucracy. Finally work is important as always for the millions of public employees.

Other changes are the more important: For example, public employees are much better qualified than ever, communication has increased and employees have taken over more individual responsibilities. Here, the European Commission is a good example. The Commission officials carry out a wide range of tasks that are divided up into two categories: administrators (AD) and assistants (AST). The administrators' staff plays a key role in the EU's legislative and budgetary processes, from coordinating the broad economic policies of the Member States, taking part in negotiations with non-EU countries, helping run the common agricultural policy, to ensuring that Union law is uniformly interpreted and effectively applied. Given the broad range of the EU's activities AD officials hold a high degree of responsibility from an early stage of their careers. Assistants' staff (AST) can also play an important role in the internal management of the Commission, notably in budgetary and financial affairs, personnel work, computing or librarianship as well as assisting in implementing policies in various areas of EU activities or be responsible for secretarial and clerical work and ensuring the efficient operation of an administrative unit. Thus, the European Commission shows par excellence that classical bureaucratic clichés ("civil servants like cogs in a machine", "civil servants like executors without own responsibility", "civil servants as subordinated experts") are outdated, although a number of traditional bureaucratic features remain in place.

Moreover, everywhere individual qualifications (like diplomas, masters, PhD's etc.) have lost in importance as constant adaptation of skills and competences are becoming more important. On the other hand, the merit principle as such needs revision. Not because of its failures but because of its success. Today, the Member States of the European Union have become more meritocratic and, at the same time, more polarized. The more the concept of meritocracy is becoming a reality, the more it seems to legitimate a hierarchy of privilege<sup>71</sup>. The paradox with the principle of meritocracy lies with the problem that our systems which reward talented

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70 Christoph Bartmann, *Leben im Büro, Die schöne Welt der Angestellten*, München 2012, p. 275.

71 Donald Menzel, *Ethics and integrity in the public service*. In Menzel/White, op. cit., p. 137.



people leave no hiding place for those who do not succeed in the competitive struggle. Today, rising levels of inequality and problems with social mobility can lead to a loss of social capital, frustration, discontentment and alienation. “A further serious deficiency in the ethical grounds of meritocracy is its virtual absence of discourse on what areas of “merit do not do justice to vast differences in status, reward and power ...”<sup>72</sup>. Another problem is that the principle of meritocracy can, at times, be self-defeating, “The more opportunity there is for people to succeed in society, the less value such success is likely to have for them”<sup>73</sup>. If all people invest in more and better education and invest in their competences and skills, the process ends as a race to the top. Everybody is likely to become disappointed quickly. Robert Merton showed that career satisfaction was higher in those units in which the promotion rates were low than in those with high ones. “If there is one thing worse than being blocked, it is seeing others succeed where you have failed”<sup>74</sup>. Merit, as the basis for employment decisions, is one of the core values. Yet employee faith in the application of merit principle is relatively low and appears to be in decline in many countries. “Even allowing for the fact that perceptions vary according to whether respondents were successful in obtaining a job, the results are still unsatisfactory”<sup>75</sup>.

Thus, the consequent application of the merit principle seems to undermine one of the most important foundations of the national public administrations: the principles of equality and equity. The consequent application of competence management may also lead to more flexibility, adaptability, but also individual treatment and politicization in recruitment and career development policies.

Moreover, computing and telecommunications technologies have delocalized work for many professionals, so that it can be done at all hours from almost everywhere. “The result is a social world where modernist distinctions like home-office, work-leisure, public-private, and even self-other no longer hold fast. In the twenty-first century, the boundary between work and home has largely disappeared, technological gadgets structure family life, business often intrudes on leisure....”<sup>76</sup>.

Hierarchical, centralized and standardised structures in advanced democracies are slowly being replaced by collaborative arrangements among public, semi-public and private organizations. Current changes include reductions in the public workforce, devolution and deregulation of public administration, a strengthening of interest groups and citizens, more transparency, an increasing coverage of service delivery by non-traditional service delivery arrangements (for example contracting out, outsourcing, networking etc.), stronger focus on non-coercive elements and steering methods. The complex discourse about Governance implies that the relationship between the state and the society is changing. According to

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72 Ibid., p. 131.

73 Georg Dench (Ed.), *The rise and rise of meritocracy*, Blackwell, Oxford, 2006, p. 190.

74 Ibid.

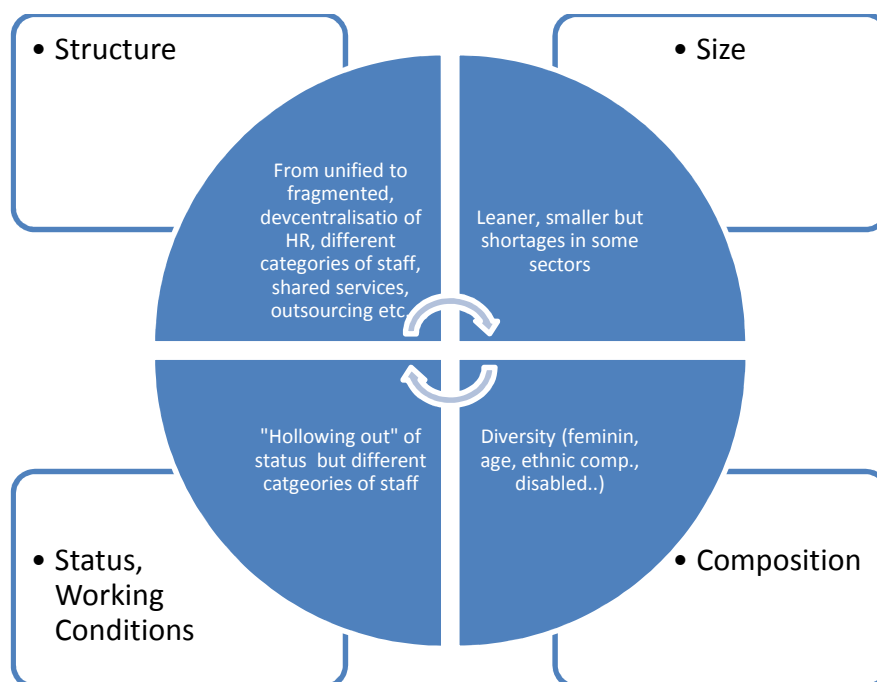
75 Lynelle Briggs, *Testing APS ethics: Where's the integrity?*, In: *The Australian Journal of Public Administration*, Vol. 68, No. 2/2009, p. 134.

76 Dalton Conley, *Elsewhere U.S.A.*, New York, 2009, p. 8.

Enroth, “Governance in this brave new world, involves a plurality of actors interacting in networks that cut across the organizational and conceptual divides by means of which the modern state has conventionally and all too conveniently been understood”<sup>77</sup>.

Therefore, it is time to analyse between the trend towards Governance and public employment reforms as it is likely that Governance also brings new forms of employment relations and more diverse contractual relations. Overall, changes and reforms concern the structure, size, composition and the status of the public services as shown in Figure 2.

**Figure 2. Dimensions of public employment restructuring**



Today, governments and employers use a much wider menu of employment contracts and reform instruments in the field of public employment than before.

These trends go hand in hand with a decline of the classical “civil service” status and the hollowing out of the traditional civil service employment conditions. This trend takes place within the context of the restructuring of public employment. Still, the effects of this process are far from clear.

<sup>77</sup> Henrik Enroth, Policy Network Theory, in: Mark Bevir (Ed.), The SAGE Handbook of Governance, op cit, p.19

**Table 6. Effectiveness of public employment restructuring and dimensions**

<b>Structure</b>	<b>Size</b>	<b>Composition</b>	<b>Status</b>
From unified CS to differentiation, decentralisation and decomposition	Smaller Leaner	More women in top-positions	Public Law Status remains
Different categories of staff (public and private law)	Employment shifts to sectors (education, health) with new (more) recruitment needs	More diversity	Dual systems prevail, diversity and fragmentation of personnel are characteristic in most of the Member States
Civil Servants, public employees, short-term employees	Recruitment shortages in some areas (ICT)	More public employees in civil service positions	Decline of numbers of CS, towards core CS
Shared Services, Outsourcing, Agencification, PPP, Privatisation	Attractiveness according to countries and sectors is different	Age-Management (people stay longer)	“Hollowing out” of status substance, alignment of employment conditions
Centralised Coordination		Life long learning (LLL) – focus on constant development of competences and skills	More public employees in CS functions, new “unfairness perceptions” amongst categories of staff
		Meritocracy and conflicts with equality, diversity, representativeness and democracy	Some issues remain specific (job security, recruitment etc.)
			Overall: Identity crisis of specific Civil Service, public employees exercise public powers as do private employees
			New discussions on need of specific Working conditions

As we will see later on, more specific employment features are about to change. Since a number of decades, pensions, pay, job security, social dialogue and the right to strike are undergoing dramatic changes. As a result, “long-standing taken for granted assumptions and orthodoxies no longer hold”<sup>78</sup>. This can best be illustrated in the field of job security. Whereas in the past, jobs in the national civil servants were “havens of security”, today more Member States allow for the termination of civil service employment in more cases and situations.

78 Ewan Ferlie/Lawrence Lynn/Christopher Pollitt (2005), Introductory Remarks, in: The Oxford Handbook of Public Management, Oxford University Press, p.1

Still, job security is higher than in the private sector. Still, civil servants enjoy higher levels of job security than all other employees. Only three countries reported that job security is not higher in the civil service.

However, the public service is undergoing dramatic changes in more countries as can be seen in the case of Portugal (see Table 8 on page 50).

**Table 7. Termination of civil servant employment by EU Member State**

0 = No, 1 = Yes

	A	B	C	D	E	F	G	H
Germany	1	0	0	0	0	0	0	1
Greece	1	0	0	0	0	0	0	1
Luxembourg	1	0	0	0	0	0	0	1
Belgium	1	1	0	0	0	0	0	2
Cyprus	1	0	0	0	0	0	1	2
Ireland	1	1	0	0	0	0	0	2
Italy	1	1	0	0	0	0	0	2
Portugal	1	1	0	0	0	0	0	2
Spain	1	1	0	0	0	0	0	2
Austria	1	1	0	0	0	0	1	3
Malta	1	0	1	1	0	0	0	3
Sweden	1	0	1	1	0	0	0	3
Czech Republic	1	0	1	1	1	0	0	4
Estonia	1	1	1	1	1	0	0	5
France	1	1	1	1	1	0	0	5
Hungary	1	0	1	1	1	1	0	5
Lithuania	1	1	1	1	1	0	0	5
United Kingdom	1	1	1	1	1	0	0	5
Bulgaria	1	1	1	1	1	0	1	6
Denmark	1	1	1	1	1	1	0	6
Finland	1	1	1	1	1	1	0	6
Latvia	1	1	1	1	1	1	0	6
Netherlands	1	1	1	1	1	1	0	6
Poland	1	1	1	1	1	1	0	6
Slovakia	1	1	1	1	1	0	1	6
Slovenia	1	1	1	1	1	1	0	6
Romania	1	1	1	1	1	1	1	7
<i>Mean</i>	<i>1.00</i>	<i>0.71</i>	<i>0.61</i>	<i>0.61</i>	<i>0.54</i>	<i>0.29</i>	<i>0.18</i>	<i>3.93</i>

A = Disciplinary reasons  
 B = Poor performance  
 C = Restructuring  
 D = Downsizing  
 E = Re-organisation  
 F = Economic difficulties  
 G = Other  
 H = Sum

**Table 8. Public Employment restructuring in Portugal**

In Portugal, the decrease in public employment was an objective pursued by the public administration reform process since 2005. As a consequence of the State Central Administration Reform Programme (PRACE) 36% of structures were reduced (general directorates and public agencies) and 26% of senior management positions were abolished. This restructuring movement was followed-up by a staff rationalization process and more staff reductions. In order to better manage this situation, the Government set up a special mobility system (SME) and the establishment of a plan for staff placed under a mobility situation.

In addition, the Portuguese Government has implemented, as of 2010, corrective measures that affected the size of public sector employment. Freezing in recruitment was implemented in June 2010 by the budget consolidation law that has forbidden to hold open competition procedures by the central, local and regional administration services to applicants who do not possess a previously formed public employment legal relationship for an indefinite period of time. Any recruitment unfreezing (inclusive in health, education, security and taxes) has an exceptional nature and presupposes previous authorisation of the Government member responsible for finance area.

Nevertheless, every year there is an exceptional recruitment for senior official general regime career through the special training Programme “Advanced Studies in Public Management Course”. For the 2011/2012 edition 70 work posts to be filled in by the applicants to this Programme are foreseen.

Furthermore, due to the sovereign debt crisis the Portuguese Government was forced to request the European Union financial assistance under the European Financial Stabilisation Mechanism. Therefore in May 2011 a “Memorandum of Understanding on Specific Economic Policy Conditionality” was negotiated and signed by the Portuguese authorities. This memorandum defines measures and reforms that are to be implemented from June 2011 to mid 2014.

In what concerns public sector employment, the “memorandum” lays down that the Portuguese authorities shall ensure that the aggregate public sector wage bill as a share of GDP decreases in 2012 and 2013, namely by limiting staff admissions in public administration. The state budget law for 2012 establishes a reduction of staff of 2% for central and regional administration and 1.2 or 3%, on a case by case basis, for local administration over this year. A reduction by at least 15% of management positions and administrative units in central administration until the end of 2011 was further established to increase the efficiency and cost-effectiveness of the public administration. Furthermore, the Government supports initiatives with a similar objective at local and regional level until the end of 2012.

In order to comply with the aforementioned objectives a new restructuring programme known as "Reduction and Improvement of Central Administration Plan (PREMAC)" was implemented, which foresees the abolishment and merger of 168 organizations, the reduction of senior management structures on central administration level by 40% and a further reduction of top and middle level management positions by 27%

Other countries pursue more moderate and cautious reform strategies. For example, in Austria, as a result of the freeze on public-law appointments, retired civil servants are being replaced – to the extent that their replacement is required – by private-law employees in those occupational groups where this alternative mode of employment is possible. For this reason divergent trends can be observed between civil servants and private-law employees. Despite a slight increase in private-law employment relationships, the number of employment relationships governed by public law has markedly decreased, leading to a reduction in overall staffing levels.

Also work is changing. “There can have been few times when it has been a greater challenge to understand the changing nature of the employment relationship. The old conception of the typical male employee, and between those with and without stable jobs has long been outdated. “Craft” and “Trade” are no longer meaningful categories, and distinction between manual and non-manual, white and blue collar, and even between “services” and “industry” have become largely redundant. “Skill”, a peculiarly English term related to a job rather than a person, is increasingly too narrow for the range of “competences” required today. “Training” is now an inadequate concept, given the changing nature of work, which necessitates a deeper and broader “vocational education”, and “skilled labour” becomes “qualified labour”. Instead, it is often unclear who is even to count as an employee, in the face of the disappearance of distinctions between employee, independent contractor, self-employed, and autonomous worker and the spread of “triangular” relationships mediated by employment agencies. Labour lawyers are struggling to develop new concepts that can comprehend – and help regulate – the situation of workers who are dependent on, but not technically employed by, the organization for which they work. In its 2006 Green Paper Modernising Labour Law, the European Commission pointed out that “fixed term contracts, part-time contracts, on-call contracts, zero-hour contracts, contracts for workers hired through temporary employment agencies, freelance contracts, etc. have become an established feature of European labour markets”, with “nonstandard contracts” now covering 40% of the EU25 workforce”<sup>79</sup>

The change of work and work contracts influence the work ethos of public officials. In fact, the above mentioned trends and reforms bring a greater number and variety of conflicting values. One could also say that, whereas classical public-service ethics is relatively conservative and has endured over time, public service reforms are requiring public officials to respect new and more numerous values.

Take the case of work ethics. A century ago, Max Weber<sup>80</sup> described a tendency within Protestant capitalist societies for rich and poor alike to work for the sake of work. Under the Protestant work ethic, Weber explained, the highest good is to combine the earning of more and more money with the “strict avoidance of all spontaneous enjoyment in life”. Instead of

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79 Linda Clark et al., What’s the point of industrial relations?, in: *The International Journal of Comparative Law and Industrial Relations* 27, No. 3, 2011, p.245

80 Max Weber, *The protestant ethic and the spirit of capitalism*, Penguin Books, 2002.

working to live, the Protestants lived to work. Consequently, work was the context for the display of moral and practical virtues.

Pay systems were based on the principle of procedural fairness, the principle of standardisation and seniority. They were not designed as a direct payment for individual work done, but compensation for their service as a whole, in other words, for civil servants making their entire working capacity available to the general public and carrying out their duties to the best of their ability. Today, most of the pay systems are based on the principle of individual performance and distributional fairness. The new pay systems are flexible and designed as a direct payment for individual work done. However, this does not suggest that flexible and performance related pay systems are fairer than the traditional systems. Instead, they are based on a different understanding of fairness and reflect the current value changes.

Because of the changing values, more public service employees do not perceive working in the public sector as distinct to working in the private sector. Instead, many public service professions are perceived as jobs and less as a vocation. However, work as such is still important for most people. Even more, individual performance orientation, life-long learning and the willingness to continuously adapt one's skills and competences have become new and positive values. Also workplace ethics have changed: in the past, the standard employment model meant that men worked full-time and stayed in their protected jobs until retirement. Workers were expected to erect a firewall between their work lives and their home lives. Also working time ethics (work from 9 A.M. to 5 P.M. in the office as being separated and closed off from home) have become relative, as employees can be reached on their smartphones anywhere and anytime. Moreover, an increasing number of employees work part-time, or according to flexible time arrangements. Yet, hard work is still seen as a virtue. In the past years, most of the European public employees have even seen their working hours increased. Early retirement and the 35-hour week is on the retreat. Many Member States apply the derogation clause in article 17 of the European Working Time Directive to their top-officials which allows for an extension of the working time above 48 hours per week.

Fast changes that are taking place can also be seen in the field of skill development, life-long learning and competency development. Whereas in the past civil servants were experts who held diplomas and received little training, today civil servants are required to continuously develop their skills and competencies. These fast-paced changes that are taking place in the field of competency development are typical of the entire field of workplace ethics. Today, no fixed workplace ethics exist. Instead, workplace ethics is continuously developing. And they change at an ever faster speed.

Today, the national public services are also becoming more exposed to outside organisational cultures and values. This does not suggest that the core public sector values – independent, merit based, professional, inclusive, responsive and fair – are going to disappear. However, the public services need to identify and emphasise the common ethical values that they share with other sectors.



#### 4. THE CHANGE OF EMPLOYMENT AND EMPLOYMENT CONDITIONS

As early as in 1996, in the first edition of “Civil Services in the Europe of 15”, the European Institute of Public Administration (Auer et al., 1996) came to the conclusion that the differences between the working condition between civil servants, public employees and private sector employees were becoming less pronounced. This trend continued until today. In fact, the differences between the working conditions in the public and the private sector have become less meaningful: in this sense, a partial harmonisation between labour regimes in the public and the private has already taken place in almost all Member States. Therefore, the current discussion focuses on the question whether or not the civil service status under public law should be aligned/abolished towards the status of employees in the private sector or not.

In the meantime, the most important differences relate mostly to job security, recruitment procedures, pay systems and career development policies. However, even these features are undergoing tremendous changes: Job security is being reduced, recruitment procedures are being flexibilised, pay systems are individualised and linked to individual performance and career structures are modified and, in some cases, even abolished. As a consequence, civil service employment differs less from private sector employment than ever before. Moreover, the differences between civil service employment and public employees employment are becoming less clear.

**Table 9. Does civil service employment differ from public employment as regards policy issues?<sup>81</sup>**

	Very much	Somewhat	Fairly little	Not at all	Cannot say
Pension system	25 (6) BE, CY, DE, DK, EE, ES	18 (5) EL, FR, IT, NL, SE	4 (1) PT	46 (11) BG, FI, HU, IE, LY, LV, LU, MT, PL, SI, SK	4 (1) EC
Job security	17 (4) BE, ES, FR, PL	50 (12) BG, DE, DK, EE, FI, HU, LV, MT, NL, PT, SE, SK	17 (4) CY, EL, LT, SI	13 (3) IE, IT, LU	4 (1) EC
Pay systems	20 (5) EE, FR, IT, LT, PT	36 (9) AT, BE, DE, EL, ES, MT,	16 (4) CY, HU, IE, NL	24 (6) BG, DK, FI, LU, LV, SI	4 (1) EC

<sup>81</sup> It is important to note that in Luxemburg the comparison concerns public law officials and labour law officials on the central level; in the Netherlands the comparison is between central public law officials and public sector employees with a labour law contract; in Germany state civil servants and public employees (all incl. federal employees) are compared; in Ireland established civil servants and unestablished civil servants are compared. Finally, in Finland the distinction is made between state employees with a public law status and central labour law employees.

		PL, SE, SK			
Holiday arrangements	0 (0)	32 (8) BE, BG, EE, ES, IT, PT, SE, SI	24 (6) CY, DE, HU, IE, LT, PL	40 (10) AT, DK, EL, FI, FR, LU, LV, MT, NK, SK	4 (1) EC
Working time	4 (1) CY	20 (5) ES, HU, IT, PL, PT	28 (7) BE, EE, FI, IE, MT, SE, SK	44 (11) AT, BG, DE, DK, EL, FR, LT, LU, LV, NL, SI	4 (1) EC
Career development	32 (8) BE, CY, ES, FI, FR, IT, LT, PT	12 (3) BG, LV, MT	36 (9) DE, EE, EL, HU, IE, NL, SE, SI, SK	16 (4) AT, DK, LU, PL	4 (1) EC
Health insurance	4 (1) BG	20 (5) AT, BE, CY, DE, ES	16 (4) FR, MT, NL, SE	48 (12) DK, EE, EL, FI, HU, LT, LU, LV, PL, PT, SI, SK	12 (3) EC, IE, IT
Right to strike	17 (4) BG, DE, DK, EE	29 (7) CY, ES, FI, HU, IT, NL, SI	25 (6) IE, LU, MT, PT, SE, SK	25 (6) BE, EL, FR, LT, LV, PL	4 (1) EC
Recruitment procedure	36 (9) BE, BG, CY, ES, FI, FR, LT, LU, LV,	32 (8) DE, EE, EL, MT, PT, SE, SI, SK	20 (5) DK, HU, IE, NL, PL	8 (2) AT, IT	4 (1) EC
Ethical obligations	12 (3) BG, EE, LT	32 (8) DE, HU, IT, LV, NL, PL, SE, SK	12 (3) BE, IT, MT	40 (10) AT, CY, DK, EL, ES, FI, FR, LU, PT, SI	4 (1) EC

This analysis requires a more specific examination (see also the discussions later in this study). In fact, in only two Member States recruitment procedures are the same for civil servants and public employees, job security only in three countries and pay systems only in six countries. Thus, despite all alignment trends, differences still prevail. Almost no Member States envisages a complete harmonization of employment features amongst the different public employment categories. This finding is intriguing as most of the experts only focus on the so-called alignment trend but less on the reasons why certain differences prevail.

**Table 10. Civil servants' legal status by type of administrative system in the EU**

(Frequencies in parenthesis)

	Recruitment procedures	Job security	Pay systems
Very much	36 (9)	17 (4)	20 (5)
Somewhat	32 (8)	50 (12)	36 (9)
Fairy little	20 (5)	17 (4)	16 (4)
Not at all	8 (2)	13 (3)	24 (6)
Cannot say	4 (1)	4 (1)	4 (1)
Total	100 (25)	100 (24)	100 (25)

Another neglected phenomenon is the importance of EU law in the process of alignment. Despite the fact that the EU has very limited competences in the field of public administration, EU law and EU policies play a significant role in the alignment process. Therefore, it would be wrong to assume that “Public Administration” is an area which falls outside the scope of the Treaty. The first time when this “Europeanisation of national personnel policies” was discovered concerned the impact of the “Burbaud case”<sup>82</sup> in the context of the interpretation of Article 45 (4) TFEU by the Court of Justice. The Judgment had a considerable impact on the French recruitment system.

In the meantime, even issues like job security, pensions and pay have been “Europeanised”. As regards the latter the European Council meeting of March 2011 “committed the Eurozone states to a regime of economic surveillance with direct implications for labour law. The Pact envisages regular monitoring of unit labour costs at the national level, with the aim of ensuring that they evolve “in line with productivity”; the setting of targets for long-term and youth employment and labour market participation rates; and the taking of steps to ensure that state expenditures in the area of pensions, health care and social security benefits do not threaten the “sustainability” of public finances”<sup>83</sup>. This Pact addresses areas that fall under the national competence and implies a further extension of EU policies in an area which has always been understood to be a domain for the Member States.

The last years have also seen a gradual alignment in the field of job security. Here, the discussions on the “flexicurity” agenda and the development of flexicurity indicators have also had an impact on the public administrations. Consequently, many Member States abolished life-time tenure and introduced more job flexibility in the public sector (as we will see later on this was less the case on central administration level). On the other hand, EU law limits the possibility to flexibilize work contracts and job security. Especially the perception that central administrations should be seen as a “haven” of job security needs revision. In

82 Case C-285/01 of 9 September 2003.

83 Simon Deakin, *The Lisbon Treaty, the Viking and Laval Judgments and the Financial Crisis: In search of New Foundations for Europe's Social Market Economy*, in: Niklaas Bruun (et al), *The Lisbon Treaty and Social Europe*, Hart Publishing, Oxford and Portland, 2012, p. 34.

Germany, France, Spain, Ireland and Luxemburg the civil servants still enjoy a very high degree of job security. On the other hand, Dutch, Swedish, British and Finnish etc. civil servants, can, in principle, be dismissed. However, in both models, an increasing number of public sector workers nowadays have fixed-term contracts.

Also the “right to strike” (which, interestingly, enjoys constitutional protection in a number of Member States as to – either a prohibition to strike or the right to strike for civil servants) has undergone tremendous modifications. Today, this right is aligned in many countries (most of the countries only apply partial restrictions to the right to strike, for example for the Police), new developments at the EU level put pressure on the general prohibition to the right to strike which still exists in some countries. Even if Article 153 (5) of TFEU does not allocate EU competences in this field of collective action it is recognised by various international instruments which the Member States have signed or cooperated in. It is included in the instruments developed by those Member States at the EU level (see the European Commission Proposal on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services COM (2012) 130 final of 21 March 2012) and in the Charter of Fundamental Rights of the European Union proclaimed in Nice on 7 December 2000, as adopted at Strasbourg on 12 December 2008.

In this context, Article 28 of the Charter of Fundamental Rights of the European Union expressly recognises the right to collective bargaining, which, in cases of conflicts of interest, includes the right to take collective action to defend interests, including strike action. According to the European Court of Human Rights, the right to collective bargaining and to negotiate and enter into collective agreements constitutes an inherent element of the right of association, i.e. the right to form and join trade unions for the protection of one’s interests, as set out in Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In the Netherlands this discussion about the alignment of working conditions amongst public and between public and private sector employees is called “normalization”. “Framing this issue as a matter of ‘normalization’ is an interesting aspect of the discussion in itself. It assumes that private sector arrangements are more normal than public sector arrangements and that they are normatively superior. Also, it assumes that the status of civil service can and should be normal, regardless of the distinct nature of the government as an employer and the distinct position of the government in society”<sup>84</sup>.

In 1982, Niessen in his report to the Dutch government underlined the fact that many private individuals exercise tasks for the public good and no greater value should be attached to the

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84 Frits van der Meer/Caspar van den Berg, Working Conditions and Industrial Relations in the Central Public Administration: Conducting In-depth Case Studies in Different Countries, Case Study the Netherlands, Study for the European Foundation for the Improvement of Living and Working Conditions, Dublin 2012 (not published)

public interest than to the private<sup>85</sup>. Niessen's report not only challenged the traditional career systems, but also the traditional justification for specific organisational structures and a specific legal status for civil servants. If the civil servant appears identical to a bank employer or a farmer, a special legal relationship would seem superfluous. Therefore, the question arises whether a specific status and specific working conditions are needed in order to carry out public tasks properly.

Niessen argued that private employees fulfill an equally valuable role for the society, irrespective of whether they are working in a bank, a chemical plant or in the field of biotechnology (which is essential to ensure the stability and preservation of the social system). Consequently, a technician in a nuclear power station, a doctor or a teacher perform just as important a function as a police officer or a tax official in a ministry. In addition, it would be difficult to argue why teachers (if they are civil servants) should be civil servants with specific ethics in one country if they perform well in other countries without that civil service status. All these arguments support the position that "civil servants are not different because they are civil servants." In fact, differences in mentality, motivation or job attitude have more to do with individual characteristics and the sector in which they work, but not with the fact that people have a specific legal status and work in a specific organisational environment. Today, this opinion is widely shared in the Member States.

In Austria, an interesting discussion unfolded in 2008 as to the future of the legal regime of public employees<sup>86</sup>. Austria employs civil servants under public law and public employees under labour law in the Austrian federal public service. However, the distinction between both legal regimes has become blurred during the last decades. The Austrian Länder have their own civil services and enjoy wide discretion in regulating the working conditions of their civil servants. This has led to an interesting (but also inconsistent) laboratory of civil service reforms. Whereas some Länder have abolished a specific public law of civil servants within their jurisdictions, others have kept it. However, this overlap of different legal regimes and different types of public employment on the federal and Länder level have provoked the question about the future of the civil service status as such. Moreover, the existing civil

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85 C.R. Niessen, Preliminary report to the Dutch Government 1982, *Bestaat er aanleiding de rechtspositionele verschillen tussen ambtenaren en civielrechtelijke werknemers te handhaven?* [Is it necessary to maintain a distinction between civil servants and private sector employees regarding legal status?], p. 146.

86 It should be noted that – unlike the situation in Germany – the Austrian constitution does not require that certain public tasks must be carried out by civil servants. However, some constitutional principles require the employment of civil servants. ("Ein allgemeiner Funktionsvorbehalt in dem Sinn, dass Beamten zwingend die Ausübung aller hoheitlichen Befugnisse zu übertragen wäre, gilt nach österreichischem B-VG bekanntlich nicht (vgl. Art 33 Abs 4 dt GG).<sup>4</sup> Ein solcher ist – jedenfalls (...) – auch nicht etwa mittelbar aus Art 20 Abs 1 B-VG ableitbar.<sup>5</sup> Das heißt, dass auch Vertragsbediensteten hoheitliche Befugnisse übertragen werden können. ...Da eine Reihe verfassungsrechtlicher Regelungen die Mitwirkung von Beamten bei der Aufgabenbesorgung im Bundesdienst vorsieht, darf das Beamtentum keinesfalls zur Gänze abgeschafft oder auch nur in eine völlig unbedeutende Rolle gedrängt werden. Anderes gilt für die Vertragsbediensteten. Diese sind in der Bundesverfassung zwar erwähnt, aber nicht vor Abschaffung geschützt. Daraus folgt, eine einheitliche Rechtsform für alle Bundesbediensteten könnte –auf Basis der geltenden Verfassungsrechtslage –nur eine öffentlich-rechtliche sein". Bundeskanzleramt (Hrsg.), *Wege zu einem neuen einheitlichen Dienstrecht für den Bund*, Wien 2008, p. 9 .

service law is seen as fragmented, non-transparent, highly regulated and complex and – even for experts – not easy to understand<sup>87</sup>. So far the experts are split in two groups. Whereas the first group of experts believes that a specific status and specific working conditions are still needed in order to have an impartial, loyal and professional civil service<sup>88</sup>, the other group points to the argument that all requirements as to an apolitical, ethical, committed and professional civil service can also be attained if the Austrian public employees are employed under labour law. Furthermore, EU law does not put any obstacles here since all EU legal instruments are either applicable to the private sector or to the public and private sector – but almost never solely to the public sector<sup>89</sup>.

However, important differences exist even amongst the postbureaucratic countries. For example, countries like Finland, Denmark and Sweden differ very much with regard to the legal status of civil servants, the degree of decentralisation of HR responsibilities, the pay system, the role and status of agencies, job security of civil servants and many other issues.

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87 “Das Dienstrecht ist zudem sehr zersplittert, sehr unübersichtlich und in vielen Punkten auch für fachkundige Juristen nicht immer nachvollziehbar und vielfach schlicht überreguliert”. Bundeskanzleramt (Hrsg.), Wege zu einem neuen einheitlichen Dienstrecht, op. cit.

88 Sie schützen sowohl vor willkürlich benachteiligenden als auch vor willkürlich begünstigenden Personalmaßnahmen. Dadurch wird ein Gefühl persönlicher Unabhängigkeit erzeugt, das dem Allgemeininteresse, der Gesetzmäßigkeit, Objektivität und Unparteilichkeit der Amtsführung dient und mittelbar zur Qualität der Vollziehung beiträgt. Dies spielt vor allem in jenen Vollzugsbereichen eine Rolle, wo eine erhöhte Verantwortlichkeit für die Rechtsverhältnisse von Bürgern besteht, wie etwa bei Ermächtigungen zu Grundrechtseingriffen oder besonderer Korruptionsgefahr. Bundeskanzleramt (Hrsg.), Wege zu einem neuen einheitlichen Dienstrecht, op. cit., p. 10.

89 Anders ist die Situation aber bereits im Lichte des Europarechts. Denken Sie nur an die Vorgaben zu Betriebsübergang, Arbeitszeit, Arbeitsschutz, Gleichbehandlung oder Antidiskriminierungsrecht. Bei all diesen Fragen umfasst der Geltungsbereich der einschlägigen EU-Richtlinien den privaten und öffentlichen Bereich meist gleichermaßen. Nur vereinzelt finden sich punktuelle Ausnahmen, wo wirklich ganz spezifische staatliche Aufgaben wahrzunehmen sind. Es gibt auch genügend Instrumente, mit denen der Sorge begegnet werden könnte, dass dann Mitarbeiterinnen und Mitarbeiter den Vor-gesetzten oder gar der politischen Willkür ausgesetzt wären. Wir haben im Arbeitsrecht ein weit reichendes Antidiskriminierungsrecht, wir haben Gleichbehandlungsvorschriften und vor allem Instrumente der kollektiven Rechtskontrolle. Zur Vermeidung von Willkür gegenüber den Mitarbeiterinnen und Mitarbeitern bedarf es also nicht unbedingt öffentlich-rechtlicher Vorschriften. (...) Hingegen muss man dem Druck Rechnung tragen, dem öffentlich Bedienstete ausgesetzt sein können und manchmal sicherlich ausgesetzt sind, insbesondere auch von politischer Seite. Hier bedarf es eines wirksamen Schutzes vor Versetzungen, vor Kündigungen oder Entlassungen. Ebenfalls unverzichtbar ist eine Absicherung bei besonderen Gefahren. Hier ist insbesondere an den Bereich der Exekutive zu denken, da sich Exekutivorgane nicht wie normale Arbeitnehmer entfernen können, wenn es eng wird, sondern gegebenenfalls sogar – wie heißt das so schön – aktiv die Gefahr aufsuchen müssen. Hier bedarf es natürlich entsprechender Vorkehrungen, Wege zu einem einheitlichem Dienstrecht, op. cit., p. 14 and 16.

## **5. RESTRUCTURING THE PUBLIC WORKFORCE AND THE IMPACT OF AUSTERITY MEASURES – TOWARDS A NEW EMPLOYMENT STRUCTURE?**

Currently, all Member States find themselves in a process of massive changes of the workforce. This concerns the size, structure, composition, HR policies, working conditions, age, diversity etc. As we have seen, pressures for reforms come from various sources and, of course, the financial crisis plays a major role in the reform process. However, important reforms are also implemented in those countries which are not yet seriously concerned by the crisis, e.g. in Finland, Germany, Luxemburg, Sweden and Austria.

In most countries, the reform of public employment, the reform of the employment status and changing trends in social dialogue are contested fields. In all cases, there is a clear danger that the notion of “public”, “public money” and “public officials” etc. is seen as the cause for the main existing problems. In the meantime, the focus is not any more on efficiency and transfer of the private sector model. Instead, it is about Good Governance, a combination of demands for more efficiency, effectiveness, quality of services and citizen-orientation. The financial crisis has brought another priority: introduction of hasty austerity measures whose effects and outcomes may be worrying in many cases.

In times of crisis, all EU Member States face the challenge of restructuring the public sector workforce and implement improvements that balance the costs and quality (OECD, 2012). Often, governments apply a mixture of measures and instruments (see the overview below) but all of them involve huge challenges and side-effects. Often, citizens do not accept easily that different categories of public sector staff are treated differently as perceptions are still popular that the public sector is too big, even if this assumption is not always based on empirical facts.

In the field of public administration employment reform, many experts feel strongly on what to conclude about the pros and cons of challenges, reform outcomes, failures and threats even though empirical evidence shows that it is very difficult to find clear answers. For example, a study by Demmke/Moilanen confirmed a negative relationship between austerity measures and motivation, engagement and commitment of public servants<sup>90</sup>. However, so far, the workforce impacts of many current reforms are under-analysed as more Member States focus on budget consolidation

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90 Christoph Demmke/Timo Moilanen, Effectiveness of Ethics and Good Governance in the Central Administrations of the EU of 27, Peter Lang, 2012.

**Table 11. Restructuring the public workforce**

<b>Categories/Instruments</b>	<b>Measures</b>	<b>Challenges</b>
Structural/Organisational Reforms	Privatisation, outsourcing, delegating tasks to agencies, decentralization, PPP, reduction of hierarchies, Shared Services, fusion of organisations, task evaluation, teamworking, enhancing efficiency through ICT, organizational streamlining	Privatisation, agencification and decentralization may only lead to shifts in employment, effectiveness of outsourcing and privatization on a case by case basis, link between organizational reforms and stress levels, what happens to staff in terms of status, working conditions, social security, what are the transfer costs?
Budgetary instruments	Ad hoc job cuts, long term reductions, re-allocation of staff, arbitrary job cuts, job cuts based on performance appraisals, job cuts based on age and gender, last recruited leaves first	Political driven cuts are often across-the board-anxiety among staff, often, governments reacting to fiscal situations through cut backs etc. in fact did not reduce public expenditure, although reductions in expenditures may have a positive short-term impact, they may also have negative side-effects on the long run (for example as to a high-quality service delivery)
HR Instruments	Workforce planning, workforce reviews, early retirement measures, recruitment freezes, promotion freezes, non replacement of retired officials redeployment measures.	Impact on morale, commitment, job satisfaction, voluntary or involuntary, early retirement and impact on employment rate and public budgets

OECD (2012), *Public Servants as Partners for Growth*, op cit.

Broadly speaking, three groups of experts can be distinguished. The first group (Symon and Corby 2011) claims that in terms of the public workforce, “they face challenges that arguably are the most serious yet and which, according to some accounts, threaten the very notion of state-administered public welfare...”<sup>91</sup>. The next years “will be the crucial ones for the state”<sup>92</sup>. Also Diamond and Liddle predict that certainly “in Europe we can see how the

91 Graham Symon/Susan Corby, *Making Sense of Public Sector Employment Relations in a Time of Crisis*, in: Susan Corby/Graham Symon (2011), *Working for the State*, Palgrave, Hampshire, P.235

92 Ibid, p.236



economic crisis feeds into a political and administrative set of crisis”<sup>93</sup>. Next, Kelly and Doods claim that, increasingly, “the costs of government and its administration, including the practice of public sector service provision”<sup>94</sup> are seen as a major factor in the financial crisis as the structure and scale of government is seen as a partial cause of the current economical problems.

The second group of experts (Danish EU-Presidency, EUPAN, 2012) believe that the crisis also bears many opportunities for further enhancing the efficiency of public administration and that many policy makers seek efficiency and effectiveness in the management of staff less through crude workforce reductions... and more through new approaches to work organization...<sup>95</sup>.

The third group (OECD 2012) warns that the current public employment trends bear the risk that the workforce impacts of “many structural, organizational and budgetary reforms remain under-analyzed”<sup>96</sup>. The “focus will shift to seeing staff as costs rather than as assets”<sup>97</sup>.

Whereas one could argue that reducing public employment, pay, job security etc. are necessary and decreasing public employment does not produce negative effects (for example in those cases where intelligent restructuring processes are implemented or persons going in retirement are not replaced etc.) it is also undeniably true that any austerity measures has unintentional effects on workplace behaviour and the reduction in the number of public employees has a direct impact on the scale and quality of services. Moreover, public employment figures often disguise changes in workforce structure and developments towards the so-called shadow state: The term is designed to highlight “that many workers providing public services financed by the government are actually employed by the private or third sector”<sup>98</sup>.

On the other hand, reductions in public employment are implemented in almost all Member States after long years of steady increases in public employment. Thus, one could argue that public services have become too big and too costly anyway and the present trends represent a movement to the former (healthier status quo). Still, public tasks as such are rarely being reduced. Therefore, is “doing more with less” feasible?

In 2012, almost all central administrations in the Member States of the European Union are in a process of reducing public employment, reforming wages and social expenditures. As these

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93 J. Diamond/J. Liddle, Reflections and speculations on teaching and learning in public administration, in: *Public Policy and Administration*, Vol. 27, No. 3, 2012, p. 267

94 J. Kelly/A. Dodds, Public administration in an age of austerity: the future of the discipline, in: *Public Policy and Administration*, Vol. 27, No. 3, 2012, p. 203

95 Danish EU-Presidency, EUPAN, HRM Group, Copenhagen, May 2012

96 OECD, *Public servants as Partners for Growth: Towards a Stronger, Leaner and More Equitable Workforce*, Paris, 2012, p. 11.

97 Ibid, p.12.

98 Stephen Bach/Ian Kessler, *The Modernisation of the Public Services and Employee Relations*, Palgrave, Hampshire, 2012, p.4

measures are subject of daily media coverage, this has been well documented (OECD, 2011, 2012). However, it is important to note that overall reductions in public employment can go hand in hand with sectoral increases in public employment. For example, in Luxemburg, there is a slight increase in some sectors such as education and public forces.

**Table 12. Public employment trends in general and on central level**

(1=increase in employment, 5=decrease in employment)

Country	Public employment	Public law employees (civil servants)	Labour law employees (public employees)	Employees with atypical forms of employment
Austria	5	5	2	5
Belgium	4	4	5	3
Bulgaria	4	2	4	4
Cyprus	5	3	3	
Czech Republic	4	3	5	2
Germany	4	2	5	2
Denmark	5	4	2	3
Estonia	3	4	2	2
Greece	5	5	5	4
Spain	5	4	5	4
Finland	4	3	3	2
France	4	3		3
Hungary	4	4	3	3
Ireland	5	5	4	4
Italy	4	2	4	5
Lithuania	5	4	3	
Luxembourg	3	3	3	3
Latvia	5	4	2	
Malta	4	4	3	3
Netherlands	5	5	3	1
Poland	3	2	3	
Portugal	5	5	4	3
Sweden	3	4	2	2
Slovenia	4	3	3	2
Slovakia	4	3	3	3
European Commission	4	3	3	2
Mean	4.21	3.50	3.35	2.85

Missing: Romania, United Kingdom

Source: Christoph Demmke/Timo Moilanen, Status Developments in the national public services, Survey for the Danish EU-Presidency and the EUPAN network, Copenhagen 2012

Overall, civil service employment is being reduced more strongly than the numbers of public employees (labour law employees) and employees with fixed-term (or so called atypical) contracts. As regards the latter, some Member states even increase the number of fixed-term employees.

Bulgaria, Germany, Italy and Poland are the only exceptions where civil service employment is increasing (in relative terms). The main explanation is that Poland and Italy have very low civil service numbers (in Poland there are only 1.500 nominated civil servants being employed). Moreover, the level of employment in the civil service corps on 31.12.2010 was 123.651 and increased by 1.3% as compared to 31.12.2009. However this increase was to a great extent caused by incorporating some categories of officials into the civil service (a result of institutional changes in the government administration). In Germany, civil service employment is *cheaper* in the short-term as employers do not need to pay social security (unemployment premiums) allowances for the *Beamte*. This is another reason why civil service employment (but not public employment as such) remains relatively stable<sup>99</sup>.

On the other hand, decreasing levels of public employment can go hand in hand with the reduction of fixed-term employment (like in Ireland), mostly for budgetary reasons (and because it is easier to terminate fixed-term contracts). Or, alternatively, the reduction of public employment is combined with an increase of fixed-term employment (like in Germany, the Netherlands and Finland) in order to save resources if employment under unlimited contracts would be the alternative. In the Netherlands almost all employees at the central administration level are civil servants (*Ambtenaren* - *stricto sensu*). This is the reason why there is a trend towards the relative increase of labour law employees as their numbers are very low.

Currently, the reduction of public sector employees is done continuously (like in Germany since 1990 or as proposed by the European Commission, by 5 % during the period 2013 to 2017) or rapidly (for example in Denmark and in the Czech Republic, in some cases around 10 per cent in 2012). Here, it is important “to distinguish the *timing* of public sector adjustments. Some reforms started well before the crisis and have merely been continued in recent years without much influence from the crisis, as in Sweden and Germany. In the Netherlands, many public sector adjustments had already taken place in the 1980s and 1990s, including significant wage and employment cuts. Consequently, until early 2012 no wage and employment adjustments had been programmed in the Netherlands. They may arise a little later, however, from 2013. In other countries, it is the crisis that has generated or accelerated the need for reforms in the public sector, as apparently in Greece, Portugal, Romania and others”<sup>100</sup>.

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99 At the time of writing we did not receive evidence on the situation in Bulgaria.

100 Daniel Vaughan-Whitehead, *Public sector shock in Europe*, op cit, p.4

**Table 13. Trends in public employment**

1 = strong increase in public employment, 5 = strong decrease in public employment

		Trend in public employment	Increase in public law employees	Increase in labour law employees	Increase in atypical forms of employment (flexible, limited or short-term contracts)
No austerity measures in use	Mean	4.07	3.33	3.14	2.85
	N	15	15	14	13
	Std. dev.	.704	.976	.949	1.144
Countries using austerity measures	Mean	4,45	3.91	3.64	3.11
	N	11	11	11	9
	Std. dev.	.688	.944	1.120	.928
Total	Mean	4.23	3.58	3.36	2.95
	N	26	26	25	22
	Std. dev.	710	.987	1.036	1.046

Source: Christoph Demmke/Timo Moilanen, Status Developments in the national public services, Survey for the Danish EU-Presidency and the EUPAN network, Copenhagen, 2012

“The nature of employment adjustments can also take various forms: dismissals, reduced working hours, outsourcing, privatization, changes in work contracts, for instance from permanent to temporary or from full to part-time. The size and features of such adjustments, which we document in the various chapters, often depend on the initial size of public sector employment in individual countries<sup>101</sup>”.

Especially those countries that implement hasty restructuring programmes do not carry out evaluations on the impact of these measures on the public workforce. So far, many of the current reform effects produce unintentional side-effects and new dilemmas.

**Table 14. Most important reform objectives and reform dilemmas**

**Implementation of reforms – evaluating reform outcomes, unintentional effects, paradoxes**

The workforce impacts of many structural, organisational and budgetary reforms remain under-analysed

**Raising efficiency – enhancing effectiveness**

101 Daniel Vaughan-Whitehead, Public sector shock in Europe: Between structural reforms and quantitative adjustment, in: ILO, Public Sector Adjustments in Europe - Scope, Effects and Policy Issues, Geneva, 2012 (not yet published)

Governments have to restructure public management and administration to make them more effective and efficient for service delivery, while at the same time ensuring that reforms contribute to fiscal consolidation plans by reducing public expenditure

### **Achieving lean government – doing more with less**

There is a risk that the focus will shift to seeing staff as costs rather than as assets. The challenge is to implement workforce productivity improvements that recognise the balance between costs and the quality and continuity of service

### **Austerity measures, reform of status and working conditions – impact on morale, satisfaction**

Negative correlation between many structural, organisational and austerity measures (workforce downsizing operations, cutting down employment, partial or total recruitment and promotion freezes, freezes on departmental operating budgets, restructuring of personnel, shifting more staff into front-line services and achieving staff reductions and savings on administrative budgets through setting up shared services, structural reforms (outsourcing, creation of movement of staff to agencies or sub-national levels of government, PPP and privatization, wage cuts, pension cuts) on moral, commitment and performance

Still, evidence of the effects of most public employment reforms is often lacking. Or, as the OECD (2012) puts it: “There is little empirical analysis about which public administration reforms bring about efficiency and productivity gains (...). Although reductions in operational expenditure are “expected” to have a positive impact on the short-term budgetary aims of government, they may also act to the detriment of government’s long term capacity for service delivery”<sup>102</sup>. Next, “fiscal consolidation plans normally involve reductions in staffing levels and in compensation of public employees, a situation that can have a significant impact on the motivation, engagement and commitment of public servants and leadership – which of course affects the quality of service delivery”<sup>103</sup> ..

This does not only concern the impact on job satisfaction, morale and job commitment. In fact, many austerity measures that have an impact on the workforce also have an impact on the composition and structure of the workforce (ration civil servants vs. public employees, employees with unlimited contracts vs. fixed-term employees, men vs. women).

According to an ILO study, “the number of temporary contracts has increased rapidly throughout Europe. The highest increase in the public sector has been observed in Spain, but other countries have seen significant increases, such as Sweden since the early 1990s, with temporary contracts accounting for 18 per cent of jobs in the public sector, 16 percent in central administration and nearly 19 per cent in local administration<sup>104</sup>. In France, such employment increased by nearly 14 per cent between 2005 and 2009, thus representing a

102 OECD, Public Servants as Partners for Growth, op cit, p.51

103 OECD, Public Servants as Partners for Growth, Paris, 2012.p. 10 and 46.

104 Daniel Vaughan-Whitehead, Public sector shock in Europe, op cit.

share of 15 per cent of employment in the public sector. In Germany, such jobs increased from 10 per cent in 2002 to 15 per cent in 2010<sup>105</sup>

Moreover, the trend towards different work contracts, working time arrangements pay and working conditions increases inequalities. “Lower pay levels for new recruits in Ireland, for instance, have increased inequalities and brought a sort of dual market in the public sector. Similarly in France the less favourable pay levels and working conditions offered to new recruits de facto leads to a dual labour force in the public sector, despite the same skills and educational background. Germany also has a strong internal labour market with lifelong employment, but at the same time an increasing number of peripheral employees with temporary contracts (...). Another way of looking at inequality is also to identify whether the adjustments are having disproportionate effects on certain categories of workers, especially those considered the most vulnerable. No doubt, certain categories of workers have been more affected by public sector adjustments. Lower employment prospects will directly hit those categories who tend to work in the public sector, especially women, young people and migrant workers”<sup>106</sup>.

In fact, public employment trends at the central administration level have a “quantitative” and a “qualitative” dimension. Most of the jobs are still “good jobs” but the good jobs are getting less. In our study, ten Member States (42%) answered that the standard employment model is not at all in decline (Belgium, Bulgaria, Cyprus, France, Italy, Luxembourg, Malta, Poland, Portugal, Sweden). In the Netherlands, a decline of the standard-employment model can be noticed at the central level and, at the same time, a strong increase of fixed-term employment. On the other hand, in Germany, it is possible to observe a decline of the standardized employment model, both in the private sector and in the public sector (mostly in the field of education and research). However, this is not the case at central administrative level despite a steady (but small) increase of fixed-term employment. Also in the Irish central administration, despite all budgetary restraints and pay cuts, there is no clear trend towards a considerable increase of flexible contracts and the emergence of a so-called precarious employment model.

The answers shows that employment conditions at the central administration level still differ considerably from the situation in the wider public sector as well as in the private sector.

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105 Ibid.

106 Ibid

**Table 15. Is the standard employment model in decline?**

(Frequencies in parenthesis)

Member State	Frequency	List of countries
Very much	13(3)	EL, IE, SK
Somewhat	17 (4)	EE, ES, FI, NL
Fairly little	29 (7)	CZ, DE, DK, EC, HU, LV, SI
Not at all	42 (10)	BE, BG, CY, FR, IT, LU, MT, PL, PT, SE
Total	100 (24)	

Missing: AT, LT, RO, UK.

Also the number of self-employment and temporary agency work is still insignificant at the central administrative level. Even more, many Member States still offer stable employment features with a strong prevalence for unlimited contracts and sometimes life-long careers in the civil service.

However, current trends are not at all clear. For example, life-time tenure is declining. However, it is still applied in twelve Member States. Luxemburg even applies the life-time tenure principle to civil servants and public employees. In Germany and in Ireland, most of the public servants also enjoy a very high degree of job security. In Ireland, the Government agreed in the Public Service Agreement 2010-2014 (the Croke Park Agreement) that compulsory redundancy will not apply within the Public Service, save where the existing exit provisions apply. This commitment was subject to compliance with the terms of the agreement and, in particular, to the agreed flexibility on redeployment being delivered. In Poland only 5.6% of all employees within the civil service corps (which, by itself, is only a small part of the Polish public sector) enjoy life-time tenure. However, other members of the civil service corps enjoy unlimited contracts.

**Table 16. Is lifetime tenure the general form of employment in central public administration?**

(Frequencies in parenthesis)

	Frequency	List of countries
Yes ++	24 (6)	BE, CY, FR, IE, IT, LU
Yes +	24 (6)	DE, EL, LV, MT, PT, SI
In-between	4 (1)	EC
No -	4 (1)	ES
No - -	44 (11)	BG, CZ, DK, EE, FI, HU, LT, NL, PL, SE, SK
Total	100 (25)	

However, this all does not suggest that further trends towards more flexibility and even “precarization”<sup>107</sup> will not also reach the central administration level, especially in those countries which are mostly affected by the financial crisis.

Especially in these countries, severe wage cuts lead to an immediate increase in low paid employees in the public sector. Specifically, female jobs seem to have been hit by the increased proportion of low paid, for example, teachers. Moreover, workforce reductions “combined with the same volume of services to be delivered will obviously lead to increased workloads and higher work intensity. This has also led to a greater number of working hours in countries such as Estonia, Germany, Greece and Spain. The problem is that this increased number of working hours has often been accompanied by a reduction in the hourly overtime rate, as in Greece, Hungary and Portugal. This trend towards deteriorating working conditions has been aggravated by changes in the functioning of collective bargaining”<sup>108</sup>.

Other measures are also problematic. For example, workforce reductions combined with the same volume of services to be delivered lead to increased workloads, higher work intensity (and possibly higher sickness rates) as a consequence of austerity measures. In addition, training opportunities are being reduced and career progressions due to austerity programmes are made more difficult in many countries. All of these may decrease the attractiveness of public sector employment

As a result of the financial crisis, central government employment is becoming increasingly complex and is most likely to become more complicated and probably more contradictory all the time<sup>109</sup>. Today, national public administrations no longer have a single, coherent paradigm or conceptual framework. “Disaggregation promotes decomposition of the civil service. Two concepts central to traditional management are now disappearing. One is that any particular government, whether federal, state, or local, should act as a single, unified employer. The other is the concomitant idea of a unified civil service”<sup>110</sup>. Whereas perhaps 80 to 90% of national public employees were once subject to the same statutes and working conditions, today the number is declining<sup>111</sup>.

Overall, the trend seems to be towards my hybrid and de-composed public employment forms as the dominance of public law (civil service) is decreasing. The ongoing reforms encourage the change, deconstruction and decentralisation of the civil service on all fronts.

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107 Rolf Dieter Hepp (ed.), *Prekarisierung und Flexibilisierung*, Westfälisches Dampfboot, Münster, 2012,

108 Ibid.

109 David H. Rosenbloom/Robert S. Kravchuk/Richard M. Clerkin, *Public Administration*, op cit, p. 541.

110 Ibid, p. 545.

111 Ibid, p. 546.



**Table 17. Towards a fragmentation of the workforce**

<b>Classical features</b>	<b>Status quo and status trends</b>
Status exercised by nationals  Discrimination Dominance of male employment	Status exercised also by non-nationals, trend towards further restriction to nationals (Article 45 (4) of TFEU and case law) Principle of non-discrimination Diversity Management Representative Administration Increase in female employment
Dominance of public law status	Dominance of labour law status Dual system (for civil servants and public employees based on public law and labour law)
Small public sector: Uniform public law status for military, tax, police, government officials, diplomats and judges  From lean to big public service	Big public sector: Different public law status for different categories of civil servants (diplomats, judges, ministerial officials, police, military personnel), others labour law employees  From big to lean public service
Uniform labour law status with fixed-term or unlimited contracts  Trend towards alignment with civil servants	Public employees with life-time tenure, unlimited, fixed-term, ad-hoc or seasonal contracts  Trend towards alignment with private sector and greater diversification of contracts
Centralised Public Law Status  Trend from centralized public administrations towards decentralized features	a) Different status for officials working in ministries and those working in agencies b) Different status for same professions on central, regional, local level (for exp. teachers are civil servants in one region and labour law employee in another region)  Trend from Government to Governance, networks, hybrid structures, public-private partnerships, shared services etc.
Exercise of public powers by civil servants	a) Blurring of boundaries, Exercise of public powers by civil servants and labour law employees b) Same job carried out by different categories of staff

Overall, all of these changes may also have positive effects after all; “the problems of the old ‘one-size-fits-all’ approach are well documented and real. However, they will also

fundamentally alter the concept of civil service and further fragment government”<sup>112</sup>. Today, the changing role of the state requires a changing conception of the public services and the civil servants. Despite the many changes that are taking place in many countries, the public perception is still that civil servants work in an environment which is clearly separated from the private sector. In some countries civil servants are seen as a protected group, set apart from the outside world. In reality, customer- and citizen- orientation have increased, and working conditions have been aligned to those in the private sector. Nowadays, the differences between public and private employees in terms of their status, working time, pay, pensions, holidays, recruitment and competency requirements are lesser than they were previously.

Without a doubt, the future will see the emergence of a growing paradox. On the one hand, various factors (e.g., growing financial and demographic pressures as well as value changes) will continue to put pressure on the central administrations to continue with radical reforms. On the other hand, the pace of change and growing uncertainties about the reform results will generate more discussions on the need to preserve traditional values, to keep the identity of civil servants and to maintain some specific features that are different to the private sector. Also fairness amongst the different employment group will become a bigger issue as different groups of public employees will work together, often in the same office and carrying out the same tasks.

Although awareness is growing that fragmentation and decentralisation are ambivalent processes, public policies are still administered through increasingly complex networks, decentralised governance structures, public-private partnerships and cooperative ventures between NGOs, consultants and government. As a consequence, the traditional concept of public administration as a single, unified employer has disappearing. Instead, the trend towards agencification<sup>113</sup>, the introduction of introduction of individual performance schemes, the flexibilisation and decentralisation of employment conditions, increased mobility between careers and the public and private sector, the slow emergence of a new class of temporary employees in the wider public sector (in some countries mostly in the academic and health sector), the decentralisation of responsibilities in Human Resources Management (HRM) and the impact of different social dialogue outcomes for different categories of staff make public administration a somewhat heterogeneous body. Also, social dialogue is more decentralized than before and working conditions differ (in some Member States considerably) from agency to agency (or, amongst governmental levels), from region to region and sometimes even amongst local administrations. It is clear that this trend towards hybrid-government is often requiring new and effective coordination and accountability structures<sup>114</sup>.

Also status developments begin to differ more strongly within the countries and amongst the EU Member States: In Finland, civil servants can be appointed to a public office either

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112 Ibid.

113 Koen Verhoest/Sandra van Thiel/GeertBouckaert/Per Laegreid, *Government Agencies*, Palgrave 2012

114 Mark Considine/Kamran Ali Afzal, *accountability in an Age of Markets and Networks*, in: Guy Peters/Jon Pierre (eds.), *Handbook of Public Administration*, 2nd edition, SAGE, 2012, pp. 712-732.

indefinitely, or if certain criteria are fulfilled, for a fixed period of time. In the same way, it is also possible to recruit personnel as contract employees. The contract may be for a specified or an indefinite period of time like in the case of civil service relationship (Finnish case study). In many other countries the civil servants are recruited either for an indefinite period of time or for a life-time. Also pay systems are still mostly adopted centrally and by law. However, bonuses, increments and performance related pay have become the discretion of different agencies, administrations and managers.

Still, the situation in central public administration is different to the developments in the public- and private sector which have seen an erosion of the “standard employment model”<sup>115</sup>. The trend towards more flexibility is not taking place with the same speed at the central public administration level. Even more, some Member States reduce the number of fixed-term employees and maintain a small and reduced public workforce. For example, in Cyprus, in the future, the standard employment model should be full time employment with life tenure under public law status (public servants appointed to public service positions). Additional hiring of employees under contracts of infinite duration should no longer be possible and additional hiring of employees under fixed-term contracts will be subject to specific regulations and provisions. Thus, the question is how public administrations can better plan the workforce to meet the challenge of reform: putting the right people with the right skills in the right place at the right time<sup>116</sup>.

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115 See for example: Günther Schmid (2010), *Non-Standard Employment and Labour Force Participation: A Comparative View of the recent Development in Europe*, Institute for the Future of Labour, IZA, Bonn, Discussion Paper, No. 5087, July 2010.

116 This is also one of the priorities of the Irish EU-Presidency in 2013.

## 6. THE TREND TOWARDS MORE FLEXIBLE EMPLOYMENT FEATURES AND THE IMPACT ON THE CENTRAL EMPLOYEES

In the 21<sup>st</sup> century, issues such as flexibilisation and decentralisation have become quasi sacrosanct principles. On the other hand, traditional features such as values like stability and centralisation are “out”. Furthermore, classical bureaucratic and hierarchical structures are seen as old-fashioned and overly rigid structures. By contrast, nothing seems more attractive than novelty, short-term and ad-hoc strategies, flexibility and innovation. This was a counter-reaction to the overly rigid, hierarchical and bureaucratic times until the end of the 20<sup>th</sup> century.

As a consequence, Demmke and Moilanen (2010)<sup>117</sup> observe various flexibilisation trends in the civil services of the EU Member States and confirm an OECD<sup>118</sup> analysis which claims that there is

- a transition from centralised to decentralised determination of employment condition,
- a shift from statutory to contractual or managerial governance,
- a development from career systems to post-bureaucratic (position systems),
- a delegation of responsibilities to managers,
- an alignment of pay levels with private sector practices and
- a change of special retirement schemes.

In fact, the national public services have shown a tremendous ability to react to changes. Compared to the situation only ten years ago, all national public services have gone through important flexibilisation reforms.

Today, awareness is growing that the right mix between flexibility and organisational stability as such can be helpful to organisations. However, expertise, a strong public service ethos, centralised structures, coherence, integration and stability may also be helpful<sup>119</sup>. Next, job stability and clear career perspectives can have a strong and positive impact on organisational performance, individual motivation and the attractiveness of public sector employment.

In many countries, flexibilisation and decentralisation trends have been taken to the extreme and resulted in many problematic outcomes. For example, the last decades have seen an erosion of the – conventionally defined – “standard employment relationship” through part-time work, fixed-term contracts, temp-agency work and self-employment. A comparative study by the Wissenschaftszentrum Berlin für Sozialforschung (2012) shows that different forms of atypical employment are widespread in Europe<sup>120</sup> although they differ strongly

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117 Christoph Demmke/Timo Moilanen, Civil Services in the EU of 27, op cit.

118 OECD, The State of the Public Service, Paris, 2008, p. 23.

119 Niklas Luhmann/Renate Mayntz, Personal im öffentlichen Dienst, Baden Baden, Nomos-Verlagsgesellschaft, 1973, p. 75.

120 See also as regards the different definition as regards atypical work, Claudia Schmeißer, Stefan Stuth, Clara Behrend, Robert Budras, Lena Hipp, Kathrin Leuze, Johannes Giesecke Atypische Beschäftigung in Europa 1996 – 2009 Wissenschaftszentrum Berlin für Sozialforschung, Berlin, Discussion Paper P 2012-001.

amongst the EU countries, amongst sectors and different forms of atypical work. Whereas many experts welcome this development as a blessing for flexible labour markets, the increasing variability in employment relations, rising employment participation of women (work-life-balance), mature aged workers, and persons with restricted work capacities, others are highly critical and point to intended or unintended disastrous side-effects such as low or volatile income, high job insecurity, the loss of the public sector ethos, new social inequalities and poverty in old-age (Schmid 2010, 3).

In the meantime, awareness is growing that too much flexibility may be detrimental and unlimited mobility of officials may also have negative effects in building competence, mutual trust, and long-term commitment. While new flows of human resources may bring innovation into an organisation, they may also have the negative side effects mentioned above. An empirical study by O'Toole and Meier on Personnel Stability and Organisational Performance reveals that general personnel stability and stability at the top often seem to matter<sup>121</sup>. Moreover, the authors claim that personnel stability can be an important determinant of public organisational performance<sup>122</sup>. Contrary to this, flexibility can also be defined in negative ways: in the book "The Corrosion of Character" Richard Sennett described (mostly) the negative sides of the flexibilisation of our working life.

In the future, it seems that the real challenge is to find the right mix between stability, security, rigidity, flexibility and adaptability. As regards this objective, the concept of flexicurity was supposed to combine all of these elements. Its purpose was also to contribute to one of the most important "Lisbon objectives": the creation of more and better jobs. However, so far, also flexicurity reforms have shown varying degrees of success and failure. On the one hand, neither the doomsday scenario of the demise of the European welfare state can be identified. On the other hand, working conditions seem to have even deteriorated in some public administrations. In fact, many components of the flexicurity strategy could also be implemented in the central public administrations. For example more working time flexibility or wage flexibility. Other issues are more difficult to be applied at the central administration level: the relaxation of employment security, career reforms, mobility policies etc.

Still, the introduction of flexicurity in the national public services has a totally different meaning for employment in the civil services than in the private sector. Since flexicurity can serve any (political) master, the evaluation of the effectiveness and efficiency of flexicurity measures at the central administration level always depends on the policy in question and the chosen instrument. For example, whereas working time flexibility and the better combination of private and professional life have been welcomed by many observers, the introduction of flexible pay schemes and the decline of the classical employment status (full-time job, unlimited contracts) are seen in much more critical ways.

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121 Laurence J. O'Toole Jr./Kenneth Meier, Plus ca Change. Public Management, Personnel Stability, and Organizational Change, in: Journal of Public Administration Research and Theory, Vol. 13, No.1, p. 56.

122 Ibid., p. 62.

Even more, financial constraints have led to a focus on saving measures in the field of training, skill development, leave policies, family and care policies etc. in an increasing number of Member States, the focus seems rather on saving and downsizing policies. The same is true as regards the aims for a European Employment Strategy: creation of more and better jobs in the face of global competition, while maintaining social cohesion. Today, with the exception of few Member States, employment is being reduced in the national public services and many existing jobs are not necessarily better than before the financial crisis.

In fact, the present reality is harsh, at least in some countries. Many EU Governments focus on the introduction of more flexibility and the reduction of the public workforce, the reduction of salaries and the increase of flexible employment standards. The questions whether the remaining jobs have become “better” jobs is also open for discussion and depends on the definition of what “better“ means. Still, little is known on the development of the quality of jobs in the national public services.

Other structural differences between the private and public services must also be taken into consideration. For example as regards mobility policies: “On average for the EU, about 10% of jobs change occupant every year, implying that in a single year one person in ten will be searching for a job, for ways of acquiring new skills but will also be exposed to the stress unavoidably linked to the increasing speed and frequency of transition in the new globalising economy”<sup>123</sup>. In the public services of many Member States, the percentage of job changes is much lower than in the private sector. Still, many people are recruited in the public sector and stay for a long period of time (if not for life). Thus, enhanced stability in the public service has a different impact on skill development needs.

In the meantime, also a normative argument - that flexicurity improves economic performance - is disputed (Tangian, 2010)<sup>124</sup>. When the flexicurity concept was adopted, countries like Denmark, the Netherlands, but also Sweden, Finland and Austria, appeared to be the role models since they performed better when both economic and social indicators were measured. Today, it seems, that many leader countries in “flexicurity” do not score exceptionally well in the economic crisis. This is also not to say that “flexicurity” laggards score better. However, it suggests that the link between flexicurity and public performance is much more complex than anticipated. The present trend also suggests that flexicurity as such is neither good nor bad. Instead, flexicurity can only be a precondition for better governance.

Eichhorst et al.<sup>125</sup> suggest that there are diverging paths of flexibility. The observation of less market-driven, but still economically successful countries has given rise to the hypothesis of various viable models of market adaptability”. Thus, it is also time to avoid a simplified flexibility-rigidity dichotomy. In fact, “flexibility can be achieved in various ways, by more or

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123 Ilaria Maselli, Beyond Flexibility and security, A Composite Indicator of Flexicurity, CEPS Working Document, No. 329/May 2010.

124 Andranik Tangian, Not for bad weather: flexicurity challenged by the crisis, ETUI Policy Brief, 3/2010.

125 Werner Eichhorst, Paul Marx, Verena Tobsch Institutional Arrangements, Employment Performance and the Quality of Work, Institute for the Future of Labor, Bonn, No. 4595.

less external or internal flexibility, more or less numerical, functional or wage flexibility”<sup>126</sup>. For example, whereas Ireland scores high in the field of external and wage flexibility, Germany scores high as regards internal flexibility. Eichhorst concludes that ‘not only patterns of flexibility vary, the overall level of labour market flexibility varies across countries as does the performance of the countries with respect to core labour market and socio-economic outcomes...’<sup>127</sup>.

According to Calmfors the “gravest problem is probably the insufficient analysis of trade-offs between different objectives”<sup>128</sup>. Flexicurity easily suggests a 'win-win' position but also risks in the national civil services to neglect important trade-offs such as that between employment protection, stable organisational features and ethics, politicisation and corruption'

In fact, although it is hard to see how anybody can be against flexicurity, it is difficult to measure the effects of flexicurity measures on the politicisation of HR policies, public service motivation and public ethics. Moreover, the decentralisation of responsibilities to line managers is producing new challenges as regards the allocation of performance bonuses and fair HR policies. Thus, the national central administrations should be advised to carefully evaluate the effects of flexicurity reforms in the private sector before they adopt some of them in central administration. Moreover, Schmid, for example, points to the 'illusion of flexicurity as a guiding principle for all countries' (Schmid, 2009:1)<sup>129</sup>.

What is noteworthy is that there is very little discussions about the effects of the flexibilisation process and the introduction of the flexicurity concept at the central administrative level. Is the situation comparable or different to the private sector? And, what are the future trends? Whether flexicurity as a concept emerges unhurt out of the recession is open to question. Its survival will depend on the future labour market performance of flexicurity countries, the future support of the social partners (especially trade unions) as well as the Member States of the European Union.

Implementing the concept of flexicurity in the central administration should be seen as a complex issue with many unintentional effects. “The recent economic crisis has not (yet) confirmed that flexicurity is a superior way of organizing labour markets as it might have appeared before the crisis. Indeed, at least some of the countries that are associated with flexicurity have experienced worse unemployment increases than other non-flexicurity countries during the crisis. Relying too heavily on external adjustment (even when protected by generous unemployment benefits) may lead to a vicious circle of quickly rising unemployment and ensuing long-term unemployment. As long

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126 Eichhorst et al, op cit, p. 7.

127 Eichhorst et al, op cit, p. 23.

128 Lars Calmfors, Flexicurity – An Answer or a Question?, in: European Policy Analysis, November, 6/2007, p. 2.

129 Günther Schmid, Theory of Transitional Labour Markets and “Flexicurity”: Lessons for Transition and Developing Countries Paper presented to the European Training Foundation (ETF), Torino, 14 May 2009, p.1.

as the social protection systems hold, such flexicurity arrangements may survive, but will be put under strain also by the reduced fiscal space of governments”<sup>130</sup> .

One of the greatest challenges is the applicability of the flexicurity indicators for the different branches of the public service (Government, Justice, Diplomat Service, Regional- and Local Government, Agencies etc). This reveals a number of questions:

- Can the whole concept be transferred to the public sector?
- Can only parts be transferred to the public sector?
- Should parts of the concept be implemented differently in different public sectors (Government, Justice, Local Government, education, Research etc.)?
- Which parts of the concept can also be transferred to the civil service?
- Which parts of the concept need a different treatment for different categories of staff?

Whatever will be decided at the political level, in the future, an increasing amount of attention should be devoted to the implementation of the flexicurity concept in the national central administrations. As we have seen, the central public services have a number of specific features as opposed to the private sector. For example, the terms ‘stability’, ‘the rule of law’, ‘anti-discrimination’, ‘standardisation’ and ‘security’ have a different meaning. Next, the national public services differ very much as regards the definition of the employment status, the number and the status of civil servants, the degree of decentralisation in the field of HR (which is also linked to the state structure), the cultural acceptance of part-time work and the number of women working in the public service. Any concept of flexicurity must take these specific features into account.

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130 Auer, *ibid.*



## 7. THE LIMITS TO FLEXIBILITY AND FLEXIBLE EMPLOYMENT CONTRACTS – EU LAW

Fixed-term work seems to be considered as being an increasingly used element in a dynamic and flexible public sector. A key component of the current debate on flexibilisation, fixed-term work can increase the overall employment available and offer real solutions to fluctuations in employment markets. However, overall, there does not appear to be an obvious correlation between the use of fixed-term contracts, HR systems and employment levels.

The use of fixed-term work varies significantly between the Member States. Overall, most of the countries have experienced a significant increase in the proportion of the workforce working on fixed-term contracts. For example, in Germany most of the employees in the university and research sector have fixed-term contracts.

However, as our study shows, the trend towards the use of fixed-term contracts is much more limited in the central administrations where unlimited contracts still concern the normal form of employment relationship. Although a number of Member States observe a (slow) increase of fixed-term contracts in the national central administrations, this trend is not significant. 13 Member States even stated that an increase of employees with fixed-term contracts cannot be observed.

**Table 18. Trend towards fixed-term contracts in the central public administrations in the EU Member States**

(Frequencies in parenthesis)

	Frequency	List of countries
Yes ++	4 (1)	NL
Yes +	13 (3)	CZ, EC, EE
In-between	26 (6)	DE, DK, EL, HU, LV, SI
No -	26 (6)	BG, CY, IE, MT, PT, SK
No - -	30 (7)	BE, ES, FI, FR, IT, LU, SE
Total	100 (23)	

Missing: AT, LT, PL, RO, UK

However, this may change in the long run. In our study we asked whether there will be more need for flexible employment in the future. Here, only one Member State stated that this would not be the case. Three Member States answered “very much” and eight Member States “Somewhat”. From this, one can conclude that the number of flexible employment in the national central administrations is likely to increase in the future.

**Table 19. Will there be more need for flexible term employment in the future?**

(Frequencies in parenthesis)

	Frequency	List of countries
Very much	12 (3)	BG, EL, PL
Somewhat	32 (8)	CZ, DK, EE, HU, IE, LT, LV, NL
Fairly little	12 (3)	EC, LU, SE
Not at all	4 (1)	FR
Cannot say	40 (10)	BE, CY, DE, ES, FI, IT, MT, PT, SI, SK
Total	100 (25)	

Missing: AT, RO, UK

Because of the overall increasing numbers of fixed-term contracts in the national public administrations, it is important to discuss the scope and limitations that are set down in the EU law. Directive 1999/70/EC and Directive on Temporary Agency Work (2008/104/EC) are the most important in this respect. For practical purposes (and the fact that Directive 2008/104/EC is currently in a process of amendment), we will restrict ourselves to the Directive 1999/70/EC.

The Directive regulates an issue (the use of fixed-term contracts and the relationship between fixed-term contracts and unlimited contracts) which concerns a highly topical development. Whereas the spirit of the Directive is clearly critical as to the development of “too much flexibility” and states that unlimited contracts should be the general form of employment relationship, the reality in the public and private sector at the national level shows a different picture. During the past years, flexible employment contracts have become the norm in many sectors. This does also concern the public sector, but, as we have seen only partially, the central public administrations.

The Directive is applicable to the public sector. Clause 2 para 1 of the Directive states that the directive applies to fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State. Consequently, some Member States are tempted to exclude civil servants from the scope of Directive 1999/70/EC on the grounds that they are not employees and thus not covered by the Directive. In case 313/10 (not yet decided) the Advocate General stated that an “objective reason” does not allow for a distinction to be made between the public and private sector. Furthermore, the court is not sure whether the national limit applicable to the public sector may be too broad.

More importantly, the Directive also create direct rights to individuals as clause 4 of the framework agreement is unconditional and sufficiently precise for individuals to be able to rely on it before a national court as against the State

In the case Impact C-268/06 the Court of Justice stated that Article 4 (1) of Directive 1999/70/EC, which prohibits, in a general manner and in unequivocal terms, any difference in treatment of fixed-term workers in respect of employment conditions which is not objectively justified, is unconditional and sufficiently precise for individuals to be able to rely upon it before a national court; that is not the case, however, as regards Article 5 (1) of the framework agreement, which assigns to the Member States the general objective of preventing the abusive use of successive fixed-term employment contracts or relationships, while leaving to them the choice as to how to achieve it.

The purpose of Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work is threefold:

- a) It allows the conclusion of fixed-term contracts, subject to certain conditions.
- b) Its aim is to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination as regards those workers with fixed-term contracts and those with unlimited contracts and
- c) It establishes a framework to prevent abuse arising from the use of successive fixed-term contracts or relationships.

As regards the latter, the Member States should introduce one or more of the following measures in a manner which takes account of the needs of specific sectors and/or categories of workers:

- (a) Objective reasons justifying the renewal of such contracts or relationships;
- (b) The maximum total duration of successive fixed-term employment contracts or relationships;
- (c) The number of renewals of such contracts or relationships (clause 5).

The Member States may also introduce measures such as a maximum total duration of successive fixed-term employment contracts or relationships *or* limitations as to the number of renewals of such contracts or relationships. Moreover, it is also up to the Member States to determine what shall be regarded as “successive contracts”. The most popular measure for preventing abuse of fixed-term contracts, on its own or combined with another measure, is a cap on the total duration of such contracts. For example, Luxemburg has a strict regime and does not allow that fixed-term contracts exceed the duration of 2 years.

According to the results of our study, 16 Member States offer contracts of an indefinite duration as the general form of employment relationship. This is in accordance with the Directive which states that employment contracts of an indefinite duration are the general form of employment relationships and contribute to the quality of life of the workers concerned and improve performance. However, a number of Member States offer an increasing number of fixed-term contracts. The latter may be in conflict with the objective of the Directive as long as contracts of an indefinite duration or life-time tenure are not the general form of employment relationship. However, this situation does not exist in all Member States on central public administration level as all Member States either offer

unlimited or life-time contracts. Still, the use of fixed-term employment is not the general form of employment in central public administration...

**Table 20. Infinite duration of the general form of employment in central public administrations in the EU Member States**

(Frequencies in parenthesis)

	Frequency	List of countries
Yes ++	38 (9)	BG, CZ, EE, ES, FI, IT, LV, PL, SI
Yes +	29 (7)	DE, DK, HU, NL, PT, SE, SK
In-between	13 (3)	EL, IE, MT
No -	8 (2)	CY, FR
No - -	13 (3)	BE, EC, LU
Total	100 (24)	

Missing: AT, LT, RO, UK

When workers are on fixed-term contracts, Article 4 (1) states that fixed-term workers shall not be treated in a less favourable manner than *comparable* permanent workers solely because they have a fixed-term contract.

The Court of Justice ruled on 18 October 2012 in the cases C-302/11 to C-305/11 that *comparable* mean whether the persons concerned are engaged in the same nature of the work, those persons can be regarded as being in a comparable situation

For example, the mere fact that a person has not passed the general competition for obtaining a post as a career civil servant in the public sector does not mean that the applicants are in a different situation. In fact, the crucial distinction concerns whether the duties performed are the same. According to the Court. “If the mere temporary nature of an employment relationship were held to be sufficient to justify a difference in treatment as between fixed-term workers and permanent workers, the objectives of Directive 1999/70 and the framework agreement would be rendered meaningless (...). The power of the Member States to determine the content of their national laws relating to employment contracts cannot go so far as to allow them to compromise the objective or the practical effect of the framework agreement”.

In the meantime, the court has decided upon a number of issues as regards differences in treatment between (fixed-term) employees and employees with unlimited contracts<sup>131</sup>. For example, in case Del Cerro Alonso C-307/05 the Court of Justice held that the principle of non-discrimination in the employment conditions of fixed-term workers compared with permanent workers also covered aspects relating to pay and the length-of-service allowance.

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131 Cases 268/06; 307/05, 444/09, 456-09 and 273/10.

The EC's lack of competence to legislate in relation to pay, as stated in Article 137(5) of the EC Treaty, is not pertinent in this respect

In the case 177/10 *Santana* the Court of Justice decided that the duties performed by an interim civil servant who was in a comparable situation to that of a career civil servant must in principle be taken into account in the calculation of seniority required for internal promotion. Also a length-of-service increment as an employment condition is covered by Article 4 (1) of the framework Agreement annexed to the Fixed Term Work Directive (1999/70/EC), i.e., the fixed-term workers can contest less favourable treatment without objective justifications. (C-444/09 and C-456/09)

The above mentioned cases C-302/11 to C-305/11 concerned a situation where workers who have worked under successive fixed-term employment contracts were placed on the permanent staff of that authority under an employment relationship of indefinite duration. The employer (AGCM) placed the workers at the starting level of the pay scale category which they were in at the time their earlier fixed-term contracts were terminated, in disregard of the length of service accrued under those contracts. The Court of Justice decided that this practice constituted a violation of article 4 of the Directive.

Therefore, the implications of the Directive for the status of public employees and civil servants as well as regards the relationship between public and private employees are considerable. In this respect one could say that the principle of anti-discrimination in the Directive supports the alignment of working conditions between public employees, civil servants and private sector employees. Still, a Member State which provides in its national legislation for conversion of fixed-term employment contracts into an employment contract of indefinite duration is not obliged to require that the employment contract of indefinite duration reproduces in identical terms the principal clauses set out in the previous contract. However, the Member State must ensure that the conversion of fixed-term employment contracts into an employment contract of indefinite duration is not accompanied by material amendments to the clauses of the previous contract in a way that is, overall, unfavourable for the person concerned.

The Member States should also ensure that employees with fixed-term contracts do not suffer unjustified discrimination. In addition, an abuse of successive fixed-term contracts between the same employer and employee for the same work shall be prevented. However, different treatment is justified on objective grounds

In case C-586/10 *Küçük* the Court accepted the use of successive fixed-term contracts in certain cases (for example, as regards the continuous replacement of employees on parental or maternity leave). Thus, Article 5(1)(a) of the Directive 1999/70/EC allows the renewal of successive fixed-term employment contracts in the public sector only in those cases where 'objective reasons' are stated. For example, in order to meet certain temporary needs (cases C-378/07 to C-380/07). The crucial question is, therefore, the definition of "objective reasons justifying the renewal of such contracts or relationships". The concept of 'objective reasons'

for the purposes of Article 5(1)(a) of the FTW Framework Agreement must, as the Court has held in case C-586/10 *Küçük* be understood as referring to precise and concrete circumstances characterising a given activity, which are therefore capable, in that particular context, of justifying the use of successive fixed-term employment contracts. Those circumstances may result in particular from the specific nature of the tasks for the performance of which such contracts have been concluded and from the inherent characteristics of those tasks or, as the case may be, from pursuit of a legitimate social-policy objective of a Member State<sup>132</sup>.

More precisely, the court has stated that temporary replacements through (successive) fixed-term contracts may be necessary due to the unavailability of employees on sick, maternity, parental or other leave. The temporary replacement of employees in those circumstances may constitute an objective reason under clause 5(1)(a) of the FTW Framework Agreement, justifying fixed-term contracts being concluded with the replacement staff and the renewal of those contracts as the need arises. However, the mere fact that fixed-term employment contracts are concluded in order to cover an employer's permanent or recurring need for replacement staff does not in itself suffice. Whilst the replacement covers a permanent need in that the employee hired under a fixed-term contract performs specifically-defined tasks which are part of the undertaking's usual activities, the fact remains that the need for replacement staff remains temporary in so far as the employees who have been replaced are supposed to return to work at the end of the leave, the latter being the reason why those employees are prevented temporarily from performing their tasks themselves.

In our study we asked the Member States about the reasons for the use of fixed-term contracts. All Member States, with the exception of Luxembourg, answered that fixed-term work is required to complete a specific and limited task (AT, LT, RO and UK missing). As it can be discerned from Table 21, seven Member States replied that they offered fixed-term contracts in order to save financial or personnel resources (fourteen Member States answered they did not!). This answer is interesting as such as it reveals a number of issues. First, the question whether the justification "in order to save resources" is in accordance with Directive 1999/70/EC if this reason is used as an objective reason when offering a successive number of fixed-term contracts. Secondly, the reasoning gives an indication that budgetary constraints in times of the financial crisis may be used for an increasing number of fixed-term contracts in the national central administrations.

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<sup>132</sup> This Judgment was contested by the German Labour Court.

**Table 21. Need for more flexible employment in order to save resources**

(Frequencies in parenthesis)

	Frequency	List of countries
Yes	29 (7)	EC, EE, ES, LV, NL, SE, SI
No	58 (14)	BE, BG, CY, DE, DK, FI, FR, IE, IT, LU, MT, PL, PT, SK
Cannot say	13 (3)	CZ, EL, HU
Total	100 (24)	

Missing: AT, LT, RO, UK

In order to shed some light on this issue, we asked the Member States whether more fixed-term employees are employed as a consequence of austerity measures. Also as regards this question, most of the Member States stated that this would NOT be the case. However, 7 Member States agreed with this question. This raises the interesting question whether this number will further increase if the financial crisis hits more the Member States in the longer run.

**Table 22. Consequence of budgetary constraints/austerity measures**

(Frequencies in parenthesis)

	Frequency	List of countries
Yes	29 (7)	EC, EE, EL, LV, NL, SE, SI
No	58 (14)	BE, BG, CY, ES, FI, FR, HU, IE, IT, LU, MT, PL, PT, SK
Cannot say	13 (3)	CZ, DE, DK
Total	100 (24)	

Missing: AT, LT, RO, UK

Further developments are difficult to predict and may only open the door for speculations. We asked the Member States whether the economic crisis and the subsequent need for stabilising national economies be an extra impetus to abolishing employment as civil servants? The answers of the Member States confirm a certain link between the economic crisis and the future of the civil service status. However, half of all respondents to this question clearly stated that the crisis will not affect the civil service employment status as such. This allows for the conclusion that it is unlikely – at least in most of the Member States with a classical civil service status – that the civil service status will be abolished. However, it is possible that the economic crisis will increasingly provoke discussions on the pros and cons of a specific or flexible status. From this point of view, it is surprising to observe that 8 Member States agreed that the economic crisis represents a more or less strong impetus to the abolishment of the civil service status.

**Table 23. Will the economic crisis and the subsequent need for stabilising national economies be an extra impetus to abolishing employment as civil servants?**

(Frequencies in parenthesis)

	Frequency	List of countries
Very much	8 (2)	DK, SI
Somewhat	17 (4)	EE, NL, PL, PT
Fairly little	8 (2)	EL, SK
Not at all	50 (12)	BE, BG, CY, DE, ES, FI, FR, HU, IT, LU, MT, SE
Cannot say	17 (4)	EC, IE, LT, LV
Total	100 (24)	

Missing: AT, LT, RO, UK



## 8. THE FUTURE RELATIONSHIP BETWEEN CIVIL SERVANTS AND OTHER PUBLIC EMPLOYEES

### 8.1 Distinction between civil servants and other public employees

As we have seen, in almost all Member States the subdivision into different categories of staff with different legal statuses is an essential characteristic of the official organisation of the national public services. Often, the Member States employ two or more different categories of public employees. Just a small minority of countries employ only one category of staff or quasi labour law employees like in the Swedish case. Italy also offers a relatively homogenous labour law regime according to sectors for most of its civil servants. France provides for a special case: although almost 80% of all French public employees have the status of a tenured civil service, the French system consists of three state *fonctions publiques* (under a general statute), the "Fonction Publique d'Etat" (State Civil Service), "Fonction Publique Territoriale" (Local Civil Service) and "Fonction Publique Hospitalière" (Public Hospitals Civil Service). All other EU countries have a dual system or provide for different employment regimes in the national public service. The United Kingdom falls somewhat outside since it is the only country in the EU without a public civil service law.

Also in the central administrations, future developments in public employment make it even more difficult to separate the concept of public employment and civil service employment. The reasons for this are many: the possibility to employ, both, public employees and civil servants in the same positions, the alignment of working conditions, the application of EU directives to civil servants and also to public employees, shifting trends in public employment, ongoing reforms in civil service laws which lead to a shift from public law to labour law approaches as regards certain sectors (e.g., the University sector in Finland as of 1.1.2010), unclear definitions of civil service and public tasks etc.

In the academic field, discussions focus on the alignment of employment and working conditions between the public and the private sector. In fact, a second trend can also be observed: alignment trends within the public sector and amongst public law employees and labour law employees. Still, it is difficult to make a clear distinction and to draw general conclusions (because of the growing fragmentation of the public workforce, both, amongst civil servants and public employees). For example, in Germany civil servants have life-time tenure and public employees unlimited or fixed-term contracts. However, many public employees (Angestellte) also enjoy life-time tenure.

As it can be seen from Table 24 below, the situation differs strongly amongst the Member States. For example, in Belgium, Cyprus, Estonia and Spain differences are still important in fields like job security, career development policies, recruitment policies etc. In other countries like Luxemburg, Finland, Slovenia, differences amongst the different public employees are not important. In Luxemburg, one could also speak of an alignment on "the top", as working conditions are aligned at a very high level. Thus, alignment can also mean a

“race to the top” and not only a “race to the bottom”, if working conditions deteriorate as a consequence of alignment trends to the private sector. Overall, alignment trends can be observed but these are not necessarily a “race to the top” or “race to the bottom”. As always, the development is more complex. For example, it cannot be excluded that the alignment trends only concern civil servants and public employees with unlimited contracts. On top of it, at least in some Member States a third “precarious” group is likely to emerge in the central administrations, including public employees with fixed-term, ad-hoc or seasonal contracts. However, more research is needed to confirm this trend.

**Table 24. Main differences between civil servants and other public employees by issue and Member State**

(1 = very different, 2 = somewhat different, 3 = fairly little different, 4 = not at all different)

	recruit ment	job security	career develop ment	pay system s	strike	pension system	ethical obligati ons	holiday arrange ments	workin g time	health insuran ce
Belgium	1	1	1	2	4	1	3	2	3	2
Cyprus	1	3	1	3	2	1	4	3	1	2
Estonia	2	2	3	1	1	1	1	2	3	4
Spain	1	1	1	2	2	1	4	2	2	2
Bulgaria	1	2	2	4	1	4	1	2	4	1
Germany	2	2	3	2	1	1	2	3	4	2
Sweden	2	2	3	2	3	2	2	2	3	3
Italy	4	4	1	1	2	2	2	2	2	5
Austria	4		4	2			4	4	4	2
Hungary	3	2	3	3	2	4	2	3	2	4
Netherlands	3	2	3	3	2	2	2	4	4	3
Poland	3	1	4	2	4	4	2	3	2	4
Portugal	2	2	1	1	3	3	4	2	2	4
Lithuania	1	3	1	1	4	4	1	3	4	4
Denmark	3	2	4	4	1	1	4	4	4	4
France	1	1	1	1	4	2	4	4	4	3
Ireland	3	3	3	3	3	3	3	3	3	5
Malta	2	2	2	2	3	4	3	4	3	3
Slovakia	2	2	3	2	3	4	2	4	3	4
Greece	2	3	3	2	4	2	4	4	4	4
Latvia	1	2	2	4	4	4	2	4	4	4
Slovenia	2	3	3	4	2	4	4	2	4	4
Finland	1	2	1	4	2	4	4	4	3	4
Luxembourg	1	4	4	4	3	4	4	4	4	4

Missing: CZ, EC, RO, UK

Sweden is a specific case as the differences between public law and labour law employees only concern the small group of judges with a public law status. Still, it is important to note that some Member States also move into the opposite direction and establish clearer distinctions between civil service employment and labour law employment. For example, Cyprus is in a process of clarifying the differences between the different employment groups.

### **Towards greater distinctions between civil servants and fixed-term employees in Cyprus**

In Cyprus, the general trend is towards reducing the numbers in public employment or at least not exceeding the numbers of previous years. In addition to that, with regards to fixed-term contract staff, recently adopted legislation regulates the hiring of such employees with the general aim to limit it as much as possible (hiring of additional contract staff is possible only provided the need is temporary and cannot be covered by the existing public status employees or the existing indefinite contract employees).

Cyprus distinguishes between public law status employment and employees with a labour law status, so called contract employees with indefinite and fixed-term duration contracts. This category of labour law staff was hired over the past years mainly for purposes of temporarily filling public service positions that remained vacant because of delays or other difficulties in the standard recruitment procedure of public servants. A number of this category of staff was also hired for other temporary needs/projects of Ministries/Departments/Services which continued to exist in the following years.

In the process of time, as contracts continued to be renewed and other legislative obligations emerged (for example as a result of Directive 1999/70/EC), many of the contracts of such employees were turned into "indefinite" duration contracts.

In addition, Cyprus employs hourly-paid staff as an established category of labour law employees that mainly perform auxiliary/technical/construction duties such as craftsmen, cleaners, office messengers, office assistants, etc. They are not considered "contract" staff as such in the above category since they also have life tenure. Nonetheless, their regulations/terms of employment are different than those applicable to public employees. This category of labour law staff is around 19% (of the above mentioned 28% labour law employees) of central public administration.

The general issue of contract staff employment has recently been regulated by law, according to which it will not be possible in the future for fixed-term/temporary contract employment to be turned into indefinite duration. Further to that, the recruitment of contract staff will be possible only on the basis of temporary needs (fixed-end projects etc) and not in place of vacant public service positions (with few exceptions for specific Ministries/Departments/Services and for a period not exceeding 2 years). The law also holds that recruiting fixed-term contract staff will only be possible provided that the temporary/other need that arises cannot be covered by existing public employees or existing indefinite contract employees. As a result, it is expected that contract employment in the future will be limited and will refer only to fixed-term contracts. This category is around 9%

(of 28% labour law employees) of central public administrations.

Therefore, in the future, the standard employment model in the case of the Cyprus Public Service should be full time employment with life tenure under public law status (public servants appointed to public service positions). Additional hiring of employees with contracts of infinite duration should no longer be possible and additional hiring of employees with fixed-term contracts will be subject to specific regulations and provisions.

Still, the general trend is going into the opposite direction. On the one hand, there is a general trend towards the reduction of public employment. This reduction is stronger in the field of public law civil service employment than as regards fixed-term employment under labour law (which is increasing in some countries). On the other hand, working and alignment conditions are being aligned amongst these two groups. This trend may, for example, also lead to more job security for fixed-term employees. As regards the latter, the situation in France seems to be representative in many countries.

### **Towards less distinctions between civil servants and fixed-term employees in France**

France distinguishes between employment in the "Fonction Publique d'Etat" (State Civil Service), "Fonction Publique Territoriale" (Local Civil Service) and "Fonction Publique Hospitalière" (Public Hospitals Civil Service). 68.9% of all employees of the "Fonction Publique d'Etat" (FPE) are civil service employees with lifetime tenure, a specific framework for career progress and who are recruited after successful competitive examination. These "Titulaires" must be distinguished from the "Non-titulaires" who represent approximately 15.1% of the workforce. The rest of the workforce is working under a public law status for the military.

Non-titulaires are recruited when the administration cannot find the appropriate competence/qualification within the "Titulaires" for a specific task/job, or when it needs to fill a vacant post, permanently or for a temporary/seasonal need.

Currently, a law is being discussed at the Parliament to reduce job insecurity for public employees under contract (fixed terms contracts could become indefinite contracts on certain conditions and employees with indefinite contracts could become civil servants under certain conditions). However, it will be possible to recruit "Non-Titulaires" only for agents of "A category" (agents with at least a bachelor degree).

## **8.2 Civil service employment - which sectors employ civil servants?**

There is no European-wide agreement as to the sectoral employment of public employees or the employment of civil servants. The allocation of functions between the different public employment groups is partly an accident of history and has altered over time. Civil service jobs range from street sweeping to the exploration of outer space, where both persons could be employed as a civil servant or as a public employee with an employment contract. In many cases, the selected employment status lacks clear logic. Things become more diverse when looking at the employment in the wider public sector or semi-public sector, e.g., prisons,

nuclear power stations, inspectorates, risk prevention etc. A comparative study by Demmke (2006)<sup>133</sup> revealed that the EU Member States employ civil servants in very different sectors. In addition, they even employ, both, civil servants and private employees in the same sectors or positions. Logic behind this is difficult to find, thus, the Member States do not only differ with regard to the employment of different categories of public employees in different sectors.

Still, most of the Member States apply sectoral limitations to the employment of public employees and civil servants. Employment regulation in the civil service, as in many other European countries, retained some distinguishing features that set it apart from the two other public sector groups, although these differences have declined over time. In the United Kingdom, strictly speaking, civil servants are only those working for the ministries or their executive agencies. They represent about 9% of public sector employees. Until very recently, the rules governing their status were based on tradition and there was no actual civil service code. The working conditions in the civil service and the rules regarding human resources management were codified in the Civil Service Management Code in 1996. Most of the public sector employees or “public servants” are employed on a contractual basis and are subject to general labour code legislation. Employment conditions vary considerably between public employers

Although some general patterns exist, all other Member States employ public employees and/or civil servants in many different sectors, functions, jobs, areas etc. According to the World Bank, the civil service legislation always covers the permanent employees of civilian central government and, in some settings, subnational government. Often teachers, health professionals, and the police are excluded.

- Employment in the education sector is also generally regulated by specific legislation.
- The health sector workforce, which usually comprises a significant element within the total public sector workforce, may be either directly employed by the public sector health system, or work in public-funded agencies or organisations (e.g., social insurance funded). In many countries healthcare will also be delivered by organisations in the private sector and by voluntary organisations.
- Subnational government employment often represents a substantial portion of the total public sector workforce – frequently over 50% in the federal counties. However, subnational government employment is considered a separate, legally defined civil service in many countries. In most of the continental European countries, military and law enforcement personnel (e.g., police, customs, etc.) have their own specific legislation as the basis for employment. However, more often than not, the police are considered civil servants.

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133 Christoph Demmke, *Are Civil Servants Different Because They Are Civil Servants?* EIPA, Maastricht, 2006.

- Employees of state owned enterprises may be subject to specific, but different legislation, or may be subject to the general labour law that governs employment contracts in the private sector<sup>134</sup>.

In fact, civil service employment shows some common (but changing employment patterns). Mostly, civil servants in the central ministries, police staff, judges, diplomats and soldiers have a specific, yet often also a special status. For example, Art 86 of the Austrian Constitution Act (Bundes-Verfassungsgesetz) foresees that judges have to be appointed by the Federal President; the very same goes for public prosecutors. Thus, all judges and public prosecutors are civil servants.

In almost half of all EU Member States, teachers, professors and health professionals are excluded from having a specific status. However, employment in the education sector is also regulated by specific legislation in some Member States. The health sector workforce, which usually comprises a significant element within the total public sector workforce, may be employed directly by the public sector health system or work in public-funded agencies or organisations, e.g., social insurance funded. In many countries healthcare is also provided by organisations in the private sector and by voluntary organisations. In Sweden, only some higher judges are hired under public law (and have life-time tenure).

In Italy, the civil service reform of February 1993 instituted contract-based relations between public employees and the State. As a consequence, civil servants are governed by private labour laws, while some categories of personnel (magistrates, State advocates, university professors, armed forces and police force, diplomats and prefects) have not been privatised in order to guarantee their independence. These categories are under public law. Thus, Italy is a somewhat special case.

**Table 25. Do these administrative sectors belong to central civil service or do they have their own civil service systems?**

(Frequencies in parenthesis)

Administrative sector	Central civil service	Specific civil service	Not part of civil service	Total
Central government	100 (27)	0 (0)	0 (0)	100 (27)
Government agencies	85 (22)	0 (0)	15 (4)	100 (26)
Diplomatic service	59 (16)	41 (11)	0 (0)	100 (27)
Judiciary	48 (13)	33 (9)	19 (5)	100 (27)
Police	41 (11)	44 (12)	15 (4)	100 (27)
Military	37 (10)	37 (10)	26 (7)	100 (27)

134 See <http://web.worldbank.org>, op cit.

Education	19 (5)	30 (8)	52 (14)	100 (27)
University	19 (5)	26 (7)	56 (15)	100 (27)
Hospitals	19 (5)	26 (7)	56 (15)	100 (27)

Source: Christoph Demmke/Timo Moilanen, *Civil Services in the EU of 27*, op cit.

Subnational government employment often represents a substantial portion of the total public sector workforce – frequently over 50% in decentralised or federal countries, but also in Scandinavian countries. In some Member States, subnational government employment is often not a part of the civil service (Poland, Ireland) or is considered a separate, legally defined civil service. For example, in the Scandinavian countries the term civil service is usually defined as the state level. Local authorities and municipalities in these countries are distinct from the central state level. However, (in Finland and Denmark) they also employ local civil servants. For example, Finland employs more than 80% of all public employees as civil servants at the state level but only approx. 40% of all public employees on the local level have a civil service status.

Despite all the existing differences, some trends can be identified. As it seems, the Member States decide to change the employment status in a number of sectors. Overall, the employment of civil servants is more and more restricted to core-areas and core-sectors such as the central governmental level, justice, diplomacy etc. For example, in Poland, civil servants can already be considered the core of the civil service corps. In other countries, for instance, Denmark decided to restrict civil service employment to the police force and in the armed forces. There are currently considerations of how to obtain a further drop in the proportion of civil servants, as employment on collective agreement terms are considered more flexible. In Estonia, the number of people with public law status has decreased considerably within last years and it is planned to reduce it further by 20%. Parallel to this development, there is less recruitment of teachers and academics as civil servants. Here, a good example is Portugal where – since 2008 – the classical appointment pattern for civil servants (with a higher job security and specific career development patterns (promotions) was restricted only to those employees who deal with “sovereign and authority powers”. The law in force explicitly identifies them: generic and specific missions of the armed forces (...); external representation of the State; security intelligence service; criminal investigation; public security (National Republican Guard, Public Security Police and prison warders) and inspection” (official answer of Portugal to this study).

This trend in the field of civil service employment is surprisingly similar to the discussions at the EU level as regards the interpretation of Article 45 (4) of TFEU. In a comparative study for the European Commission, Ziller<sup>135</sup> shows how the Court of Justice and the European Commission have narrowed down the applicability of Article 45 (4) of TFEU to ever more restricted areas and sectors. Still, the situation at the national level is very different and ranges

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135 Jacques Ziller, *Free Movement of European Union Citizens and Employment in the Public Sector*, Report for the European Commission, Brussels 2010.

from very open to national attempts to restrict the access to the national public employment market for other EU nationals as much as possible. The same is true as regards civil service employment at the national level. The trend is towards a number of core sectors which may be reserved to civil servants. However, the trend is very different and ranges from a uniform public employment sector to cases where a high number of sectors are still reserved for civil servants.

### **8.3 The reserve of certain functions to civil servants – a new blurring of boundaries**

Despite the discussed trends in the previous chapter, the traditional question about which tasks should be performed solely by civil servants has never been answered definitively.<sup>136</sup> In addition, the question as to which jobs should be done a) by public employees subject to labour law and b) by civil servants, is handled differently not only throughout the European Union, but also throughout the world.

The definition of who should be a civil servant has always been linked to the definition as to the exercise of public power, the special nature of the duties, and the nationality criteria. For example, in Hungary, the tasks directly related to exercising the public power, managing, controlling and supervisory functions, furthermore for the administrative functions of the administrative authority should only be carried out by civil servants. In other countries, the exercise of sovereign powers should remain the preserve of civil servants. These are measures to safeguard society, to preserve order and to protect citizens. This can be interpreted very broadly (as in Finland where central government employees are normally recruited as civil servants) or narrowly (as in Poland where only few nominated civil servants have been recruited so far). However, in Poland there are two categories of staff in the Polish civil service corps. Generally the civil service corps consists of civil service employees (employed under a labour law status and on the basis of employment contract) and civil servants (employed under a public law status and employed on the basis of nomination, lifetime tenure). In practice, the employment relationship of civil service employees is regulated by both: the Civil Service Act and the Labour Code, however, the basis of the employment (employment contract) is of labour law nature and the differences between labour law workers and civil service employees are not substantial.

Other countries offer a much more detailed task description. For example, the Romanian law lists a number of tasks and duties which should be reserved to civil servants. Article 3 states that the activities performed by the civil servants that involve the exercise of public power prerogatives are the following:

- Execution of laws and other norms;
- Issuance of norms and other rules specific to public authorities or bodies, and providing for their approval;

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<sup>136</sup> Christoph Demmke and Uta Linke, Who's a National and Who's a European? Exercising Public Power and the Legitimacy of Article 39 (4) EC in the 21st Century, EIPASCOPE 2003/2.



- Issuance of projects of policies and strategies, of programmes, of studies, of analyses and statistics required for the execution and implementation of public policies as of the documentation required for law execution, with the purpose of achieving the competence of the public authority or body;
- Counselling, the control and the internal public audit;
- Management of human and financial resources;
- Collection of budgetary liabilities;
- Representation of the interests of the public authority or body in its relations with natural or juridical persons of public or private right, inside or abroad, within the limit of competence established by the manager of the public authority or body, as the representation in justice of the public authority or body where the activity is being performed;
- Performance of activities according to the strategy of computerisation of the public administration.

Also in Slovakia Article 3 of the civil service law states that civil servants tasks include:

- Management;
- Decision making;
- Inspection;
- Professional preparation of decisions;
- Professional preparation of legislation drafts and other generally binding legal regulations including professional activities related to discussion and approval of the above; or
- Professional preparation of requirements for the performance of state affairs.

In Belgium the Law of 22 July 1993 (M.B. of 14.8.1993, *portant certaines mesures en matière de fonction publique*) stipulates that civil servants with a public law status (Article 3) should be recruited in clearly defined areas and organisations.

Still, the crucial question is to define what is “exercising public power”, “managing, controlling and supervising”, “safeguarding the society”, “preserving order and protecting society”?

Of course, the latter could be the police, judges and soldiers who have the right to intervene – and to restrict, if necessary – the fundamental rights of citizens. It would be very difficult to allow private employees to intervene in the field of fundamental rights. The latter is still a reason why also Sweden applies the public law status to (few) judges in order to guarantee that these group is totally independent from political and executive influence in their execution of tasks. The same argument is used by many Member States but only with a wider application as regards the employment groups that should be included. As regards the latter it is interesting to compare the “privatised” public sectors in Italy and in Sweden in terms of the

application of the exclusive criteria for the employment as civil servant. For example, Italy has also opted for professors working in universities who are working under a public law status.

Still, the traditional question about which tasks and which functions should be performed solely by civil servants is more difficult to answer than ever before<sup>137</sup>. In times of sending “private” space shuttles in the outer space, managing nuclear power installations by private firms, outsourcing many state services, running private ICT services with access to confidential data and leading wars with the support of private security forces. Should these tasks be carried out only by civil servants?

Despite growing uncertainties, many Member States uphold clear rules: for example, in Spain it is not possible to recruit or to employ a person with a different employment status/contract in the same job or function as a civil servant (although Spanish legislation also lists functions that "could" be performed by contracted personnel).

#### **Employment of contractual staff in civil service positions in Cyprus**

In the past, contract staff was hired to serve in permanent public service positions that were vacant; they performed the same duties and responsibilities prescribed job description of the permanent position against which they were hired as any other public employee of the same position (public law status). The contracts of many of these employees later became "indefinite" duration contracts and they will therefore remain in the service until retirement, performing the above mentioned duties.

Thus, although in the past fixed-term employees could have similar functions as those of permanent public employees serving in the same position, from now on it will not be possible to hire fixed-term employees in vacant public service positions (few exceptions apply). Furthermore, it is specified in the recently adopted legislation regulating indefinite contract employment that even though their employment contract is under labour law, employees with indefinite contracts have analogous duties and obligations as those applicable to public servants. In addition, their terms of employment are determined based on the same process of collective consultation that is followed in the Public Service (for public servants) and are approved by the Council of Ministers.

In Germany, certain tasks should, *as a principle*, be carried out by civil servants. In Luxemburg, key positions inside the public administration are reserved to civil servants only, such as functions related to the "participation directe ou indirecte à la puissance publique" (police and customs, certain functions inside the judiciary system, etc.), as well as top level executives positions with a high degree of responsibility. In Denmark, since 2001 appointment of civil servants in the state sector is confined to specific positions (e.g.

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137 Ibid.

uniformed personnel in the police force and in the armed forces). In Poland, according to Article 10 (3) and (5) of the Civil Service Act, the Head of Civil Service and his/her deputy is an appointed civil servant. Also members of the Higher Disciplinary Commission of the Civil Service must have the civil servants status. Apart from these rules, no further distinctions exist: in Poland civil servants perform the same duties as compared to civil service employees. There is no difference between their scopes of tasks.

Ireland and the Netherlands do not provide for specific rules and regulations as to whether central employment should be carried out by civil servants. Still, in Ireland, almost all Irish employees on the central civil servants are appointed as "established" civil servants. In the Netherlands and in Finland the situation is similar although the status of civil servants has been "normalised". In the Netherlands, future developments will show whether the public law status will further be modified in the process of "normalisatie". Also in Finland, most of the general labour legislation applies partially or in full to both employment relationships.

In the meantime, more Member States allow for the employment of public employees in civil service functions, subject to specific reasons (in case of specific organizational needs, replacement of sick people, people on parental leave etc.). For example, in Ireland, while the majority of Civil Servants are recruited on an established basis, appointments can be made to all grades on a contract basis where the need arises. However, such appointees must be given the same career progression opportunities as their permanent comparators according to the Protection Employees (Fixed Term Work) Act 2003). In France, the State employs "Non-titulaires" when it can not find the appropriate competence/qualification within the "Titulaires" for a specific task/job, or when it needs to fill a vacant post, permanently or for a temporary/seasonal need. A law is being discussed at the Parliament to reduce job insecurity for public employees under contract (fixed terms contracts could become indefinite contracts on certain conditions and employees with indefinite contracts could become civil servants under certain conditions). In the future, it will be possible to recruit "Non-Titulaires" only for agents of "A category" (agents with at least a bachelor degree). Similar practices are even allowed in countries with specific constitutional requirements (as in the case of Germany and in Belgium) which do not exclude the possibility of concluding normal employment contracts in the national civil services.

In our study, 19 Member States state that fixed-term contracts are used to in order to substitute civil servants who are temporarily absent (in cases of maternity leave, sickness or parental leave). For example, in Hungary, the most common case when a fixed-term contract is concluded is to substitute a civil servant who is on maternity leave or parental leave.

**Table 26. Need for substituting civil servants who are temporarily absent**

(Frequencies in parenthesis)

	Frequency	List of countries
Yes	76 (19)	BE, CZ, DE, DK, EC, EE, FI, FR, HU, IE, IT, LU, MT, NL, PL, PT, SE, SI, SK

No	24 (6)	BG, CY, EL, ES, LT, LV
Total	100 (25)	

Missing: AT, RO, UK

Similarly, 19 Member States agree that fixed-term work is needed for the compensation of civil service work in the case of temporary increase in the work amount.

**Table 27. Need for compensation in the case of temporary increase in work volume**

(Frequencies in parenthesis)

	Frequency	List of countries
Yes	83 (19)	BE, BG, CZ, DE, EC, EE, EL, ES, FI, FR, HU, LU, LV, MT, NL, PT, SE, SI, SK
No	13 (3)	CY, IT, PL
Cannot say	4 (1)	DK
Total	100 (23)	

Missing: AT, IE, LT, RO, UK

In the future, this trend towards the employment of employees with (unlimited or fixed-term) employment contracts needs to be monitored closely as it could undermine the legitimacy of the civil service as such.

Another so far neglected developments concerns the link between the impact of demographic developments and the use of fixed-term employees. As it seems, more Member States substitute civil servants with public employees because of shortages in civil service recruitments. Although the numbers are not significantly high, five Member States answered that they would employ public employees because of shortages in recruitment of civil servants.

**Table 28. Shortages in civil service employment and recruitment**

(Frequencies in parenthesis)

	Frequency	List of countries
Yes	31 (5)	EL, IE, LU, MT, NL
No	50 (8)	BE, BG, DK, EE, FI, HU, PT, SI
Cannot say	19 (3)	DE, EC, SK
Total	100 (16)	

Missing: AT, CY, CZ, ES, FR, IT, LT, LV, PL, RO, SE, UK

Similarly, the trend towards part-time employment may affect in some cases the (increasing) employment of employees with fixed-term contracts. Thus, the present trend concerns more

inconsistencies as regards the employment of public employees in civil service employment positions even if national civil service reserve specific functions for civil servants. In more cases, public employees carry out the same tasks in the same positions and sometimes, in the same offices.

As mobility has increased and careers are in the process of being reformed (or even abolished), there seem to be less reasons to treat different groups of public employees differently. For example, France allows in Article 20 of the Law no 2009-972 of 3 August 2009 (*relative à la mobilité et aux parcours professionnels dans la fonction publique*) that non-tenured personnel may be recruited in tenured positions in special cases. Also Article 21 of the Portuguese law 12 a/2008 allows for the recruitment of employment contracts to meet “urgent public and temporary needs” (Article 22)<sup>138</sup>. In both cases, the derogations may be interpreted widely. Also in Belgium the civil service law allows for the recruitment of public employees in civil service positions in certain cases.

In Luxemburg, contrary to the German distinction between civil servants and public employees, there are no positions, which are excluded for state employees. During recent times, they more and more exercise the same tasks as civil servants. How much their significance has grown for the general functioning of the central administration during the last decade, is for instance illustrated by the *exposé des motifs* of the law which ensures a wider access for EU nationals to the civil service<sup>139</sup> and which describes the changing role of state employees as such. While a decade ago, the functions of state employees were limited to low level and rather unskilled tasks, they nowadays are allocated quite important missions such as in the field of budget and accountancy, higher secretarial tasks etc..

When considering the current situation, the following conclusion can be drawn: although many Member States employ civil servants and other public employees, this distinction becomes less decisive for deciding which tasks are carried out by whom. The conviction is growing that public employees can exercise important state tasks just as well or badly as civil servants under public law. On the other hand, more Member States are of the opinion that specific legal and ethical requirements in the national civil services can also be adopted under labour law: the need to act impartially, specific ethical requirements, fairness, rule of law and standardised treatment, etc. Here, pressures for alignment come also from EU obligations. One such example is European labour and anti-discrimination law where many directives apply in the same way to the public and private sector. The case law of the European Court of Justice is also relevant. As we will see later on, in the future the case law on the interpretation

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138 In France Article 20 of the Law on Mobility states that « Toutefois, des agents non titulaires peuvent être recrutés pour assurer le remplacement momentané de fonctionnaires autorisés à exercer leurs fonctions à temps partiel ou indisponibles en raison d’un congé de maladie, d’un congé de maternité, d’un congé parental, d’un congé de présence parentale, de l’accomplissement du service civil ou national, du rappel ou du maintien sous les drapeaux ou de leur participation à des activités dans le cadre de l’une des réserves mentionnées à l’article 53, ou pour faire face temporairement et pour une durée maximale d’un an à la vacance d’un emploi qui ne peut être immédiatement pourvu dans les conditions prévues par le présent titre».

139 Loi du 18 décembre 2009 modifiant le statut général des fonctionnaires.

of Directive 1999/70/EC may further blur the distinction between civil servants and other public employees. It is clear that the transposition of this Directive has led to a difficult alignment process in some Member States. On the other hand, recent case law of the Court of Justice allows the Member States to offer fixed-term contracts and even the conclusion of so-called chain contracts in specific cases.

Thus, despite the abovementioned alignment trends, differences in working conditions amongst the different categories of public employees are prevailing but they are getting less. For example, in Luxemburg, the greatest differences between civil servants and public employees still exist in the field of recruitment policies and (partly) the right to strike; in Germany in the field of pension systems, the right to strike, recruitment procedures, job security, pay systems, health insurance and ethical obligations; in Finland in the field of career development procedures, job security, recruitment procedures and the right to strike; in Ireland and in the Netherlands all central officials are also civil servants. In Ireland, some differences exist between established civil servants, unestablished civil servants and public workers. In general, most of the public servants have lifelong tenure.

Despite the growing importance of EU law, each analysed Member State still follows a specific, not always rational, national logic. As regards public employment and the employment of civil servants and other public employees, different national models have developed and brought their own paradoxes and complexities. As a consequence, more European states are confronted with growing inconsistencies as regards the employment of public employees in civil service positions. For example, some Member States employ a growing number of fixed-term employees in positions which should normally be offered only to civil servants with unlimited contracts. This has led to the fact that several Member States apply different employment relationships in the same sectors, sometimes for the same professions and for employees who are working in the same office.

Here, little is known on the fairness perceptions and ethical behaviour of civil servants, public employees and employees under short-term contracts. Do the different categories of staff show different behaviour patterns because of different employment statuses?

To conclude, when looking at the different Member States, it is almost impossible to draw a clear line between the tasks that are reserved for civil servants and those which are given to other employees. In many countries, the possibility of employing staff in terms of employment contracts is NOT treated as an exception. In addition, some Member States employ civil servants and employees under private law simultaneously in the same positions. For example, in the Netherlands, approximately half of all teachers either have a public law status or are employed as employees subject to labour law. In Germany, too, teachers are civil servants in some *Länder* or they are public employees subject to labour law in others. In practice, however, it is difficult to legitimize the different treatment of different employment groups in the same positions and jobs.

When considering the situation in all Member States, the following conclusion can be drawn: although most of the Member States apply a distinction between civil servants and other public employees, this distinction as such is no longer decisive for deciding which tasks are carried out by whom. In many cases, public employees subject to labour law can exercise important state tasks just as good or bad as civil servants. In addition, specific job requirements can be arranged in an ordinary labour contract: qualification requirements, powers, ethical requirements, fairness, professionalism and working conditions, etc. The logical consequence for some Member States is to align the various working conditions of all public employees and to create one law which is applicable to all public employees.

## 9. CONCLUSIONS

At the beginning of the twenty-first century, the central public administrations are moving through a fascinating but also disorienting period throughout Europe. Whereas the past reform trends were characterized by a move away from the classical bureaucratic model<sup>140</sup>, current reforms do not indicate convergence towards a NPM model and even the 'varieties of NPM' thesis may be unconvincing<sup>141</sup>. In fact, several reform trajectories exist which lead to a modernization of structures, processes and employment conditions, but these highlight the existence of alternative models rather than a shift towards one common administrative reform model or even the emergence of 'varieties of New Public Management'<sup>142</sup>. Neither is there a common trend towards one European employment model or one employment status.

Overall, public employment is changing as regards the size, structure, composition and status. The national public services are also becoming more open, flexible, diverse, feminine, fragmented, decentralized and smaller. Despite the existence of the many differences amongst the Member States of the EU, in the future, much of the administrative reform that will be conducted will no longer be done in the belief of the civil service status as the better and loyal provider for public services. Instead, the focus of the debate is likely to become much more pragmatic and at the same time dominated by effectiveness, efficiency and sustainability considerations. Another future trend will be to make exchanges between the private sector, citizens and the public bureaucracy easier.

Although most of the Member States find themselves in a process of reducing public employment, most of the Member States will continue to have a sizeable civil service. In the field of central public employment, the reduction of civil service employment is stronger than in other public employee categories. Hence, it is likely that, in the future, the civil service status will not be anymore the dominating employment category. Overall, the trend is towards a pluralisation of different employment forms on central governmental level.

Moreover, the civil service status is "hollowing out". Specific employment features of civil servants are slowly disappearing, however, some issues like job security, recruitment procedures and pay remain different to the private sector. Thus, there will be less government employment, different government employment and core government employment. The alignment trend is also supported by developments on the EU level and the impact of EU law (Directive 1999/70/EC) in areas which are presumed to belong to the national prerogative.

In addition, another trend seems to be the increasing recruitment of public employees in positions which should be reserved for civil service positions. Although employment of public employees in civil service positions is still the exception and requires justification, the trend

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<sup>140</sup> Christoph Demmke/Timo Moilanen (2010), *Civil Services in the EU of 27*, op cit.

<sup>141</sup> Stephen Bach/Lorenzo Bordogna (2011), *Varieties of new public management or alternative models? The reform of public service employment relations in industrialized democracies*, in: *The International Journal of Human Resource Management*, Vol. 22, No. 11, June 2011, 2281–2294.

<sup>142</sup> *Ibid.*



raises the question why civil servants are needed at all if public employees carry out the job as good (or as bad) as civil servants.

Overall, the use of fixed-term contracts is less significant in the central public administration than in the wider public and the private sector. From a sectoral point of use, the development is towards a “core civil service” and the employment of civil servants in core areas/sectors according to the definition of the Court of Justice as regards the interpretation of Article 45 (4) of TFEU.

Despite all reforms that are taking place, the consensus amongst the EU countries is relatively thin. Overall, public employment is being reduced in almost all EU countries. Although reductions in public employment are “expected” to have a positive impact on the short-term budgetary aims of government, they may also act to the detriment of government’s long term capacity for service delivery (OECD, 2012). It is also unclear whether public employment reforms bring efficiency and productivity gains if tough austerity measures are implemented. Moreover, evidence is lacking on the impact of austerity measures on work motivation, job satisfaction, work ethos etc. Although the trend is towards more alignment, almost all Member States maintain a number of specific employment features for certain employment groups in the field of job security, recruitment procedures and pay systems. Differences in the private sector (in comparison to, for example, the investment and banking sector, sports, culture, media etc.) also prevail as to the application of performance based rewards and the merit based-principle, recruitment procedures, career development policies, social mobility and the application of the principle of equality of chances.

Without doubt, the future will see the emergence of a growing paradox. On the one hand, growing doubts exist as to the need for employees with a specific status and specific working conditions. On the other hand, the process of alignment may be easily “abused” and lead to a deterioration of working conditions. In some countries, (severe) wage cuts lead to an increase in low paid employees. Moreover, workforce reductions combined with the same volume of services to be delivered will lead to increased workloads and higher work intensity (and possibly higher sickness rates). In addition, training opportunities are being reduced and career progressions due to austerity programmes are made more difficult in many countries. All of these developments may decrease the attractiveness of public sector employment and lead to greater challenges in recruiting the “most talented”.

Overall, many employment practices in the private sector do not serve (anymore) as an example to the public service. Even contrary: in many respects, working and employment conditions in central administrations could serve as a best-practice example. For the future, it will be important to keep those features which are better, fairer, less prone to discrimination and even more efficient.

As a consequence, defending good working conditions will re-appear as one of the most important agenda points within the next years. So far, no analysis has been carried out on the link between the above-mentioned alignment- and reform trends and the development of

politicisation and unethical behaviour. For example, is the trend towards less job security linked to higher levels of politicization?

In some cases, there is also a negative correlation between structural, organisational and austerity measures such as workforce downsizing operations, cutting down employment, partial or total recruitment and promotion freezes, freezes on departmental operating budgets, restructuring of personnel, outsourcing, creation of movement of staff to agencies or sub-national levels of government, wage cuts, pension cuts etc. and the impact on moral, commitment and performance of personnel. The analysis of most of the restructuring programmes and austerity measures effects is not sufficient. However, overall, working and employment conditions are still better at the central public administration level than elsewhere in the public sector. Still, most jobs at the central administration level are (relatively) good jobs. However, there is a widening gap between the situation in those countries that are not confronted with the introduction of austerity and those that are.

Today, there is little consensus amongst the Member States as to the question whether or not a specific civil service status is needed and if so, in which positions and in which sector. Another question relates to the question of how working conditions should be designed and how working conditions relate to work behaviour. For example, is it still necessary to offer lifetime tenure because it is hoped that this correlates positively with impartiality, independency and performance? A final question relates to the size of the public sector and the nature and structure of the Services of General Economic Interest. For example, despite all privatization and alignment trends that have taken place in the last years, the “aligned” Sweden still has one of the biggest public sectors in Europe. On the other hand, “traditional” Germany has one of the smallest public sectors. Thus, the discussions about the “privatization” of the status must be distinguished from discussions about the privatization of the public sector.

So far the Member States have adopted three solutions to these challenges.

*Model 1:* Those Member States who think that public tasks are special still require a specific civil servant status, specific organisational structures and working conditions. Consequently, a specific group of civil servants with a specific public law status and specific working conditions is still needed for most or all public employees.

*Model 2:* Those Member States who think that public tasks are special require a specific ethical behaviour. Therefore, a specific group of civil servants with a specific public law status is still needed for a small group of core public employees (mostly on the central level, for judges etc.). For all other public employees, working conditions are aligned and some features of private sector practices adopted.

*Model 3:* In some countries, a specific status is no longer needed since all job and ethical requirements can also be regulated under labour law contracts. These countries are in a process of abolishing the statutory civil service and aligning the working conditions of the different groups of public employees or even between public- and private sector

employees. However, specific rules are provided for specific categories of employees such as judges and police.

In 2012, in the Netherlands, a discussion was held on a law proposal which provided that “large groups of civil servants will no longer be appointed based on administrative law, but will have a labour contract under private law”. The bill excludes a number of categories from this operation, such as judges, military personnel, and elected politicians (legislative and executive). A new amendment by the drafters of the bill excludes also the police and the public prosecuting service. In all, 25% of civil servants are excluded. Thus the harmonization does not apply to a sizeable minority”<sup>143</sup>.

The latter is interesting as such since it illustrates that almost all Member States (and even the very reform-oriented countries) still shy away from a total “privatisation” of the civil service. Also in the Netherlands, the Council of State was not convinced of the necessity of amending the Civil service Act because it failed to appreciate the particular position of the government and the distinct relationship between employees and employers in the public sector. The main argument the proponents of normalisation was that most of the work that was carried out by civil servants did not differ much from work that was carried out in the private sector. Another argument that is often used in favour of normalization, is that it is outdated because the civil service status is perceived as an unduly dignitary status, a privileged legal position that is no longer appropriate for civil servants in present-day democratised societal relations. “Low public appreciation and a suboptimal image could be countered by means of normalization this status”<sup>144</sup>. As regards the latter van der Meer wonders about this argument as “there are no studies that have found that changes in the legal position of civil servants have had any effect on the image of civil servants in society in any country”<sup>145</sup>.

In general, supporters and opponents of eliminating the differences between public and private employees make a number of predictions about the beneficial or negative effects for the performance and stability of public sector employment. Mostly, critics of alignment and privatisation policies argue that a total privatisation would lead to a decline in loyalty to the organisation, increase the danger of conflicts of interests and provoke political instability, etc. Instead, partisans of privatisation and alignment may argue that a too strong separation of the public and private sector would contradict new developments in almost all modern societies which require new models of governance. Furthermore, civil service reforms will also free civil servants and managers from ineffective and inefficient bureaucratic restraints, increase their authority and flexibility, improve performance by individuals and organisations and give employees more control of and responsibility for work. In addition, the alignment of working conditions between the public and private sector, the possibility of dismissing employees

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143 Frits van der Meer/Caspar van den Berg, Working Conditions and Industrial Relations in the Central Public Administration: Conducting In-depth Case Studies in Different Countries, Case Study the Netherlands, Study for the European Foundation for the Improvement of Living and Working Conditions, Dublin 2012 (not yet published).

144 Ibid.

145 Ibid.

(other than for disciplinary reasons), the introduction of performance contracts and the individualisation of pay would lead to higher performance levels, as employees would be more motivated due to the fear of losing their jobs as a result of poor performance (in extreme cases).

Sweden is one of the most promising and interesting examples. Over the past two decades, Sweden has undergone major structural and institutional changes, which explain its relatively good post-crisis performance. Both fiscal and monetary policy since the mid-1990s have become more restrictive, leading to a historically low rate of inflation, significant improvements in public finances and declining public debt. Still, there is no evidence that working conditions have been weakened. Moreover, the public sector is considered to be performing well and corruption rates are low (although increasing). The Swedish case also shows that alignment does not necessarily result in more insecurity for employees and will not increase political pressure on them.

Could Sweden be a best-practice model? Certainly it is in many ways. However, we remain cautious as it is difficult to imagine that the Swedish strong tradition of social dialogue can easily be “exported” to other countries. The same is true for its (highly decentralized) administrative model, its (still) high trust culture and the high degree of social cohesion. Still, despite a wave of privatizations and liberalization of a large part of the service sector during the 1990s, Sweden’s public sector remains large, by international standards, reflecting strong public and political involvement in the provision of a wide range of services.

On the other hand, the above mentioned trends shows that, yet, it is important to find responses to the complex effects of all reforms within the last decades and the recent impact of the financial crisis. New questions and (social) challenges arise in times of growing inequalities and the emergence of new forms of employment models in our societies. For example, the pace of change and growing uncertainties about the reform results also generate more discussions on the need to preserve traditional structures, to keep the identity of civil servants and to maintain some specific features that are different to the private sector and other public sectors.

At the end, we close the circle and return to the importance of history in this context: Why should countries like France and Germany abolish the civil service, other than for budgetary reasons? In both countries, the civil service is a two-hundred years old constituent and highly performing part of the system of government.

Still, we also wish to mention an additional “warning”. Especially in times of tough austerity measures, the alignment of working conditions may have an adverse effect on – rather than improve – working conditions, performance and motivation. Also proponents in favour of alignment may view the civil service status as an obstacle to realizing cutbacks in terms of personnel in the civil service. Especially given the current pressure on public expenditure, ‘normalisation’ could be seen as a way to achieve budgetary cutbacks.

**Table 29. Status and working conditions at the central administration level in the 21st century**

Civil service principles and procedures	General developments
Categories with a public law status	Yes, but restricted to a few categories (e.g., judges, police, military), nomination and oath only for these categories, further alignment of working conditions and status with public and private sector
Private law status	Large majority of employees in the public service, further alignment of working conditions and status with private sector
Administrative principles and ethical standards	Classical values (legality, impartiality) remain in place, ongoing trend towards more ethical rules, controls and accountability mechanisms
Trends in public employment	Generally further reduction of employment, need for additional recruitment in certain sectors and in some countries, need for demographic sensitive age management
Job security	Importance of job security recognised, however, relaxation of “lifetime tenure”, dismissals possible also for reasons other than disciplinary
Bureaucratic career and post-bureaucratic systems	No trend towards a “best-practice” model, move away from “pure forms” and more diversity of different systems, overall still trend towards post-bureaucratic models
Principle of hierarchy	Remain important, however also trend towards more communication, participation and new organisational structures
Decentralisation of responsibilities	Still trend towards more decentralisation, growing awareness of the need for more consistency and coherence in standards, working conditions and HR policies, need for more for discussions on accountability in n HR settings
Mobility between the public and private sector	Further enhanced, difficult in some countries because of difficult competitive situation of the public sector, more conflicts of interests
Leadership	Due to ongoing trends towards decentralisation of responsibilities and the changing nature of work leadership will further increase in importance. However, growing gap between leadership expectations

	and the leadership “reality”
Career development	More focus on individual development plans, competency management, lifelong learning, management of older employees more important, promotion policies remain a challenge
International mobility	Ongoing challenges as regards technical (coordination of pensions and tax issues), low cross-border mobility, legitimacy of Article 45 (4) TFEU questioned by societal trends (multinational citizenship, EU citizenship etc.)
Anti-discrimination and diversity	Ongoing importance, greater focus on new areas (age discrimination)
Recruitment procedures, selection of top officials	Further opening up of public sector, need for further reform: move away from recruitment to entry level as principle, more flexible recruitment (also at mid-career)
Pay according to performance	Ongoing popularity of PRP despite criticism, more differentiation and decentralisation in pay, dilemma between theory and austerity measures, further reduction of pay in some countries, reduction of allowances
Performance management and personnel appraisal	Increasing challenges, greater focus on communication and trust, need for better leadership in this policy area, ongoing PM bureaucracy
Working conditions	Enhanced pressure on in some countries due to austerity measures, need to combine private with professional working life, in some countries deterioration of working conditions; need to improve attractiveness in some countries
Working time	Flexible working times, in some countries increase of weekly working time
Social dialogue and distribution of competence in HRM	Further decentralisation and fragmentation, local differentiation, informal SD at EU level
HRM and role of Personnel Department	New trend towards more centralisation of HRM Department in some countries, need for more coherence in HR management
Training	Ongoing trend towards more investments, lifelong learning, more focus on training for older officials, reduction of training due to austerity measures in some countries

Specific pension system	Further alignment with private sector, increase of retirement age, early retirement more difficult, calculation not on basis of last salary, more old age poverty
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In the end, it is not so much about the question whether the Member States should maintain a public law status or not, whether they should have a specific civil service or not or whether they should have a core or broader definition of civil service. It is more important to have rules, working conditions and ethics-/trust mechanisms in place so as allow the Member States to have efficient, effective, impartial and democratic public administration. The latter can be achieved by labour or public law mechanisms. The status question is still linked to national tradition and national structures.

Thus, nothing suggests to be against aligning public sector employment practices to those which are applicable in the private sector et vice versa. Still, we wish to mention that many current developments in the private sector (for example in the field of applying the merit principle, (un-)fairness issues, the link between pay and performance) contradict the objectives of the state as employer: Government needs employment systems that guarantee observation of the fundamental values, administrative law principles and ensure a focus on effectiveness, efficiency and accountability. They must ensure equal treatment and fairness while ensuring the merit principle and the equality of chances. They must be attractive and competitive with respect to the private sector policies while managing tax payers money as prudently as possible. To sum up: At present, Government employment systems are corresponding better to “Rawls” definition of “justice” than current trends in the private sector which produce many forms of injustice and perverse developments in the rewarding of individual performance. Government should not become like a private company. Money cannot buy everything.

## **ANNEX 1: THE DEFINITION OF CENTRAL PUBLIC ADMINISTRATION REFORMS AND THEIR IMPACT ON THE STATUS**

Until today, central public administration (CPA) – just like the wording “status” - has no generally accepted definition because the scope of the term is so great, complex and so debatable that it is easier to explain than define. First, because of the difficulties involved in defining public administration. Second, because of the complexities in defining the term central and third, because of the unclear notion “public”.

The definition of Public Administration developed in the early 1900s (mostly by Lorenz von Stein and later on by Woodrow Wilson) and emphasizes the structure and operation of public bureaucracies and public organizations, including budgeting, personnel, and formal and informal internal controls. Originally (and mostly influenced by Prussian scholars) public administration was considered a form of administrative law.

In the United States of America, Woodrow Wilson wrote in “The study of Public Administration” (1887) that "it is the object of administrative study to discover, first, what government can properly and successfully do, and, secondly, how it can do these proper things with the utmost possible efficiency and at the least possible cost either of money or of energy." In modern terms, one could say that, for Wilson, public administration was a form of public management.

Since then, scholars have long been trying to offer a clear definition, but yet after more than 100 years, it still in vain.

One challenge is its multidiscipline characteristics in the different Member States that make it difficult to come to a common definition.

This difficulty to define (central) public administration even increases in times of blurring of boundaries between the public and private sector, the emergence of public-private partnerships, outsourcing policies, mixed private-public forms of service delivery and agencification. As regards the latter Verhoest et al. note that “systems of public administrations all over the world have been disaggregated into a multitude of different kinds of semi-autonomous organizations, denoted as agencies”<sup>146</sup>. It would require a huge academic endeavour alone to answer whether the multitude of existing agencies in one country (for example in Germany) belong to central public administration or not. In Sweden, things are different because of the independent character of many agencies but answers are also far from simple. Thus, defining central public administration is rather becoming more difficult than easier.

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146 Koen Verhoest et al, Government Agencies, op cit, p. 3.



Moreover, central public administration is also a field of academic study and academic dispute (between those who prefer the term public administration and those who prefer public management) but also a state task and a professional occupation.

Finally, it is fair to say that central public administration is everywhere, as it overlaps with the implementation of policies; the production of public services in the whole country; the interactions of the different judicial and police branches. Today, globalisation requires certain centralisation effects and action on behalf of central administration by which the purposes and goals of government are realized. For example, in the field of risk and civil protection.

### **The relationship between state structure and definition of central public administration**

Our study deals with political and administrative systems that are either federal, decentralized unitarian or centralized systems. These differences determine the definition of CPA. Differences can be illustrated by taking two different cases and compare the competence of the central government in the field of HR matters for public employees. For example, Luxembourg is a unitary state with two layers of government, (1) the most dominant central government and (2) the municipalities or communes. The state is characterized by a very centralized administrative structure in the sense that all legislative powers are concentrated at central level. The centralized administrative structure is also underlined by the fact that the management (recruitment, training, promotion, remuneration etc.) of all the Luxembourgish public employees (civil servants, state employees, state workers) is under the responsibility of the Ministry of Civil Service and of Administrative Reform. As State employer, this ministry negotiates for instance all questions related to remuneration for all the public employees in the whole public sector with the trade unions.

On the other hand, Germany is a federal state with three or even four layers of government: The federal level, the Länder level, the Regierungsbezirke (county administrations) and the local municipalities. The state is characterized by a very decentralized administrative structure in the sense that legislative and administrative powers are concentrated at central level and regional level (and also important independent executive functions at local level) . The federal level has almost no direct implementation and enforcement powers at regional and local level. The federal and decentralized administrative structure is also underlined by the fact that the management (recruitment, training, promotion, remuneration etc.) of all German public employees (civil servants and state employees) is under the responsibility of different public authorities on the different governmental levels. Slightly more centralised is the Social Dialogue: As State employer, this minister of the interior negotiates the remuneration for all the public employees on the federal level (and local level) sector with the trade unions

### **Definition in the legal “status” employment context**

Almost all EU countries still employ civil servants under a public law status. If a global comparison is to be made of the respective forms of public-status and private-contract posts, there is a clear overall tendency for private contracts to be given much greater scope at the

local authority level than at the central state level. In several countries, this special status covers a large proportion of central government employees.

However, whereas in the past, most of the central administration employees had a public law status of civil servants, today we can speak of a “hollowing out” of the public law status, both as regards numbers and as regards the status and the substance of employment (e.g. differences between civil service and public employee employment are becoming less distinct). Today, because of the decreasing numbers of civil servants in compared to other public employees, it makes less sense to refer to the central public administration as an employer of civil servants. In fact, central public employment is becoming more complex and fluid and distinctions between private sector employment and central public administration employment are slowly disappearing.

These developments show that the legal or institutional status of public employment is not, in itself, the determining factor for an activity that belongs only to central public administration.

### **The linguistic problem: the term central public administration as synonym or not for civil service and state administration**

The term ‘central public administration’ refers to what is defined as the civil service in Ireland and in the Netherlands but not in Finland, Germany and Luxembourg. Central administration can be used as a synonym for the civil service in Ireland and in the Netherlands but not in Germany, Luxembourg and Finland where also public employees not belonging to the civil service work for the central administration.

**Case Finland and Germany.** The Finnish public administration consists of (1) state administration and (2) municipal administration while the German public administration consists of (1) federal, (2) regional and (3) local administration. In Finland the State administration - ministries and agencies - operates on central, regional and local level. Therefore, the Finnish focus in the study is on the state central administration = central public administration. In Germany the State administration – federal and Länder ministries, courts, public authorities – operate mostly either only on central, regional and local level (clear distinction). The German focus is only partly on the state administration = central and regional and local administration

### **Distinction between central public administration, public service and public sector**

Central public administration covers government departments (ministries) and agencies which operate at national, regional and local levels and which have implementation and enforcement functions either only on behalf of the central/federal level (DE) or also on the regional and local level.

The public service comprises the civil service (incl. civil servants and public employees), state agencies, the education and health sectors, local government, police service, the judicial

service and the defence forces. It seems that the term 'public service' is to be more broadly understood in the UK than in Germany. Whereas in the UK it also encompasses voluntary and honorary services for the public, this is not the case in Germany.

When referring to the public sector, in addition to all of the above, commercial state bodies (e.g. the forestry service, the electricity and gas companies and the national transport company) are included.

### **Existence of central administration on the regional and local level**

Central administration exist on the regional and local level in many countries, but not in all countries (for example almost not in Germany except in few cases)

### **Different sectors belonging to central administration**

Central public administration can also be defined in functional terms.

**The Dutch case.** Dutch public employment is divided according to different governmental sectors. The most relevant groups comprise public administration personnel (central, provincial and local governments, defence, judiciary, police, and waterboards), academic hospitals and education.

With the exception of law and order units (including the police that is now being centralized, the administrative units within the court system (with the exception of the Judiciary) and, prison services) Public works and internal revenue agency most implementation offices of central government have been decentralized to local governments. Some are transformed into independent agencies or to a much lesser degree privatized or reformed into private law foundations.

Ministries thus, with these exceptions mainly comprise policy making, inspection and management function support units. All these staff members currently work under the same public law statute with the exception of some of the zelfstandige bestuursorganen (zbo) or Independent Public Board and the military.

Other countries are not divided into sectors like in the Dutch case. Also the independent situation of the water boards is unique in Europe. In most of the countries, the judiciary and the police belong to central administration.

### **Central Public administration and NACE definition**

According to NACE the term public administration includes activities of a governmental nature, normally carried out by the public administration. This includes the enactment and judicial interpretation of laws and their pursuant regulation, as well as the administration of programmes based on them, legislative activities, taxation, national defence, public order and

safety, immigration services, foreign affairs and the administration of government programmes.

*The legal or institutional status is not, in itself, the determining factor for an activity to belong in this section, rather than the activity being of a nature.*

This means that activities classified elsewhere in NACE do not fall under this section, even if carried out by public entities. For example, administration of the school system falls under this section, but teaching itself does not (section P), and a prison or military hospital is classified to health (section Q).

### **The definition of central public administration – where to go from here?**

Our deliberations clearly indicate that central public administration mean different things in the Member States. Thus, there is a lack of a common meaning. Therefore, we can only offer a broad definition: central administration deals with government (and parts of the civil service) and dependent governmental agencies at central or deconcentrated governmental level. The term does not include non-government parties, independent agencies, sectors that do not belong directly to government administration (such as the police and the judiciary). Central public administration includes parts of the civil service but not of the public sector (such as services of general economic interest).

In most of the countries, the central public administration is preoccupied with the design of governmental policies, decision-making, the adoption of governmental policies but only partly with the implementation of public policies, the management of public programs and the translation of politics into the reality that citizens see every day. Thus, it is part of the core of government.

Our deliberations have also shown that the definition of CPA is not only difficult but, as it seems, it becomes even more complex and difficult.

Despite all limitations and complexities involved in defining CPA, we therefore propose a rather simplistic and restrictive definition. Following this, CPA deals exclusively with the core governmental level and includes ministries and agencies on the central/federal and deconcentrated state level (the latter only as they are subordinated to governmental powers and the implementation of governmental policies). Public Administration includes activities of a governmental nature, **normally** carried out by the public administration.

We agree with the NACE definition that this includes the enactment and judicial interpretation of laws and their pursuant regulation, as well as the administration of programmes based on them, legislative activities, taxation, national defence, public order and safety, immigration services, foreign affairs and the administration of government programmes. However, in all of these cases (even in the case of foreign affairs in Germany) CPA shares some of these tasks with other bodies, institutions or governmental levels. In the

future, the definition of CPA should be based on functional terms rather than on legal definitions as the legal or institutional status is not, in itself anymore anymore the determining factor for an activity to belong to CPA.

## ANNEX 2: QUESTIONNAIRE ON STATUS DEVELOPMENTS IN THE NATIONAL PUBLIC SERVICES

Please find a short questionnaire concerning the status developments in the national public services focusing on central public administration. Please mark your options and write comments in this e-document. Please reply by filling out this questionnaire and sending it to Mr. Christoph Demmke at [c.demmke@eipa.eu](mailto:c.demmke@eipa.eu) and Mr. Timo Moilanen by e-mail at [t.moilanen@eipa.eu](mailto:t.moilanen@eipa.eu) **by the 1st of March 2012 at the latest.**

A discussion about the topic and the findings will take place in the second Human Resource Working Group meeting in Copenhagen.

Thank you in advance for your cooperation and valuable comments.

Contact information:

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**1.1 Name of the Member State:**

**1.2 Name and title of the respondent:**

**1.3 Respondent's organisation:**

**1.4 Respondent's email and telephone information:**

**2.1 Generally speaking, what is the trend in public employment currently in the national public service in your country on central level?**

Increase in public  
employment



Decrease in public  
employment

Comments (e.g. increase/decrease in some parts/sectors):

**2.2 Do you employ different categories of staff in your public service such as employees with a public law status, employees with a labour law status, other categories of staff? Please write the names of the categories below and their respective sizes.**

Name	% of central/federal public service
Category 1: Public law status	
Category 2 (if exists): Labour law status	

Other categories, please describe

Category 3 (if exists):

Category 4 (if exists):

Category 5 (if exists):

Category 6 (if exists):

Total: 100%

Comments/remarks:

### 2.3 What are the main reasons for using the different categories of staff mentioned above?

### 2.4 Does civil service employment differ from public employment as regards following issues?

	Very much	Some-what	Fairly little	Not at all	Cannot say
a) pension systems .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) job security .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) pay systems .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) holiday arrangements .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) working time arrangements .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) career development procedures .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) health insurance .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) right to strike .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) recruitment procedures .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j) ethical obligations .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k) other, what (comment below) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

### 3.1 How is the relationship amongst the different groups of public employees developing? Is there a trend towards

	Increase in employment		Decrease in employment		
	←—————→				
a) increase in public law employees (civil servants) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) increase in employees with labour law contracts (labour law employees) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) increase in other employees with atypical forms of employment (flexible contracts, limited contracts, short-term contracts) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

**3.2 Are employment contracts with lifetime tenure the general form of employment relationship in the central public service? (Dismissal possible only in exceptional cases such as disciplinary action)**

Yes ←————→ No  
           

Comments:

**3.3. Are employment contracts with indefinite duration the general form of employment relationship in the central public service? (Dismissal possible in a few cases, for example when the department ceases to exist)**

Yes ←————→ No  
           

Comments:

**3.4 Is there a trend towards the employment of more fixed-term employees with short-term contracts in the public sector?**

Yes ←————→ No  
           

Comments:

**3.5 If fixed-term employment contracts are a feature of employment in certain sectors, then:**

**a) in which sectors and functions do you employ mostly civil servants with indefinite contracts (for example, ministries, agencies, education sector, university sector etc.)?**

Comments:

**b) in which sectors and functions do you employ mostly public employees with fixed-term contracts?**

Comments:

**4.1 Does your national constitution/civil service system provide for legal provisions that reserve certain functions only to civil servants?**

Comments:

**4.2 Is it possible to recruit employees with a different status/employment contract in the same profession/job/function/position?**

Comments:



#### 4.3 What are the usual reasons if labour law employees or flexible-term employees are used as substitutes for civil servants?

	Cannot		
	Yes	No	say
a) for cost-saving measures .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) because of shortages in civil service employment and recruitment .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) need to replace more part-time employees with temporary workers .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) because labour law employees perform their tasks in the same way as civil servants .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) others (describe below) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

#### 4.4 What are the general trends?

	Very much	Some- what	Fairly little	Not at all	Cannot say
a) the standard employment model (full-time employment, contracts of indefinite duration) is in decline .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) trend towards employment of more employees with flexible labour law contracts .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) no significant changes .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

#### 4.5 What are the main reasons, both for employers and employees, for the use of fixed-term employment contracts in the central public service?

	Cannot		
	Yes	No	say
a) need to complete a specific and limited task .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) need for substituting civil servants who are temporarily absent .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) need for compensation in the case of temporary increase in work volume .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) performance of seasonal work .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) need for compensation of temporary and specific needs of an organisation etc. ....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) need for more flexible employment in order to save resources .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) consequence of budgetary constraints/austerity measures .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

#### 4.6 Will there be more need for flexible term employment in the future?

Very much  Somewhat  Fairly little  Not at all  Cannot say

Comments:

#### 4.7 Will the economic crisis and the subsequent need for stabilising national economies be an extra impetus to abolishing employment as civil servants?

Very much  Somewhat  Fairy little  Not at all  Cannot say

Comments:

**4.8 If Yes, could you give an example of how measures have been - or are planned to be - taken?**

Comments:

**4.9 Was there something important left out in this paper? Please give your additional comments.**

**Thank you!**