

**STUDY**

**FOR THE DIRECTORS-GENERAL OF THE PUBLIC  
SERVICES OF THE MEMBER STATES OF THE EUROPEAN  
UNION**

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**“WHO IS A CIVIL SERVANT AND WHO IS  
NOT – AND WHY?”**

Draft – Not Language checked  
Comments are welcome

**In cooperation with the Irish and Dutch Presidency  
of the European Union**

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# 1. Introduction

If so many things are changing in the national civil services and civil service structures, what will happen to the people, to the civil servants? If organizational structures are reformed, budgets reduced, a growing number of (top-) officials nominated on time, pay- and pension systems changed, alignment trends introduced, how will this affect the status of the civil servant? Is there a common strategy in the Member States of the EU for defining the (future) status of a civil servant? Or is the civil servant a “dying species”?

The question “who is a civil servant?” is indeed a fairly basic question. Yet, it is an important one. Especially during this year, many administrations were asking for information and data on the status of civil servants in the Member States of the EU. Unfortunately, this information was not available – especially not for all of the 25 Member States.

Indeed, it is not easy to get a complete picture about the status of civil servants. Also this study can not give a final answer. As this survey will show, it is not easy to get a complete overview about the number and the status of the different categories of staff on the national, regional and local level. Nor is it always possible to compare the legal situation and the contractual status of the 30 – 40 million or so public employees in Europe.

Also, many Member States struggle to get a clear picture about the structure and size of their own administration. Especially in some of the new Member States, the situation is changing and – almost on a daily basis.

However, more national experts also want to know and try to understand the structure of the civil services in other countries. Often, this is not an easy task. In order to help, the Irish Presidency has published in May 2004 a documentation on “Information on the structure of the Civil and Public Services of the EU Member and Applicant States”. In the future, it may also be possible to find more information on the new EUPAN webpage.

The question “Who is a civil servant?” is indeed much more complex than I thought when I started with this work. Today, the 25 Member states of the European Union apply related - by also different - definitions for the national public services. One reason for this is that the Member States have very different legal systems, administrative structures and traditions. In addition, in many Member States, the legal status of the civil servants is also determined by the national Constitution. Finally, some Member States (for example the French system) have very old and established civil service systems, some of the new Member States are still in a process of building a new civil service.

Comparisons are also delicate. For example the definition as regards “total active population” may contain different national definitions.

I am aware that this study may contain some faults, a number of imprecise statements and some superficial judgments. Especially the tables in the study are – by nature – to be interpreted very cautiously.

Ideally, I should have mentioned all exceptions and derogations and explained them in footnotes. Most Member States have mentioned *en masse* specific conditions, situations or legal provisions in their replies to the questionnaire. However, working on a comparative study for 25 countries and within a very limited period of time (over the summer 2004) has its price.

This short study is based on the answers given to the questionnaire (attached to this study) by 25 Member States of the EU. I want to emphasise that the answers received from some of the Member States understandably concentrated on some issues and questions to the detriment of others. In addition, the reports received by EIPA varied considerably in length. This study takes this fact into account, but at the same time considers all answers in a balanced way. On the other hand, our aim was to keep the survey as short and precise as possible. As a result, some national responses may be quoted or referred to more briefly, explicitly or in greater depth than others. I apologise in advance if some Member States consider that their answers have not received sufficient consideration.

Finally, despite all these limitations, I am sure that the presented data are very useful. I sincerely hope that this study will serve to generate a productive debate within the HRM-group and foster mutual learning for all national experts interested in this topic.

Christoph Demmke

## 2. Why do we need civil servants? Should they be different to other employees?

For a long time, Public administrative jobs ranged from the exploration of outer space to sweeping the streets. Some public administrators were highly educated professionals, who were at the forefront of their fields of specialization; other possessed few skills that differentiate them from the mass of the citizenry. Some public administrators made policies that had a nationwide impact and from which millions of people benefited; others had virtually no responsibility for policy making. Public administrators were working as doctors, lawyers, scientists, engineers, accountants, budgeters, policy analysts, personnel officers, managers, clerks, post officials, train conductors, manual laborers<sup>1</sup>. One development seems to be clear: competences and qualifications are continuously changing. Whereas train conductors, post officials and doctors are (mostly) not officials anymore, computer specialists are badly needed nowadays.

But knowing what public administrators did for a long time does apparently not resolve the problem of defining who they are and whether these categories should be treated differently than other employees and if so, why?

Traditionally, in most Member States five arguments were/are used why a special status for public employees is/was needed.

1. **First argument:** All Member States agree that work in the public service is specific and - by nature - different from work in the private sector.

For example, all Member State believe that jobs in the civil service are “special” because civil servants:

- Are given considerable power and responsibilities
- Set standards for the different countries and their citizens
- Have a responsibility to provide leadership
- May intervene directly into the basic rights of the citizens (e.g. Police).
- Are financed and paid from the public in order to carry out work for the public<sup>2</sup>.

Thus, Civil Servants bear special responsibilities. They exercise public powers on behalf of the country. They spend public money for important governmental projects. They raise taxes. They hunt down criminals. They protect the people. They take decisions which have an impact on the fundamental rights of the citizens. They decide on health and on risk protection. For all these important tasks, it is important that the public servants exercise their role properly, and act lawfully, honestly and loyally without acquiring personal any personal advantage. The level of power or responsibility awarded to public officials can be seen as to necessitate the

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<sup>1</sup> David Rosenbloom/Robert Kravchuk, Public Administration, fifth Edition, New York, 2002, p. 4.

<sup>2</sup> 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.

imposition of some specific duties, rights and obligations for carrying out that role properly. Thus, most Member States agree that public officials should be distinct as to those working in the private sector.

This perception is valid since the beginning of the twentieth century when the European States started to develop specific civil service systems with specific ethical standards. In the beginning, almost all European States were convinced that civil service career systems with hierarchical organisational structures and a maximum of security and rigidity guaranteed a maximum of stability and efficiency. The development of specific civil services structures was also the consequence of the theory that working conditions and individual behaviour are influenced by work organisation and the organisational structure.

2. **Second argument:** Specific tasks require specific working conditions and a specific (legal) status. Especially, those employees who are directly participating in the exercise of powers conferred by public law, 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 public law status. Following this argument, it is important to clearly define those categories and posts which are falling within these categories. Employees of the ministries, agencies, judges, police officials, teachers, professors, fireworkers etc.?
3. **Third argument:** Public tasks are by their nature different to private nature. For example, the exercise of public tasks require a high degree of impartiality, loyalty and neutrality. Especially, the experience in many former communist countries shows that the public service can be used as an instrument for the political elite. In order to avoid this, a public law status and clear ethical obligations are needed for all public employees. A private labor law status should be the exception.
4. **Fourth argument:** Specific working conditions, e.g. specific ethical requirements, specific recruitment procedures, oath, career paths, life-time tenure, specific pension systems, limited right to strike are needed for a specific category of public employees in order to reduce as much as possible the danger of too much political influence, corruption, misconduct, private interests and instability of the government. Specific working conditions and/or a public law status have the benefit of protecting civil servants from arbitrary or politically based actions and guarantee that the civil servant is loyal and not depend on a particular interest or a political party. "Civil servants might even overlook the temptation of short-term personal gain (e.g. in the form of a higher paying job offer) because they knew that their jobs with government were secure..."<sup>3</sup>. "Civil service was also meant to protect existing public employees from shifts in political administration, and to ensure that such personnel actions as promotions, pay rises and layoffs were executed based

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<sup>3</sup> Walters, J., Life after Civil Service Reform: The Texas, Georgia, and Florida Experiences, IBM Endowment for The Business of Government, Human Capital Series, October 2002, p.7

on individual's skills and abilities, and not on "favoritism"<sup>4</sup>. The argument for the life-time tenure is mainly that it allows the public employer to rely on institutional knowledge and continuity of its employees.

5. **Fifth argument:** Many developments such as reforms in the national public service make it more difficult to argue for a specific and unified set of civil service ethics. At the same time, however, it is precisely these developments, e.g. closer contacts between the private and public sector, more direct exchanges with citizens and companies, more mobility between the public and private sector, which provoke discussion about the need for a specific status.

Thus, the present reform trends reveal an enormous paradox in many Member States: on the one hand, Member States find it more difficult to justify why civil servants should be treated differently to other employees; on the other hand, in times of growing media attention and public scrutiny, specific (ethical) requirements for public officials are seen as necessary, and may be even more than ever

Today, many of these traditional arguments for a "special status" are still valid in many Member States. However, they are also more and more criticized within the last years.

1. **First argument:** One may ask who is carrying out public functions, who is safeguarding the general interest, who is carrying out services for the Government? What about doctors, workers in chemical companies, employees of nuclear power stations, farmers, employees in banks? Are all of these categories not carrying out tasks for the general interest?
2. **Second argument:** Despite many changes, people still perceive the centralised and unified public administration to be clearly separate from the private sector. Moreover, the civil 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 administration was shaped in a world that no longer exists. Today, the definition of public services has become much more complex and the separation between the State and the private sector is becoming less and less evident. Should agencies, public-private partnerships, so-called "quangos", outsourced- and decentralised authorities, inspection authorities etc. be added to this definition of "Government" and "Public Service"? Can they be added?
3. **Third argument:** 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. However, in reality, also more and more contractual employees are employed in these countries. Evidence so far suggest that these employees do not perform differently than civil servants. Consequently, today, it becomes more difficult to justify why civil servants should be treated differently at all. Are these employees really in

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<sup>4</sup> ibid

need of specific ethical obligations? Would these groups perform worse or differently if they were “just the same” as anybody else?

4. **Fourth argument:** Today, many Member States are also in a process of changing organisational structures, introducing more mobility, abolishing career structures and seniority principles, and aligning working conditions and working patterns to those existing in the private sector. As regards the civil service status, all of these developments are followed by a “bottom-up process”: generally, more public employees on the local and regional level than on the central level are offered a private law status. As a consequence, the number of public officials with a specific status is becoming less. So far, there is very little evidence that local services have deteriorate because of the changing status.
5. **Fifth argument:** In addition, 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>5</sup>. Hence, no greater value is attached to the public interest than to the private<sup>6</sup>. However, this popular demand challenges not only career systems but also the classical justification for a specific civil servants status and a specific ethics. When the State ceases to be above society and stands beside it, a special relationship between public servants and the State seems superfluous. This also makes professional civil servants ethics dispensable, as all you need is a manager, technician, office worker, lecturer, specialist or secretary who have to respect the same values as everybody else. While it is true that civil servants work with a view to protecting order, life and freedom, they have in this function only assumed a different function from an employee working in a bank or a chemical plant who is fulfilling an equally valuable function in their 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 (in case they are civil servants) should be civil servants with a specific ethics in one country if they perform well in other countries without that civil service status.

Today, more people fail to see any reason why the civil service should be regarded as superior to the service provided by the rest of the working population<sup>7</sup>. For example, Professor Niessen in his famous advice (pre-advies) to the Dutch Government (1982) underlined the fact that not every public authority has a close relationship with the exercise of public power. Also, not every public authority exercises public tasks. Finally, there are a number of private actors who could pretend that they also exercise tasks for the public good. Precisely because of this, in some Member States

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<sup>5</sup> See Christoph Demmke, *Civil Services between Tradition and Reform*, EIPA, Maastricht 2004.

<sup>6</sup> See Demmke, *ibid*.

<sup>7</sup> Demmke, *Civil Services*, *op cit*

inspection tasks, work in the field of risk management or services in nuclear power station are either carried out by public or private employees.

6. **Sixth argument:** For example, in Sweden, people are convinced that specific structural and organizational differences between public and private employment are not important for upholding specific ethical requirements and for carrying out public functions properly. What is more important for establishing a “good civil service” are good working conditions, an appropriate administrative culture, openness, accountability etc. For exp. 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 status questions. But also in Sweden there is one exception: judges have a specific status in order to protect the neutrality and impartiality of this group.
7. **Seventh argument:** Civil Servants are too expensive!

### 3. Towards the Europeanisation of the civil service status ?

More recently, especially in Germany and in France, experts have argued that the impact of the integration process on the national public services is leading to a « banalisation de la fonction publique » or to the slow but continuous abolishment of the civil service status and the alignment with the labour law<sup>8</sup>. These arguments will not be discussed here since our interest in this study is a different one. However, from a first point of view, these views are the more surprising since the EU has no competence to regulate the national public services. Hence, the definition of the status should be – at least in the theory – completely independent from developments on the EU level.

However, despite all “Europeanisation trends”, it is indeed difficult to determine the impact of the integration process on the national civil services and to analyse the boundaries between the EU and the national civil services. What is clear is that there is no trend towards a common European Model of Public Administration. At the same time, it is almost impossible to offer a Europe-wide definition of a “civil servant”. In EU law, there exist two concepts of the meaning of « employee », but not one of the meaning of « civil servant ». One concept of the term « special employee » is the legal interpretation of the ECJ as regards the definition of employees in the sense of Art. 39. 4 EC Treaty. The second concept refers to the various national definitions of the word « employee ».

In the case *Commission vs. Belgium*, the European Court of Justice worked out two criteria and made an exception of free movement only for those posts in the civil service which involve direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interest of the State or of other public authorities.

It is obvious that both criteria (the exercise of powers conferred by public law, and the responsibility for safeguarding the general interest of the State or other public bodies) taken together (meaning "and" instead of "or"<sup>9</sup>) determine whether posts fall within the scope of 39.4 EC.

According to the European Court of Justice the exception laid down in paragraph 4 has to be interpreted "very strictly".<sup>10</sup>

By case law, the following jobs do not fall within the scope of the public-service exception: postal services: workers<sup>11</sup>; railways: shunters, loaders, drivers, plate-layers, signalmen, office cleaners, painter's assistants, assistant furnishers, battery services,

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<sup>8</sup> Jean-Michel Lemoyne de Forges, *Exigences communautaire et exigences managériales se rejoignent-elles?* In: AJDA, 27 October 2003; Marcel Pochard, *Les implications de la libre circulation: plus qu'une banalisation, la normalisation de la fonction publique*, in: AJDA, 27 October 2003; Jörn Axel Kämmerer, *Deutsches Berufsbeamtentum und Europäisches Gemeinschaftsrecht*, in: *Die Verwaltung*, No. 3/2004, pp. 353.

<sup>9</sup> This is our interpretation of the case law of the ECJ and the word “and”. We have seen no case yet where the ECJ has used the word “or”. See for example Case 307/84 *Commission vs. France*, paragraph 12; Case 66/85 paragraph 27.

<sup>10</sup> Case 66/85 *Lawrie-Blum vs. Land Baden-Wuerttemberg*,

<sup>11</sup> Case 152/73 *Sotgiu*, paragraph 4

coil winders, armature services, night-watchmen, cleaners, canteen staff, workshop hands<sup>12</sup>; municipal councils: joiners, gardeners, hospital nurses, children's nurses, electricians, plumbers<sup>13</sup>; state hospitals: male and female nurses<sup>14</sup>; state education: trainee teachers<sup>15</sup>, secondary school teachers<sup>16</sup>, foreign language assistants in universities;<sup>17</sup> civil research: researchers.<sup>18</sup>

The Commission decided in 1988 to implement a "strategy" for the elimination of restrictions on grounds of nationality on the basis of Communication 88/C72/02: Freedom of movement of workers and access to employment in the public service of the Member States.<sup>19</sup>

The Commission considered that the derogation of Article 39.4 EC covered specific functions of the State and similar bodies in the following categories: the armed forces, the police and other law enforcement bodies, the judiciary, the tax authorities, and the diplomatic corps. Furthermore, the public service exception covers jobs in State ministries, regional authorities, local authorities, central banks, and other public bodies where the duties of the post in question involve the exercise of state authority such as the preparation of legal acts, their implementation and the monitoring of their application and the supervision of subordinate bodies. The position of the Commission as regards the interpretation of Art. 39 4 EC has developed since 1988, and today the interpretation is certainly stricter and more precise than it was then.

### Public service employment within the scope of article 39.4 EC

European Court of Justice	Jobs which involve: a). the exercise of powers conferred by public law, and b). responsibility for safeguarding the general interests of the State or other public bodies
European Commission	Armed forces Police and other law enforcement bodies Judiciary Tax authorities Diplomatic corps Jobs in the State ministries (restricted) Regional authorities (very restricted) Local authorities (very restricted) Central banks (very restricted) Other public bodies where the duties of the

<sup>12</sup> Case 149/79 Commission vs. Belgium

<sup>13</sup> *ibid*

<sup>14</sup> Case 307/84 Commission vs. France

<sup>15</sup> Case 66/85 Lawrie-Blum

<sup>16</sup> Case 4/91 Bleis

<sup>17</sup> Case 33/88 Allue vs Coonan

<sup>18</sup> Case 225/85 Commission vs. Italy

<sup>19</sup> Communication 88/C72/02 Freedom of movement of workers and access to employment in the public service of the Member States . Commission action in respect of the application of article 39.4 of the EC Treaty OJ 1988 C72/2

In the Communication on “Free Movement of Workers – achieving the full benefits and potential”, the European Commission has also made clear that not all jobs in State ministries, regional authorities, local authorities and in the central banks fall within the scope of Art.39.4<sup>20</sup>. For example, all technical, administrative or secretarial jobs would fall outside the scope of Art. 39 4 EC. In addition, it is important to note that not all posts that involve the exercise of public authority and responsibility for safeguarding the general interest shall be restricted to nationals. For example, “the post of an official who helps prepare decisions on granting planning permission should not be restricted to nationals of the host Member State”<sup>21</sup>.

The legal interpretation of the ECJ has certainly helped to define the word “employee” as regards the legal interpretation of Art. 39 4 EC Treaty. On the other hand, this interpretation also forced Member States to define the term “civil servant” under national law in accordance with the meaning of Art. 39 4 EC Treaty.

However, the ultimate legal interpretation of the definition of “employee and civil servant” is still up to the Member States' interpretation and – consequently – different definitions of civil servants have developed from west to east and from north to south in Europe. Even more, it seems, the crisis of the public sector and the various reforms of the national civil service have led to a growing fragmentation and diversity of the definition of "civil servant". Also, whereas most European legal instruments allow the Member States to apply their own definitions some Directives that have an impact on the national public services apply different concepts of the term employee. Consequently and because of all this, it is also becoming more difficult to define and to justify a specific status for civil servants on the national level.

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<sup>20</sup> European Commission, Communication from the Commission, COM (2002) 694 final, 11.12.2002

<sup>21</sup> Communication, op.cit, p. 19.

## The definition of the terms "employee" and "civil servant" in EU Directives<sup>22</sup>

<b>Directive</b>	<b>2001/23/EC<sup>23</sup></b> (transfer of undertakings)	<b>93/104/EC, amended by 2000/34/EC<sup>24</sup></b> (working time)	<b>1999/70/EC</b> (fixed-term work)	<b>76/207/EC, amended by 2002/73/EC<sup>25</sup></b> (equal treatment)	<b>89/48/EC<sup>26</sup></b> (recognition of diplomas)
<b>applicable to the public service</b>	(+)	(+)	no details, according to the Commission (+) <sup>27</sup>	(+)	(+)

<sup>22</sup> Derogations provided for in Dir 93/104 as amended by Dir 2000/34:

Art. 17: derogations possible for offshore-workers, security guards, caretakers, hospital and prison personnel, including doctors in training (for whom further derogations within a transitional period apply), dock and airport workers, media productions, postal and telecommunication services, ambulance, fire brigade, civil protection, gas/water/energy suppliers, household waste collection, incineration plants, industrial fields where the work process due to technical reasons cannot be interrupted, research and development activities, agriculture, urban public transport, in case of occasional, unexpected workload especially in the fields of agriculture, tourism, postal services, generally under unexpected exceptional circumstances or under collective working agreements, for shift-workers and cleaning staff

Art. 17 a: some provisions do not apply for "mobile workers", defined as members of the travelling or flying personnel of public transport or transport of goods

Art. 17 b: some provisions do not apply for workers on board of sea-going fishing vessels (even though they would already be covered by the general exemption for seafarers)

<sup>23</sup> *Wendelboe*, C-19/83 + *Danmols Inventar*, C-105/84 + *Collino/Chiappero*, C-343/98 + EFTA Court judgement E-3/2001

<sup>24</sup> e.g.. *Simap*, C-303/98 + *Jaeger*, C-151/02

<sup>25</sup> e.g. *Gerster*, C-1/95 + *Kreil*, C-185/98

<sup>26</sup> e.g. *Burbaud*, C-285/01 + *Fernández de Bobadilla*, C-234/97

<sup>27</sup> see Commissioner Diamantopoulou on behalf of the Commission replying to question E-1505/02 of Stavros Xarchakos and E-1495/02 of Konstantinos Hatzidakis of 29.05.2002, OJ Nr. C 277 E of 14.11.2002, S. 0216, 0220f

<b>definition of worker</b>	national	= every person employed by an employer, including trainees and apprentices but excluding domestic servants (Dir 89/391/EC)	no definition; “... as regards terms not specifically defined. ... Member States are allowed to define them in conformity with national law or practice as is the case for other Directives on social matters using similar terms, provided that the definitions in question respect the content of the framework agreement”	no explicit definition, but general definition of the ECJ applies: “a person who performs services of some economic value for and under the direction of another person in return for which he receives remuneration” <sup>28</sup>	no use of the term worker, instead “regulated profession” = defined as having a Community meaning and without regard to the qualification of the profession as one of the civil service
<b>applicable to civil servants</b>	(-)	(+)	unclear	(+)	(+)

<sup>28</sup> see e.g. *Lawrie-Blum*, C-66/85

<p><b>excluded groups workers</b></p>	<p><b>of</b></p> <p>everybody who according to the national definition is not a worker (e.g. in D Germany <u>all</u> civil servants)</p>	<p>seafarers acc. to the definition of Dir 99/63/EC  + extensive catalogue of derogations (see annex p. 3)  + according to the reference Dir 89/391: certain specific activities in the public service (e.g. police, army, civil protection)</p>	<p>unclear as to how far civil servants might be ex- or included</p>	<p>(-)  (the principle of equal treatment knows no exemption for certain groups, exemptions only possible for other public reasons, where the job depends on a specific gender or to promote female employment<sup>29</sup>)</p>	<p>civil servants that fall under the exemption of Art. 39 (4) TEC or individual posts that are justified according to the criteria laid down in <i>Gebhard</i>, <u>C-55/94</u></p> <ol style="list-style-type: none"> <li>1. non-discrimination</li> <li>2. obligatory reasons in the public interest</li> <li>3. aptitude</li> <li>4. necessity/proportionality</li> </ol>
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<sup>29</sup> *Sirdar*, C-273/97 + *Lommers*, C-476/99

	<b>Dir 96/34/ECG</b> <sup>30</sup> (parental leave)	<b>Dir 97/81/EC</b> <sup>31</sup> (part-time work)	<b>Reg 1408/71/EC</b> (amended several times, last COM (2003) 0468) <sup>32</sup> (on the application of social security schemes to employed persons and their families moving within the Community)
<b>applicable to the public service</b>	(+)	no details, probably (+)	(+)
<b>definition of worker</b>	Dir applies to all workers who have an employment contract or employment relationship as defined by the law, collective agreements or practices in force in each Member State	no definition	worker = any person <i>(i) ..., any person who is insured, compulsorily or on an optional continued basis, for one or more of the contingencies covered by the branches of a social security scheme for employed persons;</i> <i>(ii) any person who is compulsorily insured for one or more of the contingencies covered by the branches of social security dealt with in this Regulation, under a social security scheme for all residents or for the whole working population if such person:</i> - can be identified as an employed person by virtue of the manner in which such scheme is administered or financed, or - failing such criteria, is insured for some other contingency ... under a scheme for employed persons, either compulsorily or on an optional continued basis; <i>(iii) any person who is voluntarily insured for one or more of the contingencies covered by the branches dealt with in this Regulation, under a social security scheme of a Member State for employed persons or for all residents or for certain categories of residents if such person has previously been compulsorily insured for the same contingency under a scheme for employed persons of the same Member State;</i>

<sup>30</sup> *Wiebke Busch*, C-320/01, opinion of Mr Advocate General Ruiz-Jarabo Colomer of 21.11.2002, para. 19-22

<sup>31</sup> ECJ has not yet had to decide on the applicability to civil servants, s. *Steinicke* ./ Bundesanstalt für Arbeit, C-77/02, judgement of 11.09.2003, para. 52

<sup>32</sup> *Niemi*, C-351/00, 12.09.2002, para.10,11, 45

<b>applicable to civil servants</b>	(+)	unclear	(+), since the extension of the range of applicability through Reg 1606/98
<b>excluded groups of workers</b>	(-)	unclear as to how far civil servants might be ex- or included	non-insured workers

## 4. Who is a civil servant in the Member States – and who is not?

Almost all countries (with the exception of the United Kingdom) apply a distinction between public officials under public law and private employees under labour law. In addition, most Member States provide for specific laws for specific categories of public employees (such as soldiers, judges and the police). However, some Member States also apply different concepts as to which categories should be included in the civil service, who should have specific regulations and who should be excluded from the civil service. Like this, it is not easy to find a useful distinction in the different countries between civil servants and public employees.

Things may be even more complicated. Almost all Member States also employ private employees under labour law in their core public services. For example, Germany employs more private employees than civil servants in the armed forces (this applies to the administration of the armed forces in Germany). In Denmark more employees under private labour law are employed in the central ministries (in Denmark) than civil servants. Also, Latvia, Malta and Slovakia employ staff under labour law in their central ministries.

Also, some Member States employ civil servants and employees under private law at the same time 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 under labour law. Also in Germany, teachers are civil servants in some Länder whether they are public employees under labour law (or BAT) in others. In the European Commission most employees are civil servants but some are agents temporaires or so called auxiliaires (at least until the new European Status of the Civil Servant comes into force). The most important differences between these groups are the duration of their working contracts and the social security systems. However, in practice, the differences are less clear: all groups might carry out the same tasks, and the question therefore arises of how to explain these differences on other than financial grounds.

<b>Where to find information about the Civil- and Public Services of the Member States?<sup>33</sup></b>
<b>Austria</b> <a href="http://www.austria.gv.at/e/">http://www.austria.gv.at/e/</a>
<b>Belgium</b> <a href="http://www.belgium.be/eportal/application?languageRedirected=yes&amp;pageid=aboutBelgium">http://www.belgium.be/eportal/application?languageRedirected=yes&amp;pageid=aboutBelgium</a>
<b>Denmark</b> <a href="http://www.stm.dk/Index/mainstart.asp?o=2&amp;n=3&amp;s=2">http://www.stm.dk/Index/mainstart.asp?o=2&amp;n=3&amp;s=2</a>
<b>Finland</b> <a href="http://www.valtioneuvosto.fi/vn/liston/base.lsp?k=en">http://www.valtioneuvosto.fi/vn/liston/base.lsp?k=en</a>

<sup>33</sup> Irish Presidency of the European Union, Information on the Structure of the Civil and Public Services of the EU Member and Applicant States, Dublin, May 2004

**France**

<http://www.premier-ministre.gouv.fr/en/>

**Germany**

<http://eng.bundesregierung.de/frameset/index.jsp>

**Greece**

<http://www.government.gr/english.html>

**Ireland**

<http://www.irlgov.ie/>

**Italy**

<http://palazzochigi.it/> (ITALIAN only) / <http://www.esteri.it/eng/index.htm> (Ministry of Foreign Affairs)

**Luxembourg**

<http://www.gouvernement.lu/> (FRENCH with English content)

**Portugal**

<http://www.portugal.gov.pt/en/>

**Spain**

<http://www.administracion.es>

**Sweden**

<http://www.sweden.gov.se/>

**The Netherlands**

<http://www.government.nl/index.jsp>

**United Kingdom**

<http://www.ukonline.gov.uk/Home/Homepage/fs/en>

**Cyprus**

<http://www.cyprus.gov.cy>

**Czech Republic**

<http://wtd.vlada.cz/eng/aktuality.htm>

**Estonia**

<http://www.riik.ee/en/>

**Hungary**

<http://www.kormany.hu/>

**Latvia**

<http://www.mk.gov.lv/index.php/en/?id=1>

**Lithuania**

[http://www3.lrs.lt/pls/inter/w4\\_home.int\\_ang](http://www3.lrs.lt/pls/inter/w4_home.int_ang)

**Malta**

<http://www.gov.mt/index.asp?l=2>

**Poland**

<http://www.kprm.gov.pl/english/index.html>

**Slovakia**

<http://www.government.gov.sk/english/>

**Slovenia**

Very specific is the situation in Sweden. In this country, the competence to recruit and to define working conditions is highly decentralized. From a comparative perspective, almost all Swedish public employees could be called “civil servants” “public employees” or “private employees” at the same time when comparing them with their colleagues elsewhere. In Sweden, despite their public status, employees enjoy the same labour law in the public sector as in other sectors in the labour market. Only a very small minority of employees enjoy a sort of specific status, e.g. judges. This makes that less than 1% of all public employees have a working relationship which is clearly distinct from those working in the private sector.

During the last years, some Member States have introduced an additional category of civil servants. For example, the United Kingdom, the Netherlands, Hungary, Poland and Belgium have introduced a specific senior civil service system. Nowadays top-civil servants in these countries have working conditions which differ from the working conditions of all other civil servants. In some cases, top-civil servants are nominated on time, recruited in open-competition and get their remuneration on the basis of performance (and reaching their objectives) and not seniority.

Poland makes a distinction between the approximately 1000 nominated elite civil servants, other civil servants and public employees. In the United Kingdom, a broad group of over 3,300 professionals are employed at this level, in 55 government departments and agencies across the country. They include doctors, lawyers and scientists, as well as policy advisors and managers. In addition, some other Member States, e.g. Belgium, have introduced the positions of top-officials which are nominated on time. This means that the principle of life-time tenure is not applicable in these top-positions.

Many Member States have divided their public services according to political levels (e.g. Sweden is distinguishing between national, regional and local level) and territorial levels (e.g. France is differentiating between the central public service, territorial public service and health or hospital services) or according to sectors (e.g. the Netherlands have a distinction between different sectors such as central governmental level, education, police, justice etc.) with either the same or distinct working conditions for public employees.

#### ***4.1. Comparative observations in the different sectors***

Obviously, the issue of what tasks should be performed by a) the general public service and b) civil servants, is regulated differently throughout the world. There is no best practice model here either.

The definition of who should be a civil servant has always been linked to the question of the special nature of the duties and tasks concerned. For example, the exercise of sovereign powers should remain the preserve of civil servants; these are measures to safeguard society, keep order and protect citizens. However, the classical question as

to which tasks should be performed by civil servants has never been settled definitively even in the classical bureaucratic States. The question as to which jobs should be done a) by the general civil service and b) by civil servants, is more and more dealt with differently throughout the European Union but also throughout the world.

When comparing the legal situation in the Member States, the biggest differences exist between Sweden and Slovenia. Whereas in Sweden, only Judges have a special status, in Slovenia all public employees have a special public law status. However, when going more into the details, the differences among the Member States are less clear.

For example, whereas some Member States do not employ civil servants in agencies or on the regional and local level - others do.

Also, whereas most Member States employ private employees in nuclear power stations, Greece and Italy employ civil servants in Nuclear Power stations

Also employees in food-, environmental- or health inspectorates or in the field of risk management are mostly civil servants but in some countries (Denmark, Germany, Latvia and partly Lithuania) they are also private employees. Or, employees in the national central banks are mostly private employees but in some countries they are also civil servants.

Moreover, while certain staff in hospitals are governed by public service law, employees in special medical institutions and other hospitals are not. The definition of a job in the health sector is not standard either (see e.g. Malta). The reason for this is that the treatment of a sick person in a State hospital is subject to exactly the same rules as in a “private” clinic. Nevertheless, in some Member States hospitals are public while in others they are “private”. If tasks are performed by public and private institutions in the same way, i.e. if the required knowledge and level of qualification are the same, the demands on the staff in the public service are no different from those in the private sector. In some areas things are different again: in the environmental field, municipal waterworks need in no way be different from private waterworks from a technical perspective. As a result staff also have to meet mostly the same requirements. The call for privatisation of water management has therefore been getting louder and louder – especially after the privatisation wave in the United Kingdom in the eighties and nineties. Should policemen be civil servants but what to do with prison guards if prisons are privatised? Or the other way round? What is the logic behind this? Or is there no logic?

On the other hand, municipal/state waterworks are not merely motivated by and focused on efficiency (and even less on profit maximisation), but first and foremost on provisions for public health, the ability to withstand crises and reasonable prices. However, this conclusion does not imply that private waterworks might not be able to meet these requirements just as well or even better. Water is moreover the most important human “foodstuff”, which is why some Member States see water as “a public responsibility”.

**QUESTION 1:**

In my country, civil Servants with a special status (mostly in form of a public law

status) or specific categories of staff (e.g. Judges) are mostly employed in the following sectors:

**Please note:** The following matrix shows what legal status the **majority** of employees of the indicated Member State has in the different sectors. This does not mean that there might not as well be a minority of employees having the opposite legal status.

Sectors	Yes, most employees are civil servants or specific categories of staff	No, mostly private employees	Comments
<b>Employees in ministries</b>	Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain	Denmark,	In Sweden and the UK, a distinction is difficult. In Sweden, in principle the same overall labour law applies to the public sector as to other sectors in the labour market. Only some groups enjoy greater employment security, for example judges. Therefore, most public employees do not fit the definition of civil servant that is used in this survey, although they are referred to as civil servants in Sweden. In the UK, there is no distinction between public and private law in employment.  In many Member States, staff in Ministries can also be employed under labour law and private status.
<b>Employees in agencies and regional authorities</b>	Austria, Belgium, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Lithuania, Luxemburg,	Denmark, Latvia, Lithuania, Poland, Portugal,	

	Malta, Netherlands, Portugal, Slovakia, Slovenia, Spain		
<b>Armed forces</b>	Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxemburg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain	Denmark, Germany, Latvia, Lithuania, Malta	In Denmark and Germany, soldiers belong to the category of civil servants or a special status employees. Personnel working in the armed forces administration however are mostly private employees. In Austria, contractual employment is legally not possible.
<b>Judiciary (Judges)</b>	Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxemburg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden	Latvia, Lithuania, Malta,	In Austria, contractual employment is legally not possible.
<b>Police and law enforcement</b>	Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain		In the UK, the Police are employed as crown servants. In Austria, contractual employment is legally not possible
<b>Prisons</b>	Austria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania,		In the UK, Prison Officers are civil servants. In Austria, contractual employment is legally not possible.

	Luxemburg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain		
<b>Central Banks</b>	Cyprus, Czech Republic, Finland, Ireland, Italy, Luxemburg, Spain	Austria, Belgium, Denmark, Estonia, France, Germany, Greece, Hungary, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia	In many Member States, the top management is nominated by the political level.
<b>Diplomatic sector</b>	Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain	Denmark,	
<b>Schools (Teachers)</b>	Austria, Belgium, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxemburg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain	Denmark, Estonia, Germany, Italy, Latvia, Lithuania, Spain,	In some Member States, teachers may either be employed as civil servants or private employees. In many Member States there are also private schools.
<b>Universities (Professors)</b>	Belgium, Cyprus, Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain	Austria, Denmark, Estonia, Italy, Latvia, Lithuania, Luxemburg, Malta, Spain	In many Member States, Professors of Public Universities have public law status, whereas Professors of Private Universities have private law status.
<b>Inspectorates (food control, health safety)</b>	Austria, Cyprus, Czech Republic,	Denmark, Germany, Latvia,	

	Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Lithuania, Luxemburg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain,	Lithuania	
<b>Nuclear Power Stations</b>	Czech Republic, Greece, Italy, Slovenia	Belgium, Finland, France, Germany, Hungary, Latvia, Lithuania, Netherlands, Spain, Slovakia, Sweden,	A number of Member States do not have Nuclear Power Stations.
<b>Gas and Electricity</b>	Cyprus, Ireland, Italy, Luxemburg,	Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Spain, Slovenia, Slovakia, Sweden	
<b>Financial authorities (taxes)</b>	Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain	Denmark,	
<b>Hospitals (nurses, doctors)</b>	Cyprus, Czech Republic, Finland, France, Greece, Hungary, Ireland, Italy, Malta, Portugal, Spain, Slovenia,	Austria, Belgium, Czech Republic, Denmark, Estonia, Germany, Italy, Latvia, Lithuania, Luxemburg, Netherlands, Poland, Portugal, Slovakia, Spain,	In many Member States, there are private as well as public hospitals.
<b>Local authorities</b>	Belgium, Cyprus, Czech Republic,	Austria, Denmark, Germany, Latvia,	In a number of Member States, employees of local authorities have a

	Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Lithuania, Luxemburg, Netherlands, Poland, Portugal, Slovakia,, Slovenia, Spain	Lithuania, Malta	distinct law status to that of central authorities.
<b>Fireworkers</b>	Austria, Cyprus, Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain	Belgium, Denmark, Estonia (changes possible with effect of 1/1/05)	In Austria, Fireworkers in big municipalities are civil servants, whereas in villages they are employed on a voluntary basis. Also in other Member States, Fireworkers are often working on a voluntary basis.
<b>Border control (customs) and Aviation (Flight control)</b>	Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Poland, Portugal, Spain, Slovakia, Slovenia	Austria (Flight control), Denmark, Germany, Netherlands, Poland, Portugal,	In some Member States, such as Austria, Germany, the Netherlands, Poland, Portugal and Spain a distinction is made between Border Control (customs) and Aviation (Flight Control), whereby mostly civil servants or specific categories of staff are employed in Customs, but mostly private employees are employed in Flight Control. In Poland, there is the Civil Aviation Office, responsible for providing and maintaining safe aviation services to, from and within Poland. Staff of this Office are under civil service law. In Spain, Flight control depends on the “Spanish Airports and Aerial Navigation (AENA)”, an Entrepreneurial Public Agency with special legal framework. Employees there used to be civil servants but became subject to common labour law in the nineties.

<b>Water sector</b>	Austria, Cyprus, Ireland, Italy, Luxembourg, Slovenia	Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Malta, Netherlands, Poland, Portugal, Slovakia, Spain	The status of employees is varying according to specific functions and situations in the Water Sector.
<b>Risk management/ environmental inspection and control</b>	Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Spain, Slovakia, Slovenia	Denmark, Germany, Latvia, Malta	
<b>Other</b>		Netherlands	

\* This study does not show the situation in the sector of Post and Telecom as most of these services have been privatized.

## ***4.2. Conclusions: Unity and Diversity and the Status question***

Within the last years, it has become more difficult to clearly define a group of employees with a civil service status. Even the distinction (for instance) between the tasks carried out by the national police and private security services or by soldiers and privately hired “fighters” (as currently in Iraq) is becoming increasingly unclear. Here, it is important to note that Member States still maintain one difference between private (police and army) services and public services: the possibility and the right of the employers to restrict – if necessary – certain fundamental rights of public police officials and soldiers. Private employees should never be allowed to decide upon fundamental rights of others.

A growing number of different employment relationships can be seen in the health sector and the teaching profession. For instance, in Malta teachers at State schools are usually civil servants, but this does not apply to teachers at other educational establishments and schools. In Germany, teachers in the same schools may be employed either as Beamte or Angestellte.

Applying different concepts for the same profession is the result of new uncertainties: The separation between the state and society has become less in all civil services and many tasks are performed that do not differ in any way from tasks performed in the private sector and so in many countries they are also performed “privately”. Take for example, ICT-experts may either be employed as civil servants or private employees. In both cases, they may do the same job.

In addition, different employment relationships are also being created in environmental protection services and in the research profession.

Because of the “blurring of boundaries”, more and more tasks are carried out by so called “hybrid” state structures and providers, and outsourced, contracted out or fulfilled in partnerships and by networks etc. This again has to do with a lack of understanding of which tasks should be carried out by the State and which by international organisations, NGO’s, public-private partnerships and the private sector. Hence the discussion about which jobs should be reserved for civil servants is likely to continue for a long time. However, as regards the present situation, some tentative conclusions can be made as regards the state of affairs of the “status” of civil servants:

- Mostly civil servants in the central ministries have a specific status. However, in many Member States technical and secretarial tasks are carried out by employees under labour law. Within the last, there has also been a tendency to employ more consultants, advisors or staff on short-term contracts.
- Judges and soldiers have a specific status but often do belong to the group of civil servants. Whereas judges almost everywhere have a specific public status, employees in the judicial administration may have different working relationships.
- In many countries, teachers, professors and health professionals are excluded from 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 either directly employed by the public sector health system, or work in public-funded agencies or organizations (e.g., social insurance funded). In many countries health care will also be delivered by organizations in the private sector and by voluntary organizations.
- Subnational government employment often represents a substantial portion of the total public sector workforce – frequently over 50 percent in decentralized or federal countries but also in the scandinavian countries. However, subnational government employment is often either not belonging to the civil service or considered a separate, legally defined civil service in many Member States.
- In most continental European countries, military and law enforcement personnel (e.g., police, customs, etc.) are mostly belonging to the civil service but often have their own specific legislation as the basis for employment.
- Employees of state owned enterprises or specific agencies may be subject to specific, but different legislation, or may be subject to the general labor law that governs employment contracts in the private sector.

### **4.3. Comparing figures – does it make sense?**

For a long time, international organizations and different authorities try to compare public employment. This is both a delicate and difficult process. The difficulties in comparing the figures are evident: Whereas some Member States apply a very wide definition of public sector employment, others do not. Some Member States incl. the armed forces in the figures and others do not. Again, some Member States employ a high number of teachers and health personnel as public employees whereas in other Member States these categories are not public services. In addition, some figures are older or newer than others. Still, it is difficult to receive “brandnew” figures on public employment.

Public employment is underlying many developments, factors and changes. Over the last decades, important developments have taken place that have had a significant impact on the position and situation of the public sector as an employer:

- A decrease in the birth rate in almost all European societies combined with a process of “ageing” of public employees in general,
- A continuous process of improving education and raising the qualification level of the population which led to a slow decrease of numbers of low-skilled employees,
- A significant increase in the number of women on the labour market (but often employed in specific areas and on a part-time basis),
- First, a decrease in the participation of older employees on the labour market combined with an increase in persons who leave their jobs early (early retirement). This process is completely reversing at the beginning of the new century,
- A slow - but relative insignificant - increase in transnational mobility
- A general increase in part-time work during the last years.
- Many Member States are (still) increasing the number of public employees in the fields of education, health, social services and (law) enforcement but reduce the number of employees in the (traditional ministerial) core services and those areas which are/were subject to privatisation, contracting out and outsourcing.

All these developments have strongly influenced the situation on the labour market, and the competitive position of the public sector in relation to the private sector has changed. Today, almost all former 15 Member States are in a process of reducing public employment. The situation is much less clear in the new Member States. Whereas some are trying to reduce public employment, others are in the need of strongly increasing the number of public employees.

Today, comparisons become even more complicated because of trends to decentralize HRM-issues, because of growing fluctuations and mobility within the public services and between the private and public sector and because of different definitions as regards the term “active working population”. In addition, some Member States include public employees on the regional and local level in their statistics and others do not. Also, the number of part-timers in the national public services is totally different with the Netherlands employing a very high number of part-timers. Finally, almost all of the former Member States are in a process of reducing public employment whereas some of the new Member states try to increase public

employment. This imbalance as regards the different situation may also create a wrong impression as to the ‘ideal’ and anticipated size of the public sector workforce.

Therefore, any reliable statistic should be based on the same definitions of ‘‘public employment’’, the same calculation methods and statistics of the same year. For example, one should have a clear understanding whether or not to include the education sector, the armed forces, the water sector, gas and electricity. Our comparison as applied in our survey is clearly NOT comparable. It should only give an indication and overview as to the existing differences in public employment in the Member States of the EU.

For example, when making comparisons one should also not forget that in some countries, up to 90% of all public employees are defined as civil servants under national law, whereas in others the figure is about 15% or even less. In Denmark, only approx. 30% of all public employees are civil servants (and the number is getting less). Germany has 35% of civil servants in the public service. In Austria the figures for officials have gone down to roughly 50% for all public employees. The United Kingdom makes a distinction between crown civil servants and civil servants (together only approx. 550000 which is 1,66% of the total economically active population<sup>34</sup>) and the rest of public employees.

Sweden, with approx. 28% of public employees among the economically active population (1,2 million public employees out of a total 4,3 million workers) has almost three times more public officials than Germany (with about 10% of the active population), but almost all public officials are ‘‘contractuals’’ under labour law. Less than 1% of the total public workforce has a specific public status (mainly judges). On the other hand, only about 12,5% of all actively employed Germans are public employees. 1,7 million German officials (approx. 4,4% of the active population) work as ‘‘career civil servants (among them are almost 800000 teachers). Also interesting, in Germany only 43% of all employees employed by the federal level (‘‘Bund’’) are civil servants and only 18000 top-officials work in the different federal ministries, whereas in France (where 17% of the actively working population are civil servants) the most ‘‘fonctionnaires d’Etat’’ are employed by the central ministries.

Other Member States have completely different figures. For example, Greece has a relatively small public sector (approx. 14% of the active population) but a high percentage of civil servants among the number of public employees (approx. 12% of the total active population). This can be explained by the fact that the Greek constitution and/or civil service laws generally requires the recruitment of ‘‘civil servants’’ as public employees. Similar provisions are existing in Spain and Austria. However, Austria is in an ongoing process of reducing the number of civil servants in relation to other public employees. Today, only 5,36% of the total active population have a civil service status. This means that 50% of all public employees still have a civil service status. According to Stanley (<http://www.civilservant.org.uk/definitions.shtml>), the UK workforce totals around 29 million of which around ca. 17.5% work in the public sector. These include ca. 1.7% in the civil service, ca.1% in the rest of central government (principally the NDPBs,

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<sup>34</sup> Generally, this is defined as the number of employed and unemployed persons. However, we have no evidence whether all Member states apply this definition.

the National Health Service and the Armed Forces), ca.5% in public corporations (such as the BBC, Royal Mail Group and BNFL) and ca. 9% in local government.

There are also great differences in the new Member States: Generally, most new Member States have a relatively or very small core civil service. for example, in Poland only 0,89% (the figure for the nominated officials would be even much lower), in Slovakia (excluding police and law enforcement forces) 2,30%, Hungary 2,6%, in Latvia 3,63%, in Lithuania 4,17%, in Cyprus (4,40%), in Estonia approx. 5% and in the Czech Republic 5,9% (including the armed forces) of the active working populations are civil servants, whereas the number is 17% in Slovenia and more than 22% in Malta.

**QUESTION 2:**

As regards public employment, what is the percentage of civil servants in relation to the active working population? What is the percentage of public sector employees in relation to the active working population?

**Please note:** Because of different national definitions used, the presented figures should be interpreted very cautiously. Like this, the figures indicate more trends than facts.

	<b>Civil servants***</b>	<b>Employees in Public Sector (including civil servants)**</b>
Austria	5,36%	5,69%
Cyprus	4,40%	15,10%
Czech Republic	5,9% (incl. armed forces)	20,7% (incl. armed forces)
Denmark	5,71%	32,42%
Estonia	approx. 4,9 %	26,1 %
Finland	12,70%	23,20%
France	17%	25 %
Germany	4,80%	12,50%
Greece	12,13%	14,65%
Ireland	1,90%	14,40%
Italy	14,75%	
Latvia	3,63%	29%
Lithuania	4,17%	
Luxembourg	6,91%	8,87
Malta	22,23%	34,61%
Netherlands	6%	8% Public Service, 32% (incl. whole tertiary sector)
Poland	0,89%	47%
Portugal	12,70%	14,20%
Spain	6,80%	12,40%
Slovakia	2,30%	27,7%
Slovenia	17%	17%
Sweden	0,05% *	30%
UK	See text	See text

\*Taking into account only Judges with a special status

\*\* Please note that Member States apply different definitions. For example, in those countries where the local level does not belong to the civil service, relevant figures on public employment on the local level may not be included. For example, in Austria teachers on the local level are not included.

\*\*\* As can be seen elsewhere in this study, the definition of civil servant is applied differently throughout the EU. For example, whereas in some Member States teachers are civil servants, in other Member States they are employed under labour law.

## 5. Complexities and new confusion

Today, the career public service is not valued as it once was, and an increasing number of public employees are either recruited from the private sector or have private law contracts. This is even a tendency in those countries where only public employees under public contract should be employed. An increasing amount of government work is being performed by people who are not government employees. Second, government needs to attract more people to manage information technologies. This again implies a reduction in the number of public employees who were doing secretarial and assisting tasks. Finally, government relies more and more on other experts such as consultants.

Today, different administrations and models have developed their own paradoxes and complexities. We will list only some examples:

- **Germany** has *Beamte* (civil servants), *Angestellte* (contractual staff) and *Arbeiter* (employees) working in the public service. However, all groups may perform tasks which are related to the exercise of official powers (although the German Constitution (*Grundgesetz*) stipulates differently in Art. 33 GG). In the various job categories, tasks are carried out which are also performed in the private sector. Precisely because of this inconsistency in the allocation of tasks the question keeps cropping up as to why these differences between *Beamte* and *Angestellte* actually exist and what the meaning is of the concept of “function connected with the exercise of official powers”, if *Angestellte* can perform these functions just as well (or badly).
- In **Belgium**, civil service legislation obliges the public employers to employ civil servants under public law as the rule and contractual employment only as an exception. The paradox is that (for example in the Flemish part of Belgium) the “theory of the status as a rule” and the “contract as an exception” is miles away from the reality<sup>35</sup>. Often, more and more people are employed in jobs which should principally be reserved for civil servants under public law. According to figures from 2001, 78% of all employees on the federal level are public law officials and 22% have a contractual status<sup>36</sup>. The number of civil servants decreases on the regional level. For example, less than 50% of the

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<sup>35</sup> Steunpunt Bestuurlijke Organisatie Vlaanderen, Jaarboek 2002, Tussen Bestuurkunde en Bestuurpraktijk, Spoor HRM, De mythe van het statut voorbij?, Katleen Janssens, Ria Janvier, p. 124, 2003

<sup>36</sup> Katleen Janssens and Ria Janvier, Statutory and contractual employment in the Belgian public sector. The gap between theory and practice, EGPA-Conference, Ljubljana, Slovenia, 1-4 September 2004.

Flemish and Wallon civil servants have “a status”<sup>37</sup>. Also, most newly recruited public employees under the age of 34 have a private law status (at least in the Flemish Community)<sup>38</sup>. One may wonder whether this high number of contractuels is an “exception”.

- In the **Netherlands**, the majority of people working in the public service have employment relationships governed by public law. However, the employment relationships in the public sector have mostly been aligned with those in the private sector, though the public service performs functions which traditionally involve the exercise of official powers. For example, labour laws on working hours, works councils, equal opportunities etc. are also applicable to the public service. Also, a unified civil service no longer exists, after a decision in 1999 split the public sector into 12 sectors. In the meantime, 50% of employees in the education sector (who represent approx. 45% of all those employed in the Dutch public service) are not appointed as civil servants. Despite all intentions to continue with the “normalisation” process in The Netherlands, it has not been finalised so far. In The Netherlands, a so-called “Advies van de Raad voor het Overheidspersonnelsbeleid inzake de Ambtelijke Status” (Advice about the Civil Service Status) was published on 16 December 1998. The report discussed whether the Dutch policy of “normalisation” should be continued, and examined the consequences of a possible abolition of civil service status on:
  - the recruitment procedures of civil servants
  - the possibility of dismissing civil servants and terminating their contracts
  - the procedural rules for civil servants
  - the budget
  - fundamental rights
  - social security
  - the image of the public service
  - the integrity of the public service
  - social dialogue
  - incompatibilities between public and private law status
  - the oath

The report concluded very pragmatically that the normalisation process in The Netherlands should be continued. However, total abolition of public law status was not recommended, on the grounds not so much “material” reasons, but because such a step would take at least “four years” and would be a complex and time consuming process. In addition, the report concluded, “the natural moment” for the total abolition of civil service status has not yet arrived. In addition, there would also be the question of whether the costs for the process would outweigh the benefits<sup>39</sup>.

In The Netherlands, this very pragmatic approach still raises the question of the legitimacy of the employment relationship governed by public law

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<sup>37</sup> Janssen/Janvier, op cit.

<sup>38</sup> Janssen/Janvier, op cit.

<sup>39</sup> Advies van de Raad voor het Overheidspersonnelsbeleid inzake de Ambtelijke Status, Adviesnummer 17, Den Hague, 16 December 1998 (official document without author), pp.3-4

- In **Slovenia**, almost all civil servants have a public law status and their employment relationship is fundamentally different from that in the private sector. Here, from a comparative point of view, the question could be why so many employment relationships are governed by public law (approx. 80% in the ministries), while many tasks are of ancillary or technical character and many tasks are not connected with the exercise of official powers and could just as well be regulated by employment contracts modelled on the private sector.
- In the **United Kingdom**, a distinction between public and private law is not known. But not only because of this, the structure of the British civil service is very different to other continental systems. However, what is similar is the complexity of the system.

Although civil servants enjoy the same collective labour law rights, they have a status which is distinct from both the rest of the labour market and the rest of the public sector. A Civil Servant is employed in the service of the Crown to perform functions on behalf of the Crown in a civil capacity and Civil Servants may serve either a Minister of the Crown or some other body performing functions on behalf of the Crown. There are many Crown servants who are not Civil Servants, including the Royal Household, Ministers, the holders of judicial offices, members of the Armed Forces and police officers. In practice, therefore, below the Senior Civil Service the decision as to what posts should exist and whom to appoint to them within the Home Civil Service is taken by the department or body concerned but subject always to the requirement to comply with the 1995 Order in Council and to the supervision and control of the Commissioners. In short, there are a number of categories of Civil Servants:

1. Home Civil Servants appointed under statutory powers (e.g. staff in HM Customs & Excise);
2. Home Civil Servants appointed under prerogative powers (e.g. the Civil Service Order in Council 1995);
3. Crown/Civil Servants outside the Home Civil Service appointed under statutory powers (e.g. the Northern Ireland Court Service);
4. Crown/Civil Servants appointed under neither a statutory power or pursuant to an Order in Council appointed directly under the prerogative (e.g. the Intelligence Services).

However, it is important to make a distinction between crown civil servants (e.g. police employees), civil servants (e.g. prison officers) and other employees in the public sector. Interestingly, in the UK, neither the army nor the judiciary are civil servants although each has its own distinctive employment characteristics. Also, tax collectors, the national health service and educational institutions are not civil servants.

Thus, in the UK there are a wide variety of other public bodies who do not generally employ civil servants.

The main categories are:

- Non-Departmental Public Bodies, often known as Quangos.
- The National Health Service
- Public Corporations, including Nationalised (i.e. state-owned) Industries
- The Armed Forces
- Local Authorities

There are around 1000 NDPBs (Non-departmental public bodies, more popularly known as "quangos":- Quasi Autonomous Non-Government Organisations). Some NDPBs are very large and important organisations such as the Environment Agency. The National Health Service is in a category of its own as a huge organisation which has a large degree of independence but is otherwise constitutionally quite similar to NDPBs. It does not employ civil servants, other than on loan from e.g. the Dept of Health. Other public servants, but not civil servants, work for public corporations such as the BBC, the Bank of England, Royal Mail Group, British Nuclear Fuels, and the British Waterways Board, who run the canals etc. The Armed Forces are another major employer of public servants who are not civil servants. And of course a great many public servants work for local authorities of various shapes and sizes. The Financial Services Authority is also a special case in that, although it is a limited company financed by the financial services industry, it exercises statutory powers and is treated for many purposes as part of government. Nevertheless, its employees are not civil servants.

- In **Italy**, the public service has been “privatized” in 1993. Since then, a distinction must be made between civil servants under public law status and which were excluded from all privatization, e.g. judges, State advocates, military personnel, police officials, diplomats, prefects and to some extent professors and researchers<sup>40</sup> public servants under a special private status (e.g. prison guards, most employees in the ministries and agencies etc.) and private employees, e.g. teachers and employees in hospitals such as doctors. Here, one may wonder why for example most professors are still civil servants whereas mostly teachers are civil servants under a private status and doctors private employees.
- Also **Ireland** makes a distinction between civil servants (such as employees in ministries, diplomats and in financial authorities) and public officials (employees in agencies, armed forces, judiciary, schools etc). According to the Irish answer to our survey, there are no private employees employed in the Irish public service. This is a significant difference to other Member States.
- Very specific is the situation in **Poland** where one must make a distinction between the 4 312 000 public employees and two types of civil servants: approximately 1 500 appointed civil servants (who have passed a very difficult recruitment procedure and are mostly working in the central ministries and in

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<sup>40</sup> Roberto Caranta, Point de vue sur les réformes récentes en matières de fonction publique en Italie, in Conseil d'Etat, op cit, p. 405

the diplomatic sector) and some 118 500 civil service employees – all under the civil service law. Employees in the armed forces, the judiciary and in the police sector all have a distinct public law status but do not belong to the 118500 civil service corps. However, employees of the voivod offices (but not most employees of the regional authorities) are established corps members. Also, the employees in the tax administration and different inspectorates belong to the 118500 civil service corps members. These distinctions are not easy to explain (especially to non-Polish citizens).

- Similarly to the situation in **Greece** and **Belgium**, the **Spanish Constitution** of 1978 and the Act 30/1984, of 2 August, on Measures for the Reform of the Civil Services and subsequent amendments, have opted for a statutory system for the civil service but without excluding the labour contract one. It means that Public Administrations have to fill their vacant positions mainly with civil servants. The possibility of hiring staff members under the labour regime is viewed as a legal exception, given the fact that such contracts can only be concluded for the following types of positions listed in the law :
  - Positions that are not permanent in nature and those whose activities aim to satisfy periodical or discontinuous necessities.
  - Positions whose activities are characteristic of a trade or craft, as well as surveillance, care taking, carriage and other similar ones.
  - Positions of an instrumental nature that relate to matters such as the maintenance of buildings, equipment and facilities, graphic arts, surveys, civilian protection, social communication, artistic expression, social services and protection of minors.
  - Positions that required specialised technical knowledge, provided that there are not Corps or Scales whose members can fulfil these tasks.
  - Positions in foreign offices with administrative, procedural or auxiliary functions that involve the operation of machinery, filing or similar tasks, and
  - Positions that involve the carrying out of auxiliary functions of an instrumental nature or the giving of administrative support.

Nevertheless, the possibility of employing staff in terms of employment contracts is not treated as an exception throughout the public sector. There are certain public organisms, such as Public Agencies that operate within special legal frameworks as well as the Entrepreneurial Public Agencies, which are subject to private law and only employ staff in terms of labour law. However, although these staff members are excluded from the legal statutory framework of the civil service, recruitment has to be regulated by principles of equality, merit and capability, and publicity. There are also some agencies where the majority of the personnel is subject to civil service status (Tax Agency, for instance).

- In Spain, Employment in the Autonomous Communities follows the same pattern just explained with civil servants and labour contract employees. Employment in the Local Administration follows also the same pattern with civil servants and labour contract employees. Regarding the *civil servants* it is necessary to distinguish the ones selected by the Local Administration and the

ones selected at national level by the State Administration. In this last case they have an special regime: they are the ones who hold national qualifications, the ones who occupy positions that involve the exercise of the authority, the giving of legal advice, internal management and control of finances and budgeting as well as positions relating to accounting, treasury and tax collection (they are the civil servants who form part of the Corp of the Secretaries, financial inspectors and local receivers of revenue).

- Finally, in **Sweden** there are hardly any differences left between public and private employment relationships. Almost all HRM-functions and policies are either decentralised or individualised. The following question can therefore be asked: what is the point or purpose of the public sector as an alternative to the private sector?

## 6. Who are the civil servants of the future?

What does all this mean for the future? Predictions are naturally difficult. In addition, the definition of who should be a civil servant will remain a national discretion (despite the jurisprudence of the ECJ on Art. 39 EC Treaty) and will be applied according to the different national traditions. However, in the future, it will become more difficult to determine what are the positions for civil servants which involve a) the exercise of powers conferred by public law, and b) the responsibility for safeguarding the general interests of the State or other public bodies. In times of globalization, the European citizenship, a possible adoption of a EU Constitution and the gradual development to a Common Foreign- and Security Policy as well as new developments in the field of Police-cooperation (EUROPOL), Judicial cooperation (EUROJUST) and Crime- and Fraud prevention (OLAF).

However, not from an EU- but from a comparative point of view, it seems that all European public services apply the concept of the “civil servant” to one – albeit very small - group of officials who have (among themselves) again a different legal status. Thus, when answering the question who – if anyone – will retain a special legal status in the future, a tentative answer could be: security, police- and military personnel, judges and diplomats. Employees in the ministries and in the financial administrations will mostly maintain a special status although a high number of employees will also have a private law status. The status of regional and local employees, teachers, professors, employees in inspectorates etc. will be decided upon differently. Whereas (a growing?) number of Member states will reduce the number of civil servants in these sectors and fields, others will maintain a specific contractual status.

One may also conclude from the situation in the Member States of the EU that no country has so far been willing to completely abolish the civil service - although there are strong tendencies towards abolishing parts of it and aligning its structures, laws, processes and working procedures to those which apply under private law.

### The civil service in the 21<sup>st</sup> century

Civil service principles and procedures	Recent developments
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Public law status	Status remains but restricted to a few categories (e.g. judges, police, military), nomination and oath only for these categories, however further alignment of working conditions and status with private sector
Private law status	Number of employees with labour law status is increasing
Trends in public employment	Generally slight reduction of employment, need for additional recruitment in certain sectors
Life-time tenure	No general trend towards flexible and short-term contracts, exceptions for precarious employment are kept very low (need for implementation of Directive 1999/70/EC), stability still important
Career system	Overhaul of traditional career system, and need for improved career development policies
Principle of hierarchy	Principal remains important, combination with decentralization of HRM, merit instead of seniority, possibility of promotion according to merit, career development for young high performers
Decentralisation of responsibilities	Strong tendency, need to avoid fragmentation, individualization and problems in co-ordination of policies
Mobility between the public and private sector	Trend towards more mobility but need to ensure ethical standards
Right to strike	Yes, with few exceptions (e.g. military)
Mobility	Yes, but need to better combine mobility and stability requirements
Complex recruitment procedures, selection of top officials	Need for further reform: move away from recruitment to entry level as principle, more flexible recruitment (also at mid-career), little evidence so far on effectiveness of “principle of open competitions for top managers”, trend towards competency profiles
Pay according to performance	Growing criticism and focus on need for better performance management and measurement techniques, need for training for evaluators, improved communication, need for poor performers policy, alignment of pay with private sector may bring cost explosion for top officials
Working procedure, standards	Rule of law remains important, maintaining formal procedures, fairness, transparency, equity, professional evaluation of results, benchmarking

Performance management and personnel appraisal	Difficulties in objective setting, need for better leadership, problems in performance measurement
Working conditions	Combining private with professional working life, reducing over-time, mechanisms to avoid ensure deterioration of working conditions
Working time	Flexible working times, discussions ongoing on increase of weekly- and life working time
Social dialogue and distribution of competence in HRM	Further decentralisation and – partly - individualisation, however this may also bring fragmentation, lack of coherence and local injustices (e.g. in pay)
HRM and role of Personnel Department	Need to professionalise HRM Department, HRM management as “Human theory”, need for managers to learn basics
Training	Need for more and better training on leadership, EU, languages, negotiations, accountability,
Specific pension system	Not felt necessary anymore, alignment with private sector, increase of retirement age, early retirement more difficult, calculation not on basis of last salary

Today, a number of Member States are in a process of reducing public employment and/or aligning certain working conditions and organizational practices in the public sector to those applicable in the private sector. However, the abolishment or the total privatization of the national civil services is not on the agenda.

Question 3:

Is there a trend towards the reform – or even – the abolishment of the civil servant status in certain sectors? Or alternatively – is there a trend towards the reduction of the number of civil servants and – instead – the employment of more „flexible“contractuals?

Yes*	No**
Austria, Denmark, Finland, Greece, Hungary, Italy, Latvia, Malta, Netherlands, Portugal, Slovakia, Slovenia	Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Lithuania, Luxemburg, Poland, Spain

\* The answers of the Member States may be interpreted very cautiously. Whereas in some Member States, public employment is reduced, others also make efforts to unify the legal status of civil servants and contractual employees.

\*\* “No” should be interpreted in the meaning that the special civil service status in these countries will not be abolished or aligned with the private sector . However, some of these Member States are also in a process of reducing public employment.

This situation is similar in the United States, where the federal level and the states have very different civil service systems. Generally, the federal level has almost no power to interfere in the public services of the states. This situation at least is comparable to the situation in Europe – between the EU and its Member States.

Also at US state level, differences in the public services are huge. For example, in California most state employees have a special status. In Texas, all state employees serving in a law enforcement capacity are covered by some form of civil service status, whether they are park rangers, border patrol, or Texas Rangers<sup>41</sup>. In Florida, not all state employees have been “privatised”: nurses, fire fighters, and law enforcement officials were exempt from coverage. “The argument used by law enforcement in gaining its exemption was that seniority protection was absolutely essential to officers, who might find themselves in the position of having to ticket or even arrest someone with powerful connections to a current administration. But if that rationale is valid for police officers, then it does raise the question of why it wouldn't be equally valid for all state employees in a regulatory capacity ... Firefighters could probably make the same claim as police that occasionally they're called on to accept some inspection and law enforcement responsibilities. Nurses on the other hand, are paid to help people and serve in no regulatory or law enforcement capacity whatsoever”<sup>42</sup>. In contrast, Georgia has no special exemption or exception for specific classes of employees when it comes to seniority or any other civil service right or privilege.

The state of Georgia passed a radical reform in 1996 that, in effect, removed all new employees from the traditional career service and made them “at-will” employees. In fact, this was less a reform than a straightforward elimination of the traditional civil service, explicitly intended to make it easier for state agencies to fire employees who do not satisfy performance standards or who are not responsive to executive policies. Another underlying reason for the reform was that traditional administration was seen as overregulated, too centralised, too slow and unresponsive. Similar, but less drastic reforms were undertaken in Florida, Arizona, Washington D.C. and Texas.

Especially in Georgia, many functions, including recruitment and classification, were decentralised. Agencies may recruit, pay and promote as they see fit. New civil servants have no seniority rights and no rights to appeal disciplinary actions such as a reduction of salaries, dismissal or bad personnel evaluation. Civil servants are promoted, paid and transferred at the discretion of personnel management. Annual salary increases were abolished. Furthermore, agencies are free to write their own job descriptions and may pay what they wish. “So if an agency wants to pay more to attract a higher-quality candidate to some-low level clerical position, it can simply create a new title and pay scale”<sup>43</sup>.

According to a survey by Walters, positive outcomes of the reform in Georgia were clearly the reduction in the length of time for hiring, firing, promotion and re-assignment of tasks. Also, the satisfaction level of personnel managers increased and more responsibilities were given to agency personnel, recruitment was made more flexible, hiring was more timely, and pay and promotions became more flexible

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<sup>41</sup> J. Walters, *Life after Civil Service Reform: the Texas, Georgia and Florida Experiences*, IBM Endowment for the Business of Government, Human Capital Series, October 2002. p. 41

<sup>42</sup> Walters, *op cit*, p.40

<sup>43</sup> Walters, *op cit*, p. 24

(although there was also more flexibility in downsizing<sup>44</sup>). Negative outcomes were that “the state has seen a proliferation of job titles – a one third increase...”<sup>45</sup> and the lack of uniformity and even divisions within departments for like work<sup>46</sup>. Also the abolition of careers and seniority has to some extent stifled career advancement<sup>47</sup> and employees themselves were not very supportive of the reforms<sup>48</sup>. As to the number of lay-offs, they have doubled, but remain “pretty low”<sup>49</sup>.

Other unofficial surveys mainly by Kellough and Nigro as regards the attitudes of classified and unclassified employees “at will”, and a recently published survey by Sanders<sup>50</sup> revealed a mix of views (but many are rather negative) toward the Georgia reforms, suggesting that they have not been particularly effective. The results of the studies reveal serious doubts as to whether a simple decentralisation and deregulation policy will lead to improved performance. “Also, a substantial number of employees viewed promotions and pay increases as being bestowed upon favored employees under performance standards that are often vague and arbitrary. Meanwhile (...) employees were upset that the previous administration’s promise to raise pay didn’t materialize (...) While changes in the system may have been significant, thus far it does not appear that improvements in productivity or public service have been significant”<sup>51</sup>. The above mentioned study from Sanders on the impact of the Performance Management system also reveals a mix of positive and negative results.

The study of Klopp revealed also some negative results. Most interesting is that most employees in Georgia agree that there had been little if any real change in the human resources practices in their agencies following enactment of the civil service reform law<sup>52</sup> and “over 75% disagreed with the idea that Act 816 had resulted in a state workforce that is now more productive and responsive to the public...”<sup>53</sup>.

On the other hand, fears that the shift “of large numbers of employees to the unclassified service would lead to the abuse or manipulation of workers for political reasons” could not be confirmed!<sup>54</sup> Most employees were of the opinion that they are not “exposed to partisan political coercion on the job”<sup>55</sup>.

The most interesting results of the survey are three unexpected outcomes. The first is that “for the most part, they are not convinced that the act has done much to improve human resources practices or performance on the agency level”<sup>56</sup>. The second is that negative outcomes dominate the positive outcomes of the reform. And the third is that political coercion has not increased significantly and the number of dismissals is still rather low.

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<sup>44</sup> Walters, op cit, p.27

<sup>45</sup> Walters, op cit, p.25

<sup>46</sup> Walters, op cit, p.28

<sup>47</sup> Walters, op cit, p.25

<sup>48</sup> Walters, op cit, p.29

<sup>49</sup> Walters, op cit, p.26

<sup>50</sup> Robert M. Sanders, GeorgiaGain or Georgia Loss? The Great Experiment in State Civil Service Reform, in: Public Personnel Management, Vol. 33, Summer 2004, p. 151162.

<sup>51</sup> Klopp, B., Civil Service Reform, in: Collective Bargaining Reporter, [http://www.afscme.org/wrkplace/cbr102\\_1.htm](http://www.afscme.org/wrkplace/cbr102_1.htm), p.4

<sup>52</sup> Ibid

<sup>53</sup> Ibid

<sup>54</sup> Edward Kellough and L.G. Nigro, Administrative Theory and Civil Service Reform; A review of the Georgia Experience, university of Georgia, Manuscript, May 1, 2003, p.17

<sup>55</sup> Kellough/Nigro, Administrative Theory, p.12

<sup>56</sup> Kellough/Nigro, Administrative Theory, p.14

One could derive from these conclusions two interesting hypotheses: first, that alignment of working conditions may also deteriorate – rather than improve - working conditions, performance and motivation. Second, alignment does not necessarily result in more insecurity for employees and will not increase political pressure on them. “Predictions that removing the protections (...) from employees would have a significant negative impact on their loyalty when compared to employees who did have such protection are not supported by the findings ... On most of the specific issues investigated here – profession of concern for the agency, likelihood of changing jobs in the near future, interest in having employee organisations represent them, and responsiveness to managers' direction – there are no significant differences”<sup>57</sup>.

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<sup>57</sup> Gossett, Charles W., The Changing Face of Georgia's Merit System: Results from an Attitude Survey in the Georgia Department of Juvenile Justice, in: Public Personnel Department, Vol. 32, No 2, 2003, p.277.

## **7. Current Tendencies in the Member States – comparative observations**

### **1. Austria**

In Austria, in most sectors specified in the survey, such as Ministries, Agencies, Armed Forces, Judiciary (Judges), Police and Law Enforcement, Prisons, Diplomatic Sector, Schools (Teachers), Inspectorates, Financial Authorities, Fireworkers and the Water Sector, employees have the status of civil servant or a specific category of staff. In some sectors, such as Armed forces, Judiciary (Judges), Police and law enforcement and Prisons, contractual employment is not possible due to special service regulations. A special approach can be found with regard to Fireworkers. The special status of employees in this sector only applies to fireworkers in Vienna. In the rest of the country, fireworkers are mostly organised on a voluntary basis.

Sectors with mostly private employees are Central Banks, Universities, Local authorities, Border Control (customs) and Aviation (flight control).

Central Banks have been outsourced and therefore are no longer part of Public Service.

Since 1 January 2004, Universities (Professors) have been outsourced as well.

### **2. Belgium**

In Belgium, there is a tendency to employ mostly private staff in supplying sectors such as Gas and Electricity, Nuclear Power Stations and the Water Sector.

There also are mostly private employees in the sectors of Central Banks, Hospitals and Fireworkers.

In the sectors of Ministries, Agencies and Regional Authorities, Armed Forces, Judiciary (Judges), Police and Law Enforcement, Prisons, Diplomatic sector, Schools (Teachers), Universities (Professors), Inspectorates (food control, health safety), Financial Authorities (taxes), Local Authorities, Border Control (Customs) and Aviation (Flight control) and Risk Management/ Environmental Inspection and Control, there are mostly civil servants or specific categories of staff.

### **3. Cyprus**

In all sectors that are applicable, most employees are civil servants or specific categories of staff.

In some sectors, namely Armed forces, Judiciary, Police and Law enforcement, Schools (teachers) and Fireworkers, staff is employed by the Central Government and has a status similar to that of a civil servant. However, these employees are governed by specific legislation other than the Civil Service Law.

Employees in Central Banks and Universities (Professors) as well as the sector of Gas and Electricity are not employed directly by the Central Government. Still, their authority is subject to financial control by the Central Government. They are governed by specific legislation other than the Civil Service Law.

Staff of Local authorities is not employed directly or indirectly by the Central Government but has a status similar to that of a civil servant.

The sectors of Agencies and Regional Authorities as well as of Nuclear Power Stations are not applicable.

#### **4. Czech Republic**

a) In the majority of sectors, employees are civil servants or belong to specific categories of staff.

In the sectors of Ministries, Central Banks, the Diplomatic sector, Schools, Universities, Inspectorates, Nuclear Power Stations, Financial Authorities, and Risk Management, staff consists of mostly State employees under the Labour code.

In Hospitals, staff are mostly State employees under the Labour code. This does not apply to private hospitals, where there are private employees.

In Agencies and Regional Authorities, there are either State employees under the Labour Code or employees that are in a service relationship. There is a Special Service Act.

Employees in Armed Forces are in a service relationship under the Act on the Service of Armed Forces.

In Police and Law Enforcement, Prisons, Fireworkers, Border Control (customs) and Aviation (Flight Control), staff is in a service relationship under the Act on the Service Relationship for Members of Security Forces.

In Local Authorities there is a Special Service Act. Employees in this sector are in a service relationship.

b) Only in the sectors of Gas and Electricity and the Water Sector, there are mostly private employees under the labour code.

#### **5. Denmark**

a) The Danish Public Sector consists of the State Sector, the Danish Regions, Local Authorities/Municipalities, the Municipality of Copenhagen, the Capital Region Hospital Co-operative and the Municipality of Frederiksberg.

It provides for three groups of civil servants.

The first group is employed in the central administration and according to a law passed by Parliament.

The second group is employed in the municipalities according to legislation passed by the organisation of local employers after negotiation with the employee-organisations,

who has a right to negotiate but not to enter a collective agreement in this field. In case of disagreement, it is the employer who has the right to decide. The regulations are very similar to the law mentioned above.

The third group is employed in the regions according to legislation passed by the Danish Regions as explained above.

b) In Denmark, in most sectors such as Ministries, Agencies and Regional Authorities, Armed Forces, the Diplomatic sector, Universities, Inspectorates, Financial Authorities, Hospitals, Local Authorities, Fireworkers, Border Control and Aviation, Water and Risk Management, the majority of personnel are private employees, which means employment on collective agreements terms.

However, in many sectors, namely Gas and Electricity, Financial authorities (taxes), Fireworkers and Water, a distinction has to be made between the Municipality of Copenhagen and the rest of the country. In the Municipality of Copenhagen, most employees in these sectors are civil servants.

c) Only in the Judiciary (Judges), Police and law enforcement and Prisons, the number of civil servants or specific categories of staff prevails over the number of private employees.

In Schools (Teachers) both forms of employment equal each other.

The Central Bank does not form part of the public sector.

## **6. Estonia**

The overview shows that in most sectors, which means Ministries, Agencies and Regional Authorities, Armed Forces, Judiciary, Police and Law Enforcement, Prisons, the Diplomatic sector, Inspectorates, Financial Authorities, Local Authorities, Border Control and Aviation and Risk Management/environmental inspection and control, most employees are civil servants or belong to specific categories of staff.

In teaching professions (Schools, Universities), Central Banks and supplying sectors (Gas and Electricity, Hospitals, Fireworkers, Water Sector), staff consists of mostly private employees.

With regard to Fireworkers, this might change with effect of 1 January 2005.

## **7. Finland**

In most sectors, most employees are civil servants or belong to specific categories of staff.

Staff of Schools (teachers), Inspectorates (food control, health safety), Hospitals, Local Authorities and Fireworkers are Municipal employees.

With regard to hospitals, quite a large amount of nurses are private employees.

In the sectors of Nuclear power stations, Gas and Electricity and Water, most employees are private.

## **8. France**

In nearly all sectors, most employees are civil servants or belong to specific categories of staff.

However, staff of Central Banks, Nuclear Power Stations, Gas and Electricity, and Water, mostly are private employees.

## **9. Germany**

a) In the Public Sector a distinction is made between civil servants, judges and soldiers as well as private employees.

These groups are employed either on national level by the „Bund“, on regional level by the „Länder“ or on local level by the municipalities („Gemeinden“).

Civil servants are employed under the statute of civil servants and not by a contract. The relationship between civil servants and that of its employer can be characterized as that of service and fidelity. (33 IV GG) As civil servant employment is governed by public law, the Parliament has the right to fix duties and rights of public servants such as for example payment.

The same applies to Judges and Soldiers who also are in a service relationship that is governed by public law..

Private employees in the public sector have private law contracts. Labour law is applicable.

However, there also are collective agreements setting out the main employment conditions. These agreement are negotiated by the public employers and the unions. Employment in the status of employee is a position that has the same value as that of a civil servant. Employment conditions of employees and civil servants have been approximated in many respects.

However, important differences still exist between civil servants and employees. For example, civil servants have a couple of duties deriving from their special bond of faithfulness towards their employer, whereas employees' duties refer to their functions. Only civil servants do not have the right to be on strike. This rule is meant to make sure that core tasks of public administration will be taken care of in a reliable way.

The German Constitution (Grundgesetz) provides in Article 33 IV for the exercise of sovereign rights by civil servants.

By means of special duties and rights of civil servants, a stable and reliable administration is one of the aims to be achieved by this rule. This is why in the core functions of traditional public administration, especially in leading positions and sectors of sovereign rights such as Police, Fireworkers, Law enforcement and Financial authorities, mostly civil servants are employed.

Still, in many sectors of supplying administration, civil servants are employed, too. Teachers mainly are civil servants. In the health and social services and technical occupations mainly employees are hired.

Thus, the German Constitution provides for a system of rule (civil servants) and exception (employees). The employers (Bund, Länder, Gemeinden) have the competence to make this system more precise. They have the right to decide which functions should be fulfilled by civil servants.

b) The German answer to the survey showed that mostly civil servants and specific categories of staff are employed in the following sectors: Ministries on national and regional level, Judiciary (Judges), Police and law enforcement, Prisons, Diplomatic Sector (ortskraefte excluded), Universities (Professors), Financial authorities, Fireworkers and Border Control (Customs).

In the sector of Schools (teachers) there is a difference between East and West Germany. In East Germany, staff consists of mostly private employees, whereas in West Germany most employees are civil servants.

Teachers mainly are civil servants. In the health and social services and technical occupations mainly employees are hired.

In the Armed forces („Bundeswehr“), soldiers belong to a specific category of staff, whereas staff working in the Bundeswehr administration are mostly private employees.

Mostly private employees are working in Central Banks, Inspectorates (food control, health safety), Gas and Electricity, Hospitals (nurses, doctors), Local authorities, Aviation (flight control), Water and Environmental inspection and control.

This also applies to employees of Nuclear Power Stations, who are however no part of the public sector.

## **10. Greece**

Greek civil servants are being divided into the following categories according to their legal status:

a) **Civil servants**, who are governed by norms of public law. They are tenured and their ranks evolve in accordance with the career system.

b) **Civil servants with a term of office**, who are governed by norms of public law during their term.

c) **Civil servants under a fixed period contract** intended to deal with unforeseen, urgent or seasonal needs.

d) **Civil servants under a private law contract** (experts, ancillary or technical staff).

e) **Non-tenured civil servants**, who enjoy the personal trust of those who appoint them and can be dismissed at any time without special guarantees and compensation (the political bureaux of the prime minister and ministers are staffed by non-tenured civil servants).

In nearly all sectors, most employees are civil servants or belong to specific categories of staff.

Mostly Civil Servants are employed in Ministries, Agencies and Regional Authorities, Schools, Nuclear Power Stations, Financial Authorities (taxes), Local Authorities, Border Control (customs) and Aviation (Flight control) and Risk management/Environmental inspection and control.

Specific categories of staff can be found in the Armed forces, Judiciary (Judges), Police and law enforcement, Prisons, Diplomatic Sector, Universities (Professors), and the sector of Fireworkers.

In Hospitals, most employees are civil servants. This does not include doctors, who are a specific category of staff.

The Central Bank of Greece is an independent administrative authority. Therefore its staff consists of private employees.

The Staff in the Sector of Gas and Electricity as well as the Water Sector are private employees working in a public corporation.

## **11. Hungary**

In Hungary, there are four different service relationships in the area of Public service. Civil servants are working in administrative authorities (ministry, regional, local authority), their legal status are regulated by a separated act. There are about 108.500 civil servants. Mostly civil servants are employed in Ministries, because the tasks directly relates to exercising the executive, administrative, controlling and supervisory functions of the administrative authority may only be attended in the framework of a civil service relationship. Other sectors where mostly civil servants are employed are Agencies and Regional Authorities, Inspectorates, Financial Authorities and Local Authorities.

Public servants (teachers, doctors, nurses, etc.) are working in public institutions, their legal status is regulated also by a separated act. This is the biggest group of employees in the Public service and amounts to about 570.000. They are employed in the sectors of Schools, Universities and Hospitals.

In the sector of Armed Forces, there also are people working in an armed force relationship.

Last, there is the official service relationship. Employees of this kind are hired in the sectors of Police and Law Enforcement, Prisons, Fireworkers, Border Control (Customs), Aviation (Flight control) and Risk Management/environmental inspection and control.

The number of people working in an armed force or official service relationship is 92.500.

Judges do have a special legal status.

Mostly private personnel are employed in the sectors of Central Banks, Nuclear Power Stations, Gas and Electricity and the Water sector.

## **12. Ireland**

In the Irish public sector, a distinction is made between civil servants and public servants.

Public servants are persons who work for the state or for local government and is paid from the public purse.

In Ministries, the Diplomatic Sector, Financial Authorities (taxes) and Border Control (customs), most employees are civil servants.

In Agencies and Regional Authorities, Judiciary, Police and Law enforcement, Prisons, Central Banks, Schools, Universities, Gas and Electricity, Hospitals, Local Authorities, Fireworkers, and Aviation (Flight control) and Risk management/Environmental inspection and control, most employees are public servants.

Therefore, all the sectors focused on in this survey are either run by mostly civil servants or specific categories of staff.

## **13. Italy**

People employed in public administrations are mostly under a special status.

They can be divided into two main categories.

1.) The first category are Civil servants under public status. The main rules of these employment relationships are fixed by law and by administrative regulations (in some cases, the administrative regulations are adopted after a negotiation between the administration and the unions);

Employees of this category are hired in the sectors of Armed forces, Judiciary (Judges), Police and law enforcement, Customs, the Central Bank and the Diplomatic sector.

They can also be found in Universities (Professors). However, in this sector, professors employed in private universities are private employees.

In the sector of Gas and Electricity as far as it is run by an independent authority, most staff belong to this category of employees. As far as it is run by private companies with a public holding, most employees are private.

2.) The second category consists of civil servants under a special private status. The main rules are fixed by the laws in force for the private sector, but there are many exceptions and particular rules fixed by specific laws. Besides, there are collective agreements. These agreements are private contracts, but are different from the collective agreements negotiated for the private sector.

There is also a particular situation for employees in economic public bodies. An economic public body is a public body which applies the private laws according to the enterprise criteria; its personnel is under the private law.

Staff of this category is employed in Ministries, Agencies and regional authorities, Prisons (besides police and law enforcement), Inspectorates (food control, health safety), Nuclear Power Stations, Financial Authorities (taxes), Local Authorities and the sectors of Fireworkers, Flight control and Risk management/ environmental inspection and control.

In Schools (teachers) and Hospitals (nurses, doctors), this category also applies, except for private schools and private hospitals, where teachers, nurses and doctors are private employees.

The Water sector is also run by employees of the second category. However, there also are private companies with a public holding where private employees are hired.

## **14. Latvia**

In Latvia, tendencies are to the integration of all employees in the public sector as the differences between civil servants and employees are formal and not important.

Most, but not all employees in Ministries are civil servants or specific categories of staff.

In the sectors Police and Law Enforcement, Prisons, Diplomatic Sector, Financial Authorities (taxes), Fireworkers, Border Control (customs) and Aviation (Flight control), a special category of „specialised civil service“ is defined by law.

In the Sector of Risk management/environmental inspection and control, the status of the employees depends on the institution they are working for. They are civil servants when working in ministries.

In all the other sectors, staff consists of mostly private employees.

## **15. Lithuania**

In Ministries, Police and Law Enforcement, Prisons, the Diplomatic Sector, Financial Authorities (taxes), Fireworkers, Border Control (customs) and Aviation (Flight control) as well as Risk management/environmental inspection and control, most employees are civil servants or belong to specific categories of staff.

Employees in Agencies and Regional Authorities, Inspectorates (food control, health safety) and Local Authorities can be civil servants, belong to a specific category of staff or be private employees.

Mostly private employees can be found in the sectors of Armed Forces, Judiciary (Judges), Central Banks, Schools (Teachers), Universities (Professors), Nuclear Power Stations, Gas and Electricity as well as Hospitals (nurses, doctors).

Thereby, staff in the sectors of Judiciary (judges) and Central Banks are employed under special law.

## **16. Luxembourg**

In nearly all sectors, such as Ministries, Agencies and Regional Authorities, Armed Forces, Judiciary (Judges), Police and Law Enforcement, Prisons, Central Banks, Diplomatic Sector, Schools, Inspectorates, Gas and Electricity, Financial Authorities (taxes), Local Authorities, Border Control (customs) and Aviation (Flight control) and Water, staff are employed as civil servants or belong to specific categories of staff.

However, a part of the staff in some agencies are private employees.

Mostly private employees can be found in the sectors of Universities (Professors) and Hospitals (nurses, doctors).

## **17. Malta**

Most employees are civil servants or belong to specific categories of staff in the following sectors: Ministries, Agencies and Regional Authorities, Police and Law enforcement, Prisons, Diplomatic Sector, Schools (teachers), Inspectorates (food control, health safety), Financial Authorities (taxes), Hospitals (nurses, doctors), Fireworkers, Border control (customs) and Aviation (Flight Control).

However, in Ministries, ministers can employ private employees to work in their offices, the latter being generally employed on a contractual basis.

In the sector of Agencies and Regional Authorities, most of the agencies and authorities have taken over from government departments and therefore the public officers serving in these departments were either detailed or given the opportunity to join the agency/authority. However, new recruitment is generally done from outside the service.

In the sectors of Armed forces, Judiciary (Judges), Central Banks, Universities (Professors), Gas and Electricity, Local Authorities, Water and Risk management/environmental inspection and control, mostly private employees can be found.

Although the Armed Forces and the sector of Gas and Electricity are considered as a part of the public sector, employees there are not public officers. The same applies to the Water sector, that is an ex- government department.

## **18. Netherlands**

Most employees are civil servants or belong to specific categories of staff.

An exception to this are Central Banks and supplying sectors such as Nuclear Power Stations, Gas and Electricity, Hospitals (nurses, doctors) and the Water sector.

Border Control (customs) is part of the civil service, therefore most employees are civil servants or belong to specific categories of staff. Meanwhile Aviation (Flight control) is private, so that its employees are private as well.

In other sectors, in the survey not mentioned by name, staff consists of mostly private employees.

## **19. Poland**

The Polish Civil Service corps consists of some 120 000 members employed in servants' positions in:

the Chancellery of the Prime Minister,

Offices of Ministers and Chairmen of Committees which are members of the Council of Ministers and offices of central agencies of Government administration,

voivodship offices and other offices which constitute structures supporting local agencies of Government administration, subordinate to Ministers or central Government administration,

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headquarters, inspection offices and other organisational units which compose structures in support of heads of unified voivodship services, inspections and guards as well as heads of poviats services, inspections and guards, unless relevant laws state otherwise.

Outside the civil service corps is so called "*state administration*" (e.g. chancelleries of President, Sejm, Senat, Supreme Chamber of Control, Ombudsman Office, Labour Inspection, Broadcast and TV National Council Office), and self-governmental administration (community, county and regional offices).

The Civil Service Corps employs some 120.000 civil service corps members (some 1 500 appointed civil servants and some 118 500 civil service employees – all under the civil service law):

some 13% in central administration (like ministries, central offices),

some 9% in voivodship administration (in 16 voivods, regions),

some 18% in specialised administration (services, inspections and guards),

some 54% in tax offices.

Employment (I quarter 2004)

- employed persons total:	13 465 000
- employed in public sector:	4 312 000
- employed in civil service corps	120 000

In Ministries, Inspectorates (food control, health safety), Financial Authorities and Risk management/environmental inspection and control, most employees are civil servants or belong to specific categories of staff.

This also applies to the following sectors:

Armed forces, that provide for specific categories of staff and an uniformed public service status. Staff employed in this sector is situated outside the civil service corps.

Judiciary (judges), where specific categories of staff are employed under a contract governed by public law but outside the civil service corps. Police and law

enforcement, where specific categories of staff are employed and have uniformed public service status but however mostly are outside the civil service corps. Prisons belong to the public sector. Employees enjoy an uniformed public service status but are situated outside the civil service corps. The Diplomatic Sector is ruled under foreign service law and under civil service law. In Schools (Teachers) and Universities (Professors) specific categories of staff are employed outside the civil service corps and under a contract governed by public law. This does not include private schools and universities. In Local Authorities, employment comes under a contract governed by public law. (self-governmental servants). Employees stand outside the civil service corps. Fireworkers have an uniformed public service status and stand outside the civil service corps. In the sector of Border control (customs), the majority of employees enjoys uniformed public service status outside the civil service corps. The minority has contracts under civil service law. In the sector of Aviation (Flight control), employees of the Civil Aviation Office, responsible for providing and maintaining safe and efficient aviation services to, from and within Poland, are employed under civil service law. Employees of Airports however are mostly private employees employed under labour code.

Agencies and Regional Authorities, that belong to the public sector, mostly private employees can be found. These stand outside the civil service corps, hereby excluded employees of voivod offices who are civil service corps members. Central Banks belong to the Public sector and have mostly private employees that are outside the civil service corps. In the Gas and Electricity as well as the Water sector, most employees are under private contracts. (private law contracts?) Hospitals (nurses, doctors) are a part of the public sector. Staff is outside the civil service corps and employed under a system governed by the labour code.

## **20. Portugal**

Mostly Civil Servants are employed in Ministries, Agencies and Regional Authorities, Armed Forces, Judiciary, Police and Law Enforcement, Prisons, Diplomatic Sector, Schools, Universities, Inspectorates, Financial Authorities (taxes), Local Authorities, Fireworkers, Border Control (customs) and Risk management/Environmental inspection and control.

However, in Agencies, there are also private employees. In the Portuguese Public Administration, public Institutes are considered as agencies.

## **21. Slovakia**

In Slovakia, there are Public Servants, which means employees under Public Service Law and the Labour code, in the Sectors of Agencies and Regional Authorities, Schools, Universities, Hospitals and Local Authorities.

Mostly civil servants are employed in Ministries. This does not apply to service staff such as secretaries, drivers and IT staff.

There are also mostly civil servants in the Diplomatic Sector, Inspectorates, financial Authorities and Risk Management.

Armed Forces come under a special law on civil service of the armed forces.

For the judiciary, there is a special law on the status of judges.

In the sectors of Police and Law enforcement and Prisons, a special law on the civil service of police forces, judicial wardens and security officers does apply.

There also are a special law on the civil service of the fireworkers and a special law on the civil service of the custom officers.

Mostly private employees are employed in the sectors of Central Banks, Nuclear Power Stations, Gas and Electricity and Water.

## **22. Slovenia**

In Slovenia, almost all employees in the public sector are civil servants.

Some of them are so called Officials and have special status, regulated with the Civil Servants Act.

Other civil servants (ancillary workers) are working in the field of personnel and in the field of material and financial management, technical and similar services and other work, required the secure uninterrupted performance of public tasks by bodies or entities of public law. Civil servants performing other (non official) work shall be professional-technical civil servants. Their employment, rights and obligations are regulated with the law governing employment.

In Ministries, 80 % of all employees are Officials and 20 % ancillary workers. In Agencies and Regional Authorities, there are 50-70% Officials, in the Armed Forces, there are approx. 80% Officials.

Only in the Sectors of Central Banks and Gas and Electricity, there are mostly private employees.

## **23. Spain**

Most employees in ministries are civil servants or belong to a special category of staff.

This also applies to employees in agencies and regional authorities.

In the sectors of Armed forces and Police and law enforcement, all employees are civil servants under administrative law (statutory system). In the Diplomatic sector, most employees are civil servants under administrative law.

In the Judiciary (Judges), all employees are civil servants under administrative law (statutory system). In Justice Administration (Judges and magistrates as well as staff working in the Justice administration), staff consists of public employees submit to a

special statutory framework. Judges and magistrates are civil servants. The rest of the personnel working in the administration of justice are mostly civil servants. Still, it is also possible to have labour personnel.

Inspectorates (food control, health safety) are run by Civil servants transferred to the Autonomous Communities.

In Prisons and Financial Authorities (taxes), mostly civil servants but also labour contract employees are hired.

In Schools (Teachers), mostly civil servants under a statutory special regime and also some labour contract employees are employed. In Universities (Professors), civil servants under a statutory special regime are employed. However, there also are private teachers hired in private schools and private professors hired in private universities.

In Hospitals (nurses, doctors and other health personnel), staff consists of statutory employees depending on the Autonomous communities. However, there also are private health personnel hired in private hospitals.

Fireworkers mainly are labour contract employees depending on the Autonomous Communities. Besides a small number of fire workers depend on the Administration of the State through the Ministry of Defence.

The sector of Border control (customs) consists of mostly civil servants but also labour contract employees. In Aviation (Flight control), labour contract employees are hired. Flight control depends on the “Spanish Airports and Aerial Navigation (AENA)”, an Entrepreneurial Public Agency with special legal framework. They used to be civil servants but became subject to common labour law in the nineties.

In the sector of Central Banks, special rules do apply. El Banco de España is a Public Entity with functional autonomy subject to an specific law. Their staff is subject to the labour law like private employees, to an specific labour agreement and to the internal regulations of the Bank. Recruitment is under the general principles of access to public employment and the annual remunerations’s increase is subject to the limitations fixed by the annual budget law for the rest of public employees

Risk management/ environmental inspection and control is run by Labour contract employees.

In the sectors of Gas, Electricity and Water, mostly private employees are hired.

In the Sector of Nuclear Power Stations, the management of the nuclear energy is realised by private enterprises. Still, there is a public independent institution in the Administration General of the State named *Consejo de Seguridad Nuclear* with civil servants and contract employees. It has regulatory functions and controls the nuclear facilities. Two civil servants of this organism are detached in the nuclear stations with functions of supervision and control.

The Spanish answer to the survey also lists some more sectors such as Post and Telegraphs, Ports and Railways and Telecommunication.

Post and Telegraphs is currently run by a private company. It used to be part of the Administration and it retains a big number of employees under the statutory regime. The rest of the personnel is under labour contract regime.

In the sector of Telecommunications, there is a National Commission for the Market of telecommunications with general regulatory functions. The National Commission is an Entrepreneurial Public Agency with a special legal framework. Their personnel is subject to labour law.

In the sector of Ports and Railways, State Ports and Port Authorities and National Network of Spanish Railway (RENFE), are Entrepreneurial Public Agencies with special legal framework. Their personnel is subject to common labour law. The employment relationships of the people who are employed in the public sector are governed by two branches of the law: administrative law (statutory system) and labour law (labour contract system).

The Spanish Constitution of 1978 and the Act 30/1984, of 2 August, on Measures for the Reform of the Civil Services and subsequent amendments, have opted for a statutory system for the civil service but without excluding the labour contract one. It means that Public Administrations have to fill their vacant positions mainly with civil servants. The possibility of hiring staff members under the labour regime is viewed as a legal exception, given the fact that such contracts can only be concluded for the following types of positions listed in the law :

Positions that are not permanent in nature and those whose activities aim to satisfy periodical or discontinuous necessities. Positions whose activities are characteristic of a trade or craft, as well as surveillance, care taking, carriage and other similar ones. Positions of an instrumental nature that relate to matters such as the maintenance of buildings, equipment and facilities, graphic arts, surveys, civilian protection, social communication, artistic expression, social services and protection of minors. Positions that required specialised technical knowledge, provided that there are not Corps or Scales whose members can fulfil these tasks. Positions in foreign offices with administrative, procedural or auxiliary functions that involve the operation of machinery, filing or similar tasks, and Positions that involve the carrying out of auxiliary functions of an instrumental nature or the giving of administrative support.

(2) Nevertheless, the possibility of employing staff in terms of employment contracts is not treated as an exception throughout the public sector. There are certain public organisms, such as **Public Agencies** that operate within special legal frameworks as well as the **Entrepreneurial Public Agencies**, which are subject to private law and only employ staff in terms of labour law. However, although these staff members are excluded from the legal statutory framework of the civil service, recruitment has to be regulated by principles of equality, merit and capability, and publicity. There are also some agencies where the majority of the personnel is subject to civil service status (Tax Agency, for instance).

Entrepreneurial Public Agencies are public bodies that are charged of performing service activities, managing services or producing goods having a public interest and

being liable to a counter-service. They are governed by private law, except for the adoption of decisions by its government bodies, intention in the exercise of any administrative faculties they have been assigned and in those aspects specifically regulated for the same on the laws, its articles of association and any budgetary provisions.

As an example, Entrepreneurial Public Agencies and Public Agencies with special legal frameworks comprises organisms as “Spanish Airports and Aerial Navigation (AENA)”, “State Ports and Port Authorities”, “National Network of Spanish Railway (RENFE)”, or the “Cervantes Institute” and the “Spanish Institute for Foreign Trade (ICEX).

Employment in the **Autonomous Communities** follows the same pattern just explained with civil servants and labour contract employees.

Employment in the **Local Administration** follows also the same pattern with civil servants and labour contract employees. Regarding the *civil servants* it is necessary to distinguish the ones selected by the Local Administration and the ones selected at national level by the State Administration. In this last case they have an special regime: they are the ones who hold national qualifications, the ones who occupy positions that involve the exercise of the authority, the giving of legal advice, internal management and control of finances and budgeting as well as positions relating to accounting, treasury and tax collection (they are the civil servants who form part of the Corp of the Secretaries, financial inspectors and local receivers of revenue).

## **24. Sweden**

In principle, the same overall labour law applies to the public sector as to other sectors in the labour market. Certain separate regulations do exist, for example concerning the responsibilities of particular posts or as concerns industrial disputes in certain government agencies, but in general, the underlying regulations are identical.

There is no life-long employment guarantee in central government posts. If redundancies become necessary, permanent employees may also be laid off.

However, certain groups do enjoy greater employment security, for example judges, who may only be removed from their posts if they commit a crime. The other groups are small and no new people are employed within these groups. Therefore, the public employees do not fit your definition of a civil servant although we use to refer to them as civil servants.

The Swedish public sector is divided into three political levels – national (government), regional (county councils) and local (municipalities), with their own elections, right to levy taxes, and own levels of responsibility. Employees at all three levels are **public employees**. Some agencies at the national, or the government, level is also organised at regional and local level. The Swedish Agency for Government Employers there I work represent only the national level that is the smallest of the three.

Judges are the only larger group of employees who enjoy greater employment security.

The Central Bank is a special case. The employees are employed by the national parliament and not by the government

In Schools, the largest part of the teachers are employed by the municipalities but there are also independent schools there the employees are private employees.

Employees in Inspectorates (food control, health safety) and Risk management/ environmental inspection and control can be found both at the governmental political level and at the municipalities.

The county councils manage the hospitals and employ the staff, whereas the municipalities employ fireworkers and manage the water sector and employ the staff.

## **25. United Kingdom**

In the UK, the approach towards employment in the public sector differs from (continental) that of the other EU member states.

First of all, there is no clear definition (statutory or otherwise) of the term “Civil Servant” or “Home Civil Service”. A Civil Servant is usually defined in public documents as “a servant of the Crown who does not hold political or judicial office, who is employed in a civil capacity and whose remuneration is paid wholly out of money voted annually by Parliament”.

In 1978, the Machinery of Government Division of the Cabinet Office issued a document called “What Is A Civil Servant?” The document criticised the precise accuracy of the above definition.

The 1978 document provided the following definition of a Civil Servant, which was necessarily very general, and warned against regarding the definition as being “watertight”. “A Civil Servant is employed in the service of the Crown to perform functions on behalf of the Crown in a civil capacity and Civil Servants may serve either a Minister of the Crown or some other body performing functions on behalf of the Crown”.

There are many Crown servants who are not Civil Servants, including the Royal Household, Ministers, the holders of judicial offices, members of the Armed Forces and police officers.

Traditionally, Civil Servants were regarded as not having contracts of employment and holding their appointments at will. In recent times, the Courts and the Crown itself have been more ready to accept that Civil Servants should be treated as if they are employees under a conventional contract.

Control over the numbers, salaries and terms and conditions of those Crown servants who are in the Civil Service of the State had traditionally been exercised by either the Treasury or a Civil Service Department.

In the early 1990s, a political initiative for the delegation of personnel issues to departments and away from central departments (the Treasury and the Cabinet Office), led to the passing of the Civil Service (Management Functions) Act 1992. These functions have been further delegated.

These days, authority to prescribe the qualifications for the appointment of Home Civil Servants, to determine the number of grades of posts outside the Senior Civil Service and to determine most terms and conditions of employment, again outside the Senior Civil Service, have been delegated to Ministers in charge of departments and to office holders or Bodies who require the sanction of the Minister for the Civil Service for the exercise of a statutory power which relates to the management of Home Civil Servants. The delegation is subject to compliance with the Civil Service Management Code.

The Home Civil Service is subject to special controls under Orders in Council. The Civil Service Order in Council 1995 (which is primary legislation) prescribes the procedure that must be followed before appointments may be made to the Home Civil Service. It places responsibility on the Civil Service Commissioners to ensure appointments (subject to certain exceptions) are made on the basis of selection on merit and fair and open competition. The Order authorises the Minister for the Civil Service to make regulations and give instruction on all aspects of the employment of those in the Home Civil Service. It is under these powers that the Minister makes the Civil Service Management Code. The Code provides the framework which departments are obliged to follow.

In practice, therefore, below the Senior Civil Service the decision as to what posts should exist and whom to appoint to them within the Home Civil Service is taken by the department or body concerned but subject always to the requirement to comply with the 1995 Order in Council and to the supervision and control of the Commissioners.

While many Home Civil Servants are appointed pursuant to prerogative powers, others are appointed and their terms and conditions determined, under statutory provisions (i.e. staff in HM Customs & Excise and the Office of Fair Trading). Heads of many of these departments will generally be “office holders”. A statutory office holder may be a Civil Servant. This is likely to be the case where he is appointed by a Minister on behalf of the Crown and his office is subject to a degree of control by the Government. Conversely, if he is generally independent of the Government and he is accountable to Parliament alone, he is not a Civil Servant. There is rarely any express provision indicating whether or not the appointment is within the Home Civil Service.

There are a number of groups not dealt with in accordance with the 1995 Order in Council (i.e. not on the basis that they are members of the Home Civil Service). They are:

The Diplomatic Service and the Northern Ireland Civil Service. There are, however, Orders which prescribe similar procedures to those in the 1995 Order for the appointment of members of the Diplomatic Service and the Northern Ireland Civil Service;

Persons traditionally regarded as members of the Civil Service, but not as members of the Home Civil Service (e.g. the Intelligence Services);

Office holders. As noted above, some office holders are also Civil Servants and, if they are Home Civil Servants, their appointment must comply with the 1995 Order in Council;

In short, there are a number of categories of Civil Servants:

Home Civil Servants appointed under statutory powers (e.g. staff in HM Customs & Excise);

Home Civil Servants appointed under prerogative powers (e.g. the Civil Service Order in Council 1995);

Crown/Civil Servants outside the Home Civil Service appointed under statutory powers (e.g. the Northern Ireland Court Service);

Crown/Civil Servants appointed under neither a statutory power or pursuant to an Order in Council appointed directly under the prerogative (e.g. the Intelligence Services).

There are a number of groups of civil servants which are outside the Home Civil Service and so the requirements of the 1995 Order in Council do not apply to their appointment (Technical Co-operation Officers appointed by DfID under the Overseas Development and Co-operation Act 1980, the Corps of Specialists appointed by DfID, staff engaged locally overseas, the staff of the Forestry Commission and the staff of the Intelligence Services). Government departments have no discretion to decide whether a particular post is within the Home Civil service and if an appointment has been made in breach of the 1995 Order, the appointment and the contract of employment will be unlawful and the individual must be required to vacate the post forthwith.

## **8. Tendencies in the Sectors – comparative observations**

### ***1. Employees in ministries***

In Ministries, there is a clear tendency towards the employment of civil servants or specific categories of staff, as Denmark is the only member state having mostly private employees (employed on collective agreement terms).

In Sweden, due to its special approach towards public employment, employees are called civil servants although they are not civil servants in the common sense. In general, the same labour law applies to them as in the private sector. Still, they are public employees.

Most of the other member states employ civil servants or specific categories of staff. In the Czech Republic, staff consists of state employees under the labour code. In Germany, where, due to its federal system there are ministries both on national and regional level, as a rule civil servants are employed in the ministries. In Hungary, tasks directly related to exercising the executive, administrative, controlling and supervisory functions of the administrative authority may only be exercised by employees with a civil service status. In Italy, civil servants are employed under a special private status, where the main rules are those of the laws of the private sector, but many exceptions and particular rules are fixed by specific laws (see above). In Latvia, most but not all employees in this sector are civil servants or specific employees. In Malta, ministers can employ private employees to work in their offices on a contractual basis. Still, most employees in ministries are not private employees. In Slovakia, only service staff, for example secretaries, drivers, IT staff are not included among the civil servants. In Slovenia, only 20% of all employees in the ministries are not civil servants under a public law status.

## ***2. Employees in agencies and regional authorities***

In most member states such as Austria, Belgium, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, Netherlands, Slovenia and Spain, employees in this sector are either civil servants or belong to a specific category of staff.

In the Czech Republic, personnel are either state employees under the labour code or in a service relationship. There is a Special Service Act. In Ireland, agencies and regional authorities are run by public servants, i.e. persons who work for the state or for local government and are paid from the public purse. In Italy, civil servants employed in this sector are under a special private status, where the main rules are those of the laws in force for the private sector but also exceptions and particular rules of specific laws do apply (see above). In Luxembourg, although most employees are civil servants or belong to a specific category of staff, part of the staff in some agencies are private employees. Most of Maltese agencies have taken over departments from government. This is why public officers serving in these departments were either detailed or given the opportunity to join the agency or authority. New recruitment is generally done from outside the service.

Spanish Public agencies have special legal frameworks as well as Entrepreneurial Public Agencies, which are subject to private law. Employment follows the rules of Labour law, so that staff is not part of the statutory framework of the civil service. Recruitment however is guided by the principles of equality, merit, capability and publicity. In some agencies, such as Tax Agencies, the majority of staff consists of civil servants. Entrepreneurial Public Agencies are governed mainly by private law,

still there are exceptions in some parts of their workings. This pattern also applies to the Autonomous communities. In Slovenia, 50-70% of all public employees have civil service status.

Denmark, Latvia, Lithuania, Poland, Portugal and Slovakia employ mostly private employees in this sector.

In Denmark, most employees are private and employed on collective agreement terms.

Latvia employs mostly private employees in this sector. In Lithuania and Portugal, employees may be either civil servants, belong to a specific category of staff or be private employees. In Portugal, this includes public institutes who are considered as agencies. The staff of Polish agencies and regional authorities (who belong to the public sector) are outside the civil service corps. This does not include employees of voivod offices (see above) who are members of the civil service corps. Slovakian Agencies and Regional Authorities employ mostly public servants which means employees under public service law and the labour code. In Sweden this sector is run by public employees who are called civil servants but are not civil servants in the classical sense of the word (see above).

In Cyprus, there are no agencies and regional authorities.

### **3. Armed forces**

When it comes to the Armed forces, most member states such as Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Poland, Portugal, Slovenia, Slovakia and Spain have chosen to give their personnel in this sector civil servant or a special status.

In Austria, contractual employment is not possible in this sector due to special service regulations. In Cyprus, staff of the Armed Forces are employed by the Central Government and have a similar status as civil servants. However, they are governed by specific legislation that differs from civil service law. In the Czech Republic, personnel in this sector is in a service relationship under the Act on the Service of the Armed Forces. In Germany a distinction is made between soldiers, who are civil servants or have a special status and personnel working in the armed forces administration, who are mostly private employees. Members of the Greek Armed forces belong to a specific category of staff. In Hungary, staff in this sector is employed in a special Armed force relationship. Ireland mostly employs public servants, which are persons who work for the state or for local government and are paid from the public budget. In Italy, personnel of the Armed forces are civil servants under public status. The main rules in these employments derive from law and administrative regulations. Armed Forces in Poland provide for specific categories of staff who have an uniformed public service status but stand outside the civil service corps.

In the Spanish Armed Forces all personnel has the status of civil servant under administrative law (statutory system). In Slovakia, a Special Law on the civil service of the Armed Forces is in existence. In Slovenia, approx. 80% of the armed forces have a public law status.

However, in Denmark, staff of the Armed Forces are private employees and employed on collective agreement terms. Latvia and Lithuania employ mostly private staff in this sector. Members of the Armed forces in Malta are not public officers although the Armed Forces are part of the public sector. In Sweden, employees are public employees and are called civil servants although in general the same regulations as in other sectors of the labour market do apply. (see above)

#### **4. Judiciary (Judges)**

In the Judiciary, again there is a tendency towards the employment of civil servants or specific categories of staff .

Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Greece, Ireland, Italy, Luxembourg, Netherlands, Poland, Portugal, Spain, Slovakia, Slovenia and Sweden mostly employees public employees either with a public law status or with a specific status.

Latvia, Lithuania and Malta however, decided to employ mostly private employees.

In Austria, contractual employment is not possible in this sector due to special service regulations. Judiciary in Cyprus mainly consists of staff employed by the central government having a similar status to that of civil servants but being subject to specific legislation other than civil service law. In Greece, judges belong to a specific category of staff. In Hungary, they are in a special legal relationship. Ireland employs public servants (persons working for the state or for local government and being paid from the public purse) in this sector. Italian Judiciary consists of civil servants under a public status, whereby the main rules are fixed by law and administrative regulations. In Poland, in the Judiciary specific categories of staff are employed under a contract governed by public law . These do not belong to the civil service corps.

In Spain they all are civil servants under administrative law (statutory system) (see above). In Slovakia, a special law on the status of judges applies to members of the judiciary. In the Swedish system of public employment, judges are the only larger group of employees who enjoy greater employment security and can therefore be regarded as a specific group of employees whose status equals that of civil servants. Judges may only be removed from their posts if they commit a crime.

Lithuania's Judiciary consists of mostly private employees but there are also judicial employees (judges) under a special law.

#### **5. Police and law enforcement, Prisons**

In the sectors of Police and Law Enforcement as well as Prisons, nearly all Member States taking part in our survey seem to agree, that most personnel should enjoy a special or civil servant status.

This outcome might be logical bearing in mind that both sectors belong to the core pieces of the exercise of governmental power.

In Austria, in both sectors contractual employment is not possible due to special service regulations. In Cyprus, both sectors provide for employment of civil servants or specific categories of staff. Personnel in the sector of Police and Law Enforcement in particular are employed by the Central Government according to specific legislation other than the Civil Service Law and have a status similar to that of civil servants. In the Czech Republic, staff in both sectors are in a service relationship according to the Act on the service relationship for members of Security Forces.

Greece employs specific categories of staff in both sectors. Staff of both sectors has public servant status in Ireland. In Italy, in the sector of police and law enforcement, civil servants are employed under public status, which means that the main rules are fixed by law and administrative regulations, whereas civil servants in the sector of prisons are under a special private status which means that the main rules are fixed by the laws in force for the private sector and exceptions and particular rules are fixed by specific laws. Latvian law defines a special category of “specialized civil service” in both sectors. Polish Police and Law Enforcement units consist of specific categories of staff who have an uniformed public service status and are mostly outside the civil service corps. In the sector of Prisons that is part of the public sector, personnel has an uniformed public service status but does not belong to the civil service corps. In Spanish Police and Law Enforcement, all employees are civil servants under administrative law (statutory system), whereas in Prisons employees are mostly civil servants except for some who are labour contract employees. Slovakia has Special laws on the civil service of police forces, judicial wardens and security officers.

Sweden has a special approach towards the employment in the public sector, where a classical civil service status is nearly nonexistent. Still, personnel in these two sectors are public employees and are called civil servants although the same rules apply as in the other sectors of the labour market.

In the UK, Prison Officers are civil servants whereas the Police are employed as crown servants.

## **6. Central Banks**

a) In this sector, the majority of EU Member States, which means Austria, Belgium, Denmark, Estonia, France, Germany, Greece, Hungary, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia and Sweden have chosen for mostly private employment contracts. In some of these member states, Central Banks have been outsourced and don't belong to the public sector at all.

For example, in Austria, the sector of Central Banks is not part of the public sector anymore due to outsourcing. In Denmark, the Central Bank also does not belong to the public sector. The Central Bank of Greece is an independent administrative authority. The Central Bank of Lithuania stands under a special law.

In Poland, the Central Bank is part of the Public sector, but employees are outside the civil service corps. In Sweden, the Central Bank is a special case, as staff are employed by the national parliament and not by the government.

b) In Cyprus, Czech Republic, Finland, Ireland, Italy, Luxembourg and Spain however, most employees are civil servants or belong to a specific category of staff.

In Cyprus, staff in this sector are not employed directly by the Central Government but nonetheless their authority is subject to financial control by the Central Government. The rules of their employment relationships are set out by specific legislation other than the Civil Service Law. In the Czech Republic, staff consists of State employees under the labour code. Irish Central Banks mostly employ Public Servants, who are persons working for the state or for local government and being paid from the public purse. In Italy, civil servants under public status are employed, whereby the main rules of employment are fixed by law and administrative regulations. El Banco de España, the Spanish Central Bank, is a Public entity with functional autonomy subject to a special law. Their staff is subject to the labour law like private employees, to a specific labour agreement and to the internal regulations of the Bank. The recruitment of employees follows the general principles of access to public employment. The annual remunerations's increase is subject to the limitations fixed by the annual budget law for the rest of public employees.

## **7. Diplomatic Sector**

The vast majority of Member States has granted Civil servant or a specific status to employees in the Diplomatic Sector.

An exception to this is provided by Denmark, where personnel are employed on collective agreement terms and therefore are mostly private employees. In Germany, an exception is made concerning local personnel. The rest of staff are civil servants or belong to a specific category. In the Czech Republic, staff consists of state employees under the Labour code. In Greece, the Diplomatic Sector is run by a specific category of staff, whereas Ireland employs mostly civil servants. Italy has chosen to make employees in this sector civil servants under public status. The main rules are hereby fixed by law and administrative regulations. (see above). In Latvia, a special category of "specialized civil service" is defined by law. Poland has a system of employing staff under foreign service law and under civil service law. Spain employs civil servants under administrative law in this sector.

In Sweden, there are public employees who are called civil servants but who are in general governed by identical rules as in other sectors of the labour market.

## **8. Schools (Teachers)**

A tendency towards the employment of civil servants or specific categories of staff does exist in Austria, Belgium, Cyprus, Czech Republic, Denmark, Finland, France, Germany (partly), Greece, Hungary, Ireland, Italy, Luxembourg, Malta, Netherlands

(partly), Poland, Portugal, Slovenia and Spain have opted to give their employees these kinds of status.

However, Italy, Poland, Spain and Sweden have commented, that there is also employment of private staff in private schools. This might also apply to other Member States who have not indicated so.

In Cyprus, staff of schools are employed by the Central Government and have a similar status as civil servants. They are governed by specific legislation other than the Civil service Law. In the Czech Republic, staff are state employees under the labour code. In Denmark, the numbers of civil servants and employees of a specific category of staff and of private employees approximately equal each other. In Finland, personnel (who are mostly civil servants or specific categories of staff) consists of municipal employees. In Germany and The Netherlands, there are both ways of employment. In East Germany, mostly private employees are hired whereas in West Germany staff consists of mostly civil servants. Greece employs mostly civil servants, Ireland public servants. Italian staff of schools who are not private consists of civil servants under a special private status, where the main rules are fixed by the laws in force for the private sector and many exceptions and particular rules fixed by specific laws exist. There also are private employees hired in private schools. In Poland, personnel belong to specific categories of staff and are under a contract governed by public law. They are outside the civil service corps. This does not apply to private schools. In Spain, staff consists of mostly civil servants under a statutory special regime and of some labour contract employees. Teachers hired in private schools are not included in this. In Sweden, the largest part of the teachers are employed by the municipalities They are public employees but not civil servants in the common sense of the word. There are also independent schools where staff are private employees.

Estonia, Latvia, Lithuania and Slovakia have mostly private employees. In Slovakia, public servants are employed which means employees under public service law and the labour code.

## **9. Universities (Professors)**

In this sector, the numbers of EU member states who have chosen to employ mostly civil servants or employees of a specific category (Belgium, Cyprus, Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Poland, Portugal, Slovakia, Slovenia and Spain) and those who hire mostly private employees (Austria, Denmark, Estonia, Latvia, Lithuania, Luxembourg, Malta) are about the same.

Italy, Poland and Spain also indicated, that there is a number of private Universities, where staff has private labour contracts.

In Cyprus, personnel in this sector are not employed directly by the Central Government but their authority is subject to financial control by the Central Government. Also, specific legislation other than Civil Service Law applies. In the Czech Republic, they are state employees under the labour code. Germany provides civil service status for University Professors. Greece employs specific categories of staff, Ireland public servants. In Italy, most employees are civil servants under public

status, which means that the main rules are fixed by law and administrative regulations. In some cases, administrative regulations are adopted after negotiation between the administration and the unions. There also is a number of professors employed in private Universities who have private status. In Hungary, Professors are public servants. Poland employs specific categories of staff, who are under a contract governed by public law. However, personnel in this sector is outside the civil service corps. There also are private Universities, where these principles do not apply and private staff is hired. Spain employs civil servants under a statutory special regime. Still, there also are private universities, where private professors are employed. Slovakia hires public servants which means employees under Public Service Law and the labour code. In Sweden, there are public employees who are called civil servants. However, the same rules are applicable in general as in the private sector.

In Austria, Universities have been outsourced since 1 January 2004. In Denmark, employment of staff in this sector follows collective agreements and is mostly private.

## **10. Inspectorates (food control, health safety)**

The majority of EU Member States provides for a civil servant or special status in this sector. This is the case in Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia and Spain. In Denmark, Germany and Latvia, mostly private employees are hired. Lithuania employs both kinds of staff.

In the Czech Republic, there are state employees under the labour code. In Finland, staff in this sector are municipal employees. In Greece, they are civil servants, in Ireland, they are public servants. Italy employs civil servants under a special private status, whereby the main rules are those of the laws in force for the private sector. There are many exceptions and particular rules fixed by specific laws. In Malta, Inspectorates are authorities, therefore the same rules as explained above apply. In Spain, civil servants transferred to the Autonomous Communities are working in this sector. In Sweden, you find these kinds of employees both at the governmental political level and at the municipalities.

## **11. Nuclear Power Stations**

In a couple of Member States, such as Austria, Cyprus, Denmark, Estonia, Ireland, Luxembourg, Malta, Poland, Portugal, this sector is not relevant.

Among the others, only the Czech Republic, Greece and Italy provide for civil servant or a specific status for employees in this sector. Belgium, Finland, France, Germany, Hungary, Latvia, Lithuania, Netherlands, Spain, Slovakia and Sweden employ mostly private staff.

In the Czech Republic, staff consists of state employees under the labour code.

In Greece, civil servants are employed in this sector. Italy employs civil servants under a special private status, which means that the main rules are fixed by the laws in force for the private sector, but there are many exceptions and particular rules fixed by specific laws.

In Germany, Nuclear Power Stations are not part of the public sector.

In Spain, the management of the nuclear energy is realized by private enterprises. Still, there is a public independent institution in the Administration General of the State named Consejo de Seguridad Nuclear with civil servants and contract employees. It has regulatory functions and controls the nuclear facilities. Two civil servants of this organism are detached in the nuclear stations with functions of supervision and control. Sweden employs mostly private employees in this sector.

## **12. Gas and Electricity**

In most Member States, e.g. Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Netherlands, Poland Portugal, Spain, Slovakia, Slovenia and Sweden, employees in this sector are mostly private.

Cyprus, Ireland, Italy and Luxembourg have opted for a system of mostly civil servants or employees of a specific category.

Staff in the Czech Republic consists of state employees under the labour code.

In Cyprus, personnel are not employed directly by the Central Government but nonetheless their authority is subject to financial control by the Central Government. Specific legislation other than the Civil Service Law applies. Ireland employs public servants, who are persons who work for the state or for local government and are paid from the public purse. In Italy, a distinction is made between Independent Authorities, where civil servants under a public status are employed and the main rules are set out by law and administrative regulations and Private Companies with a public holding where mostly private employees are hired. The latter have the status and are subjected to the rules in force for the private sector.

In Denmark, mostly private staff are employed on collective agreement terms. This does not apply to the Municipality of Copenhagen, where most employees are civil servants. In Greece, there are mostly private employees working in a public corporation. In Malta, Gas and Electricity are part of the public sector but employees are not public officers.

## **13. Financial authorities (taxes)**

In nearly all member states, such as Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia and Spain, mostly civil servants or specific categories of staff are employed in this sector.

This may be because of the fact that financial administration is one classical tasks of public administration.

The Czech Republic employs state employees under the labour code in this sector. In Greece and Ireland, most employees are Civil Servants. In Italy, they are civil servants under a special private status, so that the main rules are those of the laws in force for the private sector and many exceptions and particular rules fixed by specific laws do apply. There also are collective agreements. Latvian Financial Authorities provide for a special category of “specialized civil service” that is defined by law. In Spain, although there are mostly civil servants employed in this sector, also labour contract employees are hired. Swedish staff in this sector consists of public employees who are not the same as “classical” civil servants (see above).

In Denmark however, Financial Authorities employ mostly private staff on collective agreement terms. This does not apply to the municipality of Copenhagen, where most employees are civil servants.

#### **14. Hospitals (nurses, doctors)**

Cyprus, Finland, France, Greece, Hungary, Ireland, Malta, Portugal, Slovenia and Spain employ mostly civil servants or staff of specific categories in this sector.

Belgium, Denmark, Estonia, Germany, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia and Spain have mostly private employees.

In the Czech Republic, Italy and Spain, the status of employees depends on whether they are employed in public or private hospitals.

In the Czech Republic, staff are state employees under the labour code, except for personnel in private hospitals. In Italian public hospitals, they are civil servants under a special private status (see above), whereas in private hospitals, nurses and doctors are private employees. In Spanish public hospitals, statutory employees depending on the Autonomous Communities are employed. There are also private health personnel hired in Spanish private hospitals.

In Finland, employees are municipal employees. Although the bigger part of employees belongs to the category of civil servants or specific employees, quite a large amount of nurses are private employees. In Greece, employees in this sector are civil servants. Doctors belong to a specific category of staff. Hungarian Hospitals employ public servants. In Ireland, employees in this sector have public servant status. (see above)

In Poland, Hospitals are part of the public sector, but its employees are outside the civil service corps. They are under the system governed by the labour code.

In Slovakia, doctors and nurses in hospitals are public servants.

In Sweden, the county councils manage the hospitals and employ the staff.

#### **15. Local authorities**

In Local Authorities, in Belgium, the Czech Republic, Cyprus, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia and Spain, mostly civil servants or specific categories of staff are employed.

Austria, Denmark, Germany and Malta employ mostly private personnel. In Lithuania, both categories of staff are employed.

In the Czech Republic, personnel of Local Authorities is in a service relationship. There is a Special Service Act.

In Cyprus, staff are not employed directly or indirectly by the Central Government but they have a similar status as civil servants.

In Finland, staff consists of municipal employees. Greece employs civil servants, Ireland public servants. Italy employs civil servants under a special private status. The main rules are those of the laws in force for the private sector and there are many exceptions and particular rules fixed by specific laws. There also are collective agreements. In Poland, a specific category of staff is employed, the so called self-governmental servants who are under a contract governed by public law but stand outside the civil service corps. Slovakia provides for a status of public servant which means that employment is under public service law and the Labour Code.

In Spain, employment in the Local Administration follows also the pattern of civil servants and labour contract employees as explained above. Regarding the civil servants it is necessary to distinguish the ones selected by the Local Administration and the ones selected at national level by the State Administration. In this last case they have an special regime: they are the ones who hold national qualifications, the ones who occupy positions that involve the exercise of the authority, the giving of legal advice, internal management and control of finances and budgeting as well as positions relating to accounting, treasury and tax collection. They are the civil servants who form part of the Corp of the Secretaries, financial inspectors and local receivers of revenue.

## **16. Fireworkers**

Nearly all Member States, which means Cyprus, Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Spain, Slovakia and Slovenia, employ mostly civil servants or specific categories of staff.

Belgium, Denmark and Estonia form an exception, as they employ mostly private staff.

In Austria, only in big municipalities, the majority of employees in this sector consists of civil servants or specific categories of staff. In the rest of the country, Fireworkers are mostly organized on a voluntary basis. In Cyprus, Fireworkers are employed by the Central Government and have a similar status to that of civil servants but they are governed by specific legislation other than the Civil Service Law. The Czech Republic has given a service relationship to Fireworkers according to the Act on Service Relationship for Members of Security Forces. In Finland, Fireworkers are municipal employees. Greece employs a specific category of staff in this sector. In

Hungary, Fireworkers are in an official service relationship. In Ireland, they are public servants. Italy employs civil servants under a special private status (see above). Latvia has defined by law a special category of “specialized civil service”. In Poland, fireworkers have uniformed public service status but are outside the civil service corps. In Spain, they are labour contract employees depending on the Autonomous Communities. Besides a small number of fire workers depend on the Administration of the State through the Ministry of Defense. Slovakia has a special law on the civil service of the Fireworkers. In Sweden, the municipalities employ Fireworkers.

Denmark employs mostly private personnel. An exception to this is made in the Municipality of Copenhagen where most employees are civil servants.

In Estonia, who indicated that most Fireworkers are private employees, it is possible that from 1 January 2005 on the majority of employees will be civil servants or belong to a specific category of staff.

## **17. Border control (Customs) and Aviation (Flight Control)**

a) In Belgium, Cyprus, the Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Spain and Slovakia, mostly civil servants or specific categories of staff are employed.

In the Czech Republic, employees in this sector are in a service relationship which means they are governed by an Act on Service Relationship for the Members of Security Forces. Greece employs civil servants. Hungary provides for an official service relationship. In Ireland, staff of Customs are civil servants whereas staff of aviation are public servants. In Italy, civil servants under public status are employed in Customs, civil servants under private status are employed in Flight Control. In Latvia, a special category of “specialized civil service” is defined by law. In Slovakia, a Special Law on the civil service of the custom officers applies. Sweden has public employees (see above).

b) Denmark has mostly private employees.

c) In Austria, Germany, the Netherlands, Poland, Portugal and Spain, a distinction is made between Border control (customs) and Aviation (Flight control)

In Austria, Germany, the Netherlands and Portugal, mostly civil servants or specific categories of staff are employed in Border control (customs), but mostly private employees are employed in Aviation (Flight control).

In Poland, with regard to Customs, the majority of employees has uniformed public service status outside the civil service corps. The minority of employees is under civil service law. In Aviation, employees of the Civil Aviation Office, which is responsible for providing and maintaining safe and efficient aviation services to, from and within Poland, are under civil service law. Employees of airports are private and under the labour code.

In Spain, Border control (customs) is run by mostly civil servants bur also labour contract employees. In Aviation (Flight control), there are labour contract employees.

Flight control depends on the “Spanish Airports and Aerial Navigation (AENA)”, an Entrepreneurial Public Agency with special legal framework. Employees there used to be civil servants but became subject to common labour law in the nineties.

## **18. Water Sector**

a) In the Water Sector, a vast majority of Member States such as the Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Malta, Netherlands, Poland, Portugal, Spain and Slovakia have mostly private employees.

In the Czech Republic, employees in this sector are under the labour code. Denmark employs mostly private employees, but in the Municipality of Copenhagen most employees are civil servants. In Greece, private employees are working in a public corporation. In Malta, the Water Sector is a former government department. It is part of the public sector but employees are not public officers.

b) In Austria, Cyprus, Ireland, Italy and Luxembourg, mostly civil servants or specific categories of staff are employed.

In Ireland, public servants are employed. Italy has mostly civil servants under a special private status (see above) in this sector, but there are also private companies with a public holding who employ private employees. In Sweden, Municipalities manage the water sector and employ the staff.

## **19. Risk management/ environmental inspection and control**

a) The majority of Member States, such as Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Lithuania, Netherlands, Poland, Portugal, Spain, Slovakia and Sweden employs mostly civil servants or specific categories of staff in this sector.

In the Czech Republic, staff consists of state employees under the labour code. Greece employs mostly civil servants. In Hungary, an Official Service relationship exists for employees in this sector. In Ireland, public servants are employed. Italy provides for civil servants under a special private status. In Spain, there are Labour contract employees. In Sweden, you find these kinds of employees both at the governmental political level and at the municipalities.

b) Denmark, Germany and Malta employ mostly private personnel. In Germany, this applies to the environmental sector.

c) In Latvia, the status of the employees depends on the institution. They are civil servants in ministries.

## 9. Annex - Questionnaire

### **SURVEY**

**FOR THE MEMBERS OF THE HRM-WORKING GROUP  
OF THE DIRECTORS-GENERAL OF PUBLIC SERVICE  
OF THE EUROPEAN UNION MEMBER STATES**

***„WHO IS A CIVIL SERVANT AND WHO IS  
NOT IN THE MEMBER STATES OF THE  
EU?“***

**Maastricht, June/July 2004**

Dear Colleagues,

During the past months, several national administrations from the EU Member States have approached me with different but very similar and related questions:

Question I: Do you dispose over comparative data as regards the status of diplomats, civil servants, the number of civil servants, the status of teachers etc?

Question II: Is there a common EU trend with the objective to gradually abolish the „special status“ in some sectors, to „align the civil servant status with private law employees“ or to employ more short-term and „flexible“ contractuels?

Question III: Another question relates to the size of the public sector and the restricted civil service: Do you have comparative data about the number of public employees in the wider public sector and the number of civil servants under public law contract (including specific categories of staff)?

All question can be also summarized as follows: which categories of staff provide for a special civil service status in the Member States of the EU? Is there a European common trend as regards the definition of who is a civil servant? Is there a trend to further reducing (or even abolishing) a special status to a wide range of public employees? Or to put it more general: who is a civil servant and who is not?

To my knowledge, there is no comparative data as regards the first question. As regards the second, the existing data is very often not comparable because the data do not take into account of the national differences in the definition of public employment (e.g. teachers may be civil servants in some countries whereas in others, they are private employees under labour law).

I have discussed this with the Irish Presidency (Pat Casey) and we agreed that it would be very useful and interesting to all of us to do a very short survey as regards the above mentioned questions. I suggest to submit the findings of this survey via the forthcoming Dutch Presidency to all of you and – if there is an interest – to present the results of this survey to one of the next meetings of the HRM-group in written and/or oral form.

In order not to take too much of your time and for the sake of keeping the survey as simple as possible, I would kindly invite you just to „tick“ the boxes with yes or no.

In those cases, where you feel that answers need some explanation and are more complex (e.g. not all employees are civil servants), please feel free to comment. For example, you may highlight that employees in the education sector (teachers) may also be, both, either civil servants or employees under labour law. Or, you may want to mention that the government also employs a growing number of short-term employees. Or, alternatively, you mention that differences between civil servants, public employees and private employees are still existing „on paper“ but do not differ anymore in real life.

As regards the question on public employment, please fill in the boxes or send in statistics if you like.

Yours sincerely

EUROPEAN INSTITUTE OF  
PUBLIC ADMINISTRATION

Dr Christoph Demmke  
Associate Professor

QUESTION 1. In my country, civil Servants with a special status (mostly in form of a public law status) or specific categories of staff (e.g. Judges) are mostly employed in the following sectors:

<b>Sectors</b>	<b>Yes, most employees are civil servants or specific categories of staff</b>	<b>No, mostly private employees</b>	<b>Comments</b>
Employees in ministries			
Employees in agencies and regional authorities			
Armed forces			
Judiciary (Judges)			
Police and law enforcement			
Prisons			
Central Banks			
Diplomatic sector			
Schools (Teachers)			
Universities (Professors)			
Inspectorates (food control, health safety)			
Nuclear Power Stations			
Gas and Electricity			
Financial authorities (taxes)			
Hospitals (nurses, doctors)			
Local authorities			
Fireworkers			
Border control (customs) and Aviation (Flight control)			
Water sector			
Risk management/ environmental inspection and control			
Other			

## QUESTION 2:

As regards public employment, what is the percentage of civil servants in relation to the active working population? What is the percentage of public sector employees in relation to the active working population?

	Civil servants	Employees in Public Sector
Percentage of public employees as regards the total active working population		

## Question 3:

Is there a trend towards the reform – or even – the abolishment of the civil servant status in certain sectors? Or alternatively – is there a trend towards the reduction of the number of civil servants and – instead – the employment of more „flexible“ contractuels?

Yes	No	Comments

## PRACTICAL INFORMATION:

Your answers should be returned by electronic mail **by 15 July 2004** at the latest to: Christoph DEMMKE, [c.demmke@EIPA-nl.com](mailto:c.demmke@EIPA-nl.com), tel: 0031 43 3296225 or – 320.

## DISTRIBUTION OF RESULTS:

A short summary of the results will be distributed to the members of the HRM-group as soon as possible.