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*Ministère de la Fonction publique et de la Réforme administrative*

**“The flexibilisation of the employment status of civil servants :  
From life tenure to more flexible employment relations ? ”**

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## **PRELIMINARY REMARKS**

*The Luxembourg Presidency has commissioned the European Institute of Public Administration to carry out a comparative study entitled “**The flexibilisation of the employment status of civil servants: from life tenure to more flexible employment relations**”. This report is based on the responses from all the Member States of the EU, the Accession States and the European Commission to the questionnaire (attached to this study) distributed to the Member States, the Accession States and the European Commission in January 2005.*

*The study addresses a number of issues/topics, including the following:*

- *Characteristics of the different types of employment relationships in the public sector of the 25 EU Member States, the Accession States and the European Commission and particularly with regard to job security.*
- *The development of the “statutory” employment relationship between civil servants and the state employer.*
- *The factors influencing flexibility.*
- *The impact of tenure on the motivation of civil servants.*

*The responses received from the Member States and the European Commission naturally focus on certain issues and questions rather than on others. In addition, the answers received by EIPA vary considerably in terms of length. The study takes this into account but at the same time tries to consider all responses in a balanced way.*

*On the other hand, our aim was to keep the study as short and precise as possible. As a result, some national responses may be quoted or referred to more briefly or more explicitly or in greater depth than others. The author apologises in advance if some Member States and/or the European Commission consider that their responses have not been sufficiently taken into consideration.*

*Finally, the study can be found on the Circa homepage at <http://www.forum.europa.eu.int>. The author hopes that the study, which contains constructive proposals for the future work of the Directors-General of the Public Service, will serve to generate a fruitful debate.*

*I would like to thank the Luxembourg Presidency for the excellent cooperation during the past few months and to express my gratitude to the Directors-General and the various national experts within the Member States and the European Commission for helping me to carry out this study.*

*Danielle Bossaert*

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# 1. Introduction

One major objective of public sector reforms in the European states since the 1980s has been making public sector organisations more flexible, responsive and performance-oriented by searching for inspiration in the private sector with regard to instruments, tools and methods, e.g. in the field of human resource management (HRM) and organisational restructuring. This trend, which is driven by the desire for more efficiency, productivity and competitiveness has been rather pronounced in the UK and the Scandinavian countries, where the public and private sector has traditionally been much more permeable and where the philosophy of New Public Management (NPM) has encountered a related public sector culture.

In these states, the emphasis on new public values, e.g. more business-like management or a stronger focus on result orientation leads to a more fundamental reshuffling of the principles of human resource management, which is shown in the changes relating to promotion criteria, pay and evaluation systems. All in all, these developments have been much weaker in most of the career systems, where such reforms are generally much less compatible with the existing culture, the prevalent image of the civil servant, legal and administrative tradition and, occasionally, the political context.

One aspect of the reforms touched upon the working conditions of public sector employees, with a strong focus on the flexibilisation of personnel management. As the literature<sup>1</sup> shows, this flexibilisation trend is characterised by many different aspects, e.g. flexibility regarding pay, contracts, tasks and working hours. In the context of pay flexibility, the trends towards performance-related pay and decentralised pay bargaining were analysed, while the studies on contractual flexibility focused mainly on the trend towards non-permanent contracts and subcontracting. The aim of task flexibility is to allow employees to perform various activities, while working hours flexibility involves the trend towards part-time working, job sharing, flexi-hours, etc.

The following survey concentrates exclusively on contractual flexibility and more specifically on measures to reduce life-long employment in the public sector, while considering the various measures in the EU Member States and analysing the significance of other employment relationships.

This study should be seen against the background of widespread public perceptions of employment instability and job insecurity<sup>2</sup> and the evolution of employment relations between the state employer and the employee in the public sector. Interesting questions in this context are: are we really seeing the end of jobs for life in the public sector as a consequence of a gradual process of privatisation of working relations in the public sector? Or is the statement by the

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<sup>1</sup> See, for instance, D. Farnham, S. Horton, Human resources flexibilities in the public services, Hampshire 2000; S. Corby, H. Mathieson, The National Health Service and the limits to flexibility, in: Public Policy and Administration, Vol. 12, No 4, Winter 1997, p.60-71.

<sup>2</sup> See in this context, for instance, K. Doogan, Job insecurity and long-term employment in Europe, paper presented to the ESRC's Worklife Seminar, Manchester, February 2003.

influential economics editor of *The Guardian*, Will Hutton<sup>3</sup>, in the mid-1990s that full-time tenured employment would be on the decline by 2000, really becoming true in the public sector?

Unfortunately, most of the studies which have been carried out in this field focus on the private sector, while similar surveys for the public sector are more scarce. Furthermore, it has to be observed in this same context that some studies about employment status developments in the private sector remain quite controversial. For instance, a recent paper on job insecurity and long-term employment concludes<sup>4</sup> that long-term employment has increased during the nineties, but with a rising sense of insecurity. However, another study on flexibility, uncertainty and manpower management predicted that employment security would be decreasing for most employees in the future.<sup>5</sup>

Major questions of interest in this study are:

- To what extent is the specific employment status of civil servants (which differs from that of private sector employees) safeguarded in the European states? Or to what extent is the traditional image of the civil servant being characterised by “a tenured, career appointment – not dependent on the whims of transient politicians or on one’s civil service superior (although dismissible, with difficulty, in case of extreme dereliction of duty or of criminal actions)?”<sup>6</sup>
- How is the principle of life tenure evolving and does working in the public sector always mean job security?
- To what extent can poor performance lead to a termination of the employment relationship? How likely is a job loss in the public sector for economic or organisational reasons?
- To what extent is job security converging in the public and private sector? Is there a growing trend towards contractualisation?
- How is life tenure perceived by civil servants?

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<sup>3</sup> *Ibid.*, p. 3.

<sup>4</sup> *Ibid.*, p. 19.

<sup>5</sup> J. Atkinson, *Flexibility, Uncertainty and Manpower Management*, University of Sussex, Brighton 1985. It has to be noted that this study was written against a background of economic recession.

<sup>6</sup> C. Pollitt, G. Bouckaert, *Public Management Reform, A Comparative Analysis*, Oxford University Press 2004, p. 76.

## **2. The flexibilisation of the employment status of civil servants: the meaning of flexibilisation in the context of this study**

As is the case in many EU Member states, e.g. **Germany, Austria and Luxembourg**, not all positions in national civil services are occupied by statutory civil servants [i.e. civil servants who are governed by separate legislation as opposed to non-statutory employees who are governed by employment legislation] enjoying life-long employment. There are also employees in these countries working under a private law contract, as well as employees who work on the basis of a fixed-term contract. In other countries, e.g. **Denmark, Finland** and the **UK**, civil servants do not have life tenure.

Against this background, the survey will examine the significance of the different employment relationships in national civil services, and it will analyse the meaning of life tenure. Does tenure really mean that civil servants cannot be dismissed under any circumstances, even if their performance is poor or inadequate or if the position is no longer needed? This is the picture that many critics have drawn of civil servants and which has occasionally contributed to the poor image of civil servants.

A major objective of this study is to focus on the following three questions, which are closely linked to the flexibilisation debate.

- To what extent can we observe a reduction of job security of statutory civil servants?
- To what extent is there an increasing focus on private law contracts with less job security?
- To what extent is there an increasing focus on fixed-term contracts?

### **To what extent can we observe a reduction of job security of statutory civil servants?**

As stated above, in the majority of the EU Member States employment security in the public sector has traditionally been characterised by a higher degree of stability than in the private sector. Very often, employment conditions of civil servants are laid down in special public laws and/or regulations, which differ from those applied in the private sector and which can only be modified by a change of legislation.

Against the background of a trend towards convergence of working conditions in the public and private sectors, it is interesting to ask whether this trend can also be observed with regard to employment security and to what extent is the job security of statutory civil servants being reduced by, for instance, changing their employment status.

### **To what extent is there an increasing focus on private law contracts with less job security?**

In many of the public sectors of the EU Member States, there are staff other than statutory civil servants who are subject to employment conditions that are sometimes characterised by a less job security. In the context of the flexibilisation debate and the discussion of the concept of the flexible firm by Atkinson (see above), it is interesting to compare the significance of this group of public employees in the various Member States, as well as their employment status and the positions for which they are hired. A further question is whether this group is increasing compared to statutory civil servants.

### **To what extent is there an increasing focus on fixed-term contracts?**

A further possibility of making national public sectors more flexible is to increase the number of staff with fixed-term contracts. In the context of the debate concerning employment relations between the state employer and the public employee, it is interesting to consider the significance of temporary public employees in the national public sectors as well as the working conditions to which these employees are subject.

## **3. The principle of life-long employment: what is behind it?**

Traditionally, working conditions such as recruitment procedures, career development, pay systems, social security benefits, ethics, etc. are different in the public and private sectors. Job security has generally been higher in the public sector than in the private sector. The separation of the labour market into two distinct areas is best illustrated by the fact that working conditions of civil servants are still defined in law in many countries. This means that the civil servant has no possibility of negotiation, while in the private sector working conditions are mostly a result of negotiated agreements between the two parties.

Another difference compared to the private sector is that in many states, some aspects of the working or employment conditions of civil servants are anchored in the Constitution, e.g. provisions relating to recruitment criteria, appointment procedures, incompatibilities, etc. The **Spanish** constitution is very clear with regard to the public nature of the employment relationship, while clearly directing the legislator in paragraph 103.3 to regulate the civil service statute, the access to the civil service in accordance with the principles of merit and competence, the special provisions applicable to the right to form unions, the rules governing conflicts of interest and the guarantees for the impartiality of civil servants in the performance of their tasks. In **Sweden**, where working conditions in the public and private sector are very similar, the Constitution contains the requirement (Article 9) that positions within the state administration must be governed by factors such as merit and competence, and that basic rules concerning the legal status of civil servants must be laid down in law.

Many countries, e.g. **Germany** and **Luxembourg** have separate legislation on civil servants' working conditions.<sup>7</sup> An exception is the **UK**, where the employment status of civil servants is not laid down in law.

As a French publication<sup>8</sup> aimed at teaching professionals in the field of public administration, observes, *Servir l'Etat n'est pas un métier comme les autres* [Serving the state is not like any other job]. This statement means that the specific functions of civil servants, which are underlined by the fact that they have a constitutional role to play and that they exercise duties that are closely linked to the general interests of the state, justify a special legal status. Demmke<sup>9</sup> characterised the special nature of the task of civil servants (which justifies the special legal status) as follows:

- they spend public money for important governmental projects;
- they may influence the basic rights of the citizens, e.g. police;
- they are financed and paid by the public in order to carry out work for the public;
- they raise taxes;
- they are given considerable power and responsibilities.

In this sense, the specific legal status, including the principle of life-long employment, is meant to protect civil servants against political, economic, religious and other kinds of pressure and to allow them to fulfil their tasks “in the best general interest”. Very often, the high level of job security is also looked upon as a compensation for the fact that remuneration in the public sector is very often lower than that of the private sector, while it ensures the loyalty, responsibility and accountability of state employees. As we will see later, job security is also one of the main factors attracting young employees to the civil service.<sup>10</sup>

A good example in this context is **Germany**, where the specific professional ethos of civil servants is expressed in the obligation to take an oath, the ban on strikes, the prohibition on certain secondary or ancillary activities, the obligation to observe confidentiality and the obligation to work impartially and to remain loyal to the employer. However, civil servants also enjoy rights such as the generous social security benefits, appointment for life and the duty of care obligation on the part of the employer [*Alimentationsprinzip*], which includes the right to a decent living in the sense that pay should correspond to the position and grade of the civil servant, etc.

But this specific civil servant ethos, which also entails a specific position in society, and the clear separation between the public and the private sector cannot of course be found to the same extent in all EU Member States due to the various traditions, as well as to the different legal and administrative cultures.

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<sup>7</sup> More on this issue in: H.G. de Gier, A. Bloemhoff, S. Dhondt, Civil servants and working conditions, regulations and policy in the Netherlands, Great Britain, Spain, Germany and France, Ministry of the Interior, The Hague 1994. Although this publication dates from the 1990s, it presents a valuable comparative overview of the main structural differences with regard to the working conditions in these countries.

<sup>8</sup> E. Dugué, H. Lenoir, *Fonction publique: moderniser sans détruire*, Education permanente, Paris 1997, p.40.

<sup>9</sup> Christoph Demmke, Who is a civil servant and who is not - and why?, study for the Directors General of the public services of the Member states of the European Union, Maastricht 21-23 November 2004, p.12.

<sup>10</sup> This is at least true for those countries, where employment security in the public sector is quite high.

To summarise, the main argument in favour of life tenure is to protect civil servants against arbitrary behaviour from political authorities and to allow them to perform neutrally and loyally. A further argument used in the context of tenure is that it guarantees a continuous and stable exercise of public functions by civil servants, who are not threatened by dismissal. This special nature of public employment is also the reason why certain countries such as Germany assign the exercise of public authority only to employees in public administration who are governed by public law, which means statutory civil servants with tenure. In addition to **Germany**, the **Belgian, Cypriote, Greek, Spanish and Dutch** Constitutions contain a provision stating that the central public administration should primarily employ statutory civil servants. In **France**, such a provision is laid down in an act<sup>11</sup> that defines the principle that permanent positions in the various administrations and institutions are to be occupied by civil servants, apart from exemptions laid down in a specific legislative act. According to the new staff regulations and the regulations of employment of other servants of the **European Commission**, statutory civil servants will remain the core group of public employees in the European institutions. The reason is that this approach is seen as the best means of effectively managing human resources and creating a civil service characterised by competence, independence, loyalty, impartiality and permanence.

Although these regulations exist, it must be noted that the principle of assigning the exercise of public authority only to statutory civil servants is being applied less and less in Member States. Despite the constitutional provision in this respect in Germany, public employees are also fulfilling tasks involving state sovereignty. And in Austria fewer statutory civil servants are being hired (also in central public administration), while an increasing number of employees are entering service.

#### **4. Key factors promoting a flexibilisation of the employment status of civil servants**

Under the pressure of increasingly tighter public finances and the subsequent strive for efficiency and increased performance in many of EU Member States, public sectors have undergone radical changes since the 1980s. In Member States where the most far-reaching reforms have been introduced, organisational and personnel policy changes have been inspired largely by private sector practices. This can also be explained by the fact that the challenges faced by both sectors were more or less similar (a strong need for structural reorganisation as well as a higher degree of productivity and efficiency).

At an ideological level, these reforms were encouraged by the philosophy of New Public Management (NPM), which promotes greater consideration of economic criteria such as outputs, financial targets and performance indicators in public sector management. It was also under the influence of this philosophy that the conviction that public and private organisations are characterised by fundamental differences, was increasingly questioned.<sup>12</sup>

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<sup>11</sup> Law of 13 July 1983, Article 3.

<sup>12</sup> On this last point, see Demmke above, p. 12.

In this context of reform, it was increasingly thought that the traditional principles of personnel administration such as promotion on the basis of seniority, a fixed pay system and restricted mobility between the public and the private sector, would not offer sufficient incentives for establishing a civil service that places stronger emphasis on individual and organisational performance.

Although approaches differ in the various Member States, most of them are characterised by a trend towards a greater flexibilisation of personnel management on the other hand, and towards reducing or even abolishing the separate legal status of civil servants (privatisation) on the other. Although both trends are very closely linked, the second trend (privatisation) is used here – theoretically – in a stronger sense, although in practice both trends may occur in some countries.

In the context of this study, it is interesting to see to what extent the flexibilisation and differentiation of personnel management and the reduction of the separate legal status of civil servants combine with more flexible employment relationships and a reduction of life tenure, as defined in the chapter on the meaning of flexibilisation within the framework of this study.

#### **4.1. The trend towards flexibilisation and differentiation of employment conditions**

As already referred to above, one major goal of the reform trends in most EU Member States has been to reduce the rigidity and uniformity of public organisations by flexibilising their structure and human resource management.

The main factors behind this flexibilisation debate – which started in the private sector and whose impact on employment relationships in the public sector are of interest here – are a changing civil service environment, characterised by increased competition, tighter state budgets, rapid technological change and slower economic growth and the need to increase efficiency and productivity. In addition, a changing and more individualised civil society with different demands and requirements with regard to job content, change of workplace or the reconciliation between family and professional life. In this context, it is hoped that greater flexibility will help to increase productivity and result in more flexible responses to internal and external constraints such as cost reductions or a change in demand.

In the private sector, one key answer to these different changes touched upon the flexibilisation of employment patterns.

In the 1980s, the British expert Atkinson developed the concept of the flexible firm. According to his researches, companies – against a background of recession with the tightening of competitiveness and technological change – increasingly tend to differentiate between various categories of staff with different employment conditions, career perspectives and levels of job security. In his model, only a core group of full-time, permanent employees enjoys employment security, while this core group is surrounded by peripheral groups, whose employment conditions are characterised by a higher degree of precariousness and less job security. A further distinction between these two groups is underlined by the fact that the core group possesses skills and experiences specific to the firm, while the peripheral groups have no such experience.

Within the framework of this study, it is interesting to see to what extent these predictions developed in the 1980s and 1990s have affected employment patterns in the public sectors of the EU Member States and, more specifically, on the development of job security.

In this same context, Farnham and Horton, in their classical reference work “Managing people in the Public Services”<sup>13</sup>, which deals with employment conditions and HRM in the public sector, even go so far as to observe a shift from traditional people management to new people management. This is characterised by less job guarantee, planned career paths and job security. According to these authors, staff with full-time, tenured contracts are declining, while the proportion of part-time and fixed-term contracts is increasing, particularly among female staff.<sup>14</sup> Other aspects of this new and more flexible management of human resources are 1) a more strategic HRM, which aims at a more active development of the competences, skills and knowledge of staff, 2) a more rational and less paternalistic management style, 3) a more individual negotiation of employment relations, and 4) less job security.

	<b>Traditional People Management</b>	<b>New People Management</b>
Personnel function	Administrative	Strategic
Management style	Paternalistic	Rationalist
Employment practices	Standardised	Flexible
Industrial relations	Collectivist	Dualist
Role of the employer	Model	New mode

As is also underlined by other research<sup>15</sup>, the development of human resource management and employment conditions in the public sector is more generally characterised by a shift from a uniform management of personnel, according to which all public employees are subordinated to the same regime as regards employment conditions such as the salary levels, career development, job security, etc., to a more flexible, individual and differentiated human resource management. Examples are a stronger link between pay and performance or a stronger link between promotion and competency management and performance evaluation. These measures are aimed at encouraging civil servants to be more responsible and to take better account of their individual profiles, competences and performance. They are also to be seen in the context of a general trend towards a decentralisation of personnel policies, characterised by greater autonomy for heads of departments or agencies to manage their staff. However, an interesting question is the extent to which greater responsibility on the part of civil servants and the stronger focus on performance is encouraged, and whether this may lead in extreme cases to the termination of the employment relationship as may be the case in the private sector.

<sup>13</sup> D. Farnham, S. Horton, *Managing people in the Public Services*, Macmillan Press LTD, London 1996.

<sup>14</sup> *Ibid.*, p. 339.

<sup>15</sup> See Pollitt, Bouckaert above, p. 74 ff.

In the above reference work, Farnham and Horton<sup>16</sup> conclude that the state is increasingly treating its employees like private-sector employees, rather than as old-style public servants.

As no express reference is made to job security, one must ask to what extent these trends towards differentiation, individualisation and stronger performance orientation in human resource management have also led to a reduction of job security for civil servants by making it more easy to dismiss them due to poor performance.

There is little evidence as to whether these developments are the same in the old and new Member States. According to recent research<sup>17</sup>, most of the new Member States are only making tentative efforts to tackle the issue of creating flexibility in terms of HRM, and these states are generally more reluctant regarding new public management ideas.

However, when comparing flexibilisation debates in the European states, it is undoubtedly the UK which is at the forefront of these developments, followed by the Scandinavian countries. It is also quite revealing to note that the term “flexibilisation” has a positive connotation in the **UK**, while in **France**, it is associated with precarious employment and viewed far more negatively.

Against this background, this study also expects the debate on the flexibilisation of employment relations to be far less pronounced in **France** and **Germany**, in the **Southern European** countries and in the new Member States. However, as there is only limited information on employment patterns in the new Member States, it is more difficult to draw conclusions for these countries.

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<sup>16</sup> See Farnham, Horton above, p. 349.

<sup>17</sup> D. Bossaert, C. Demmke, Civil services in the Accession States, EIPA, Maastricht 2003, p. 9 ff.

## 4.2. The trend towards a “privatisation” of the employment relationships and conditions

In addition to the trend towards a flexibilisation and differentiation of employment conditions of human resources, there is also a trend – in the same context of a changing public sector environment – towards the privatisation of the employment relationships and conditions. Although it would be interesting to do so, we will not deal in detail with the meaning and the different aspects of the privatisation trends in the various countries as this would go beyond the scope of this study.

In 1993 in **Italy**<sup>18</sup> for instance, employment relationships in the public sector were placed (under the pressure of the 1992 financial crisis) on a par with those in the private sector. Since the adoption of legislative decree No. 29/1993, all civil servants, with the exception of judges, diplomats, prefects and university teachers, are governed by general labour legislation, which offers the possibility of collective bargaining. Consequently, a labour relationship between the state employer and the public employee is based on an individual labour contract. However, this development of employment conditions is not equivalent to a complete adoption. Differences between the public and the private sector still persist with regard to recruitment processes or with regard to promotions, which are still decided unilaterally. What this means for job security will be revealed in the next chapter.

In **Finland**, too, working conditions in the public and private sector hardly diverge. The State Civil Service Act of 1994 aimed to align the situation of the civil servant with that of private sector employees, while maintaining the public nature of the employment relationship.

In the **UK**, there is no clear legal distinction between the status of public and private sector employment, which has also facilitated the restructuring and privatisation of the public sector. It is therefore interesting to observe that in the UK, the formal legal status of civil service employment was uncertain until the High Court decided in 1991 that civil servants were employed by the Crown under contracts of employment.<sup>19</sup> Until now, the employment status of civil servants has not been laid down. However, although there is no civil service law, a draft Civil Service Bill was issued as a consultation document in November 1994.<sup>20</sup>

However, not all the EU Member states have gone that far in this process of normalisation, depending on their civil service system and administrative law traditions, the political context, budgetary constraints, etc. In some EU Member States, e.g. **the Netherlands**, this process of standardisation or normalisation is ongoing. Examples include the progressive inclusion of civil service staff in employees’ insurance schemes or in the privatisation of the civil service pension

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<sup>18</sup> S. Bach, L. Bordogna, G. della Rocca, D. Winchester, *Public Service Employment Relations in Europe, Transformation, modernization or inertia?*, Routledge, London, New York, 1999, p. 22 ff.

<sup>19</sup> *Ibis*, p. 22 ff.

<sup>20</sup> The Government wishes to hear what people think about taking such a significant constitutional measure that has been under consideration for the last 150 years. This consultation will be on the first ever government bill produced since Northcote and Trevelyan called for a civil service act in 1854.

fund. Another example is that all negotiations on conditions of employment in the public sector need the agreement of the public sector employee federations.

Nonetheless, it should be noted that these developments have not yet changed the legal relationship between the state employer and the employee, which is still laid down in public law, while legal protection is provided by administrative law.

A further development that can be observed in a growing number of countries<sup>21</sup> and which illustrates a progressive change of the principles characterising the traditional civil service status is the change from the unilateral definition of employment conditions to the introduction of collective negotiations and the conclusion of collective agreements.

Following the analysis of the different employment relations in the national civil services in the next chapter, we will consider to what extent this privatisation trend has led to a reduction of the employment security of statutory civil servants and to an adaptation of the employment status of public employees to practices in the private sector. These practices may include a reduction of job security or an increase of public employees working under a private law contract. We will also consider to what extent job security is now higher in the public sector than in the private sector.

Compared to the old Member States, it is interesting to observe that in most of the new Member States, the development of working conditions goes in the opposite direction. In these countries, the aim seems to be to establish a civil service where working conditions differ substantially from employment conditions in the private sector. This difference between the two groups of countries is generally confirmed in literature on this subject<sup>22</sup>. Goetz/Wollmann describe this difference as follows. "While in Western Europe, there are signs of deprivileging of the civil service and growing convergence in the rights and responsibilities of civil servants and ordinary employees (...), in CEE professionalisation at the level of the central state administration has been regarded as equivalent to the creation of a body of civil servants separate from the rest of public employees...".

Considering this difference is of course relevant in the context of this study, in the sense that it should lead to a higher level of job security in the public sectors of the new Member States and to less flexibilisation of employment relationships.

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<sup>21</sup> See in this context: S. Bach, L. Bordogna, G. della Rocca and D. Winchester (eds.), *Public service employment relations in Europe*, London Routledge 1999, p.1-21; K.Nomden, *Les relations professionnelles dans les fonctions publiques en Europe: Entre convergence et divergence*, in: M-L. Onnée-Abbruciati, *Le fonctionnaire est-il un salarié comme les autres*, Bruxelles, Bruylant 2003, p.59 ff.

<sup>22</sup> K.H. Goetz, H. Wollmann, *Governmentalizing central executives in post-communist Europe: a four country comparison*, in: *Journal of Public Policy*, December 2001, p. 879; D. Bossaert, Ch. Demmke, see above p.6 ff.

## 5. The development of job security of public employees<sup>23</sup> in the national civil services

### 5.1. Job security of statutory civil servants: development and general trends

It is interesting to observe that in nearly all the European states and the European Commission, there is a certain category of public employees (although very small in some states) who can be called career civil servants, in the sense that they enjoy a right to a career and that they can hardly be removed from their positions. However, a closer look at this group of public employees shows that its size varies considerably in the different contexts.

In some states, e.g. **Austria, Luxembourg, Denmark, Estonia, Germany, Poland, Spain** and **Ireland**, statutory civil servants are distinct from other public employees in the sense that prospective civil servants have to go through a probationary period, during which their employment relationship can still be terminated, before they are appointed as civil servants with life tenure. In Austria, public employees continue for up to six years in a provisional employment relationship with the state employer before the relationship becomes definite following a written application from the civil servant.

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<sup>23</sup> In this context we focus on public employees working in the central public administration.

## Who has a right for life-long employment in the central public administrations?

European states	Percentage of statutory civil servants with life-long employment
Austria	68.93% (2002)
Belgium	75%
Cyprus	32% (2003)
Denmark	No right to life-long employment <sup>24</sup>
Estonia	No statement
European Commission	78% (2005)
Finland	No right for life-long employment
France	87.23% <sup>25</sup> ; 81.50% <sup>26</sup> (2002)
Germany	43%
Greece	93.4% (2002)
Latvia	Approx. 58%
Luxembourg	78.5%
Malta	93% <sup>27</sup>
Poland	2.1%
Portugal	81.7% (1999)
Slovak Republic	No statement
Slovenia	No right for life-long employment
Spain	73.63% (2004) <sup>28</sup>
Sweden	A few percent
The Netherlands	No right for life-long employment
UK	No right to life-long employment
Ireland	12.5%
Bulgaria	35%

This table clearly shows that not all civil services include public employees having a right to life-long employment, and it is sometimes limited to specific professions. In **Denmark**, for instance, only judges have a higher level of employment security compared to other civil servants. This means that special rules apply concerning dismissal, so that judges cannot be removed against their will and may be dismissed only by order of the Special Court of Indictment and Revision. In **the Netherlands**, only judicial officers are appointed for life.

In **Sweden**, judges are permanently employed and their employment relationship can only be terminated following a court decision relating to a criminal offence or gross negligence. In general, the great majority of Swedish public employees enjoy a special position, at least compared to most of the other states. This is because they are subject to public law to a certain

<sup>24</sup> In the case of Denmark, see below the applicable rules for judges.

<sup>25</sup> The figures indicated by France exclude regional authority and hospital staff.

<sup>26</sup> These figures do not include education sector staff.

<sup>27</sup> While there are no explicit guarantees of security of employment in the public service, it is a common expectation that public employees with satisfactory conduct should not have their employment terminated.

<sup>28</sup> The Spanish answer specifies that labour law employees also enjoy a high level of employment security.

extent, but this legislation merely concerns the relationship between citizens and public officials, while their conditions of employment generally differ little from those in the private sector. However, it should be noted that special provisions exist with regard to hiring and firing procedures, disciplinary responsibility and other activities that may undermine confidence.

Furthermore, only the **UK, Dutch, Slovenian, Finnish and Danish** responses to the questionnaire indicate that no entitlement to life-long employment exists in their civil services.

The above table also shows that in the career systems, civil servants with life tenure are still the most important group of public employees, although in some states, non-statutory employees also constitute an important group. However, it must be noted that the percentage of civil servants in some of the new Member States and Accession States, e.g. **Poland, Latvia or Bulgaria** is rather low (see chapter below on non-statutory public employees).

According to the responses to the questionnaire, there are no major plans to reduce the number of civil servants in central public administration. The **Slovak** response stated that this had already effected by the Civil Service Act in January 2003, while the **Slovenian** answer response stated that the new government promised to reduce the number of civil servants by 1%, but this would be a difficult target to attain.

In **Sweden**<sup>29</sup>, where the civil service comprises a large share of total employment, this trend has been going on for about twenty years.

All in all, the employment conditions of statutory civil servants appear to be moving towards a standard alignment with the private sector. As regards the principle of life tenure, however, this development applies only to a small extent. This last point is confirmed by the responses to the questionnaire.

Consequently, despite the ongoing process in an increasing number of states to decentralise human resource management to individual ministries and agencies and to transfer practices from the private sector in order to make public employment more flexible, this process has so far not affected the principle of life-long employment as one of the traditional characteristics of public employment in a great majority of European states.<sup>30</sup>

The responses also illustrate that the majority of European states where this principle is applicable have no plans to introduce any changes in this respect. This group of states also includes **Italy**, where reform during the last decade was characterised by the privatisation of public employment. In this country, too, civil servants are better protected than private employees. The French response to the question on the flexibilisation of public employment is also revealing and characteristic for many other states in this regard. So according to France, the required flexibility of employment in the civil service does not mean a weakening of the link

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<sup>29</sup> In Sweden, 28% of the economically active population are public employees, which means that this country has almost three times more public officials than Germany (with 10% of the active population). See Demmke, above, p. 48.

<sup>30</sup> In the context of this survey, no reference is made to the senior civil service, whose principles of employment are to be reformed.

between the civil servant and the state. It means an adjustment of the statutory frameworks allowing greater mobility and a better suitability of civil servants to public employment. This reform is currently being applied by the government.

Reforms aiming at reducing the right to life-long employment are planned only in **Austria** and **Estonia**. In Estonia, one of the new measures provided for in the White Paper on Public Service Development, which was adopted in 2004, includes the plan to align employment in the public/civil service to that of the terms and conditions of ordinary labour contract employment, e.g. less employment security and less special provisions/benefits for statutory civil servants. In **Austria**, the employment status of civil servants is currently under discussion. For instance, within the context of public service reform, there are plans to introduce a uniform employment status for all federal employees within the framework of the new federal employee legislation, though with function-related protection against dismissal and the possibility to take into account specific occupational requirements.

To sum up, the development of life tenure shows that the flexibilisation of working conditions in the national civil services does not seem to touch on the reduction of life tenure, and this point is not a subject for discussion in the great majority of countries where it is applied. However, an interesting question to be tackled in the next chapter is what does this mean in practice.

## **5.2. The meaning of life tenure: how resistant is life tenure to poor or inadequate performance and to economic or organisational restructuring?**

As mentioned above, statutory civil servants can generally only be dismissed under very difficult circumstances. This suggests that the principle of life-long employment seems to belong – as opposed to promotion criteria or pay systems – to those traditional elements of the civil service that have been subject to the least modification during the reform processes in the EU Member States and particularly in career systems. While the principles of recruitment and pay are increasingly being influenced by current practices in the private sector, this does not seem to be the case for life tenure.

Until now, life tenure has been considered a key element in many countries, which makes an essential contribution to ensuring the continuity and stability of the civil service. It is curious to observe that the human resource management reform discussion relating to a more performance-oriented civil service has so far focused mainly on elements such as the introduction of performance evaluations and performance-related pay systems, without considering the principle of life tenure. In any event, we will return to this question in the conclusions.

In the great majority of civil services, the reduction of employment security is not seen as an efficient instrument for increasing the performance of staff. In other words, the advantages of life tenure still seem to outweigh its disadvantages. However, the situation is more complex than it seems. Although many countries indicate in their responses that tenure is still in place, they also state that it is possible in theory to dismiss civil servants for poor or inadequate performance, as is the case in **Austria**, **Belgium**, the **European Commission**, and **Greece**. In **Italy**, the law allows the dismissal of managers in the event of poor performance.

Broadly speaking, the past few years have shown an increasing trend in more and more states to introduce measures or instruments such as evaluations and/or legal measures, which make it possible to terminate the employment relationship with a civil servant in the event of poor or inadequate performance. A comparison between the different states shows that we can distinguish between four different approaches in this respect.

In one group of states (**Germany, Cyprus, Luxembourg, Malta, Portugal and Spain**), which have traditional career systems characterised by distinct private sector working conditions, dismissal is more or less excluded and only possible through disciplinary legislation after a long procedure if civil servants fail in their duties. In **Italy**, too, dismissal is generally a consequence of a disciplinary procedure (except in the case of managers). **Estonia** can also be included in this group as cases are usually solved by disciplinary courts. However, the Estonian response states that it is possible to dismiss civil servants in the event of poor performance, but the circumstances where this is possible are complicated.

It is interesting to note that most of the new Member States and Accession States have introduced legal measures in their new civil service laws that make it possible to terminate an employment relationship with a civil servant. In **Hungary**, for instance, civil service employment may be terminated in accordance with Act XXIII/1992 on the legal status of civil servants, if civil servants are unable to fulfil their tasks.

Another approach in these countries to deal with inadequate performance is the introduction of the possibility of dismissal in the case of one or more poor evaluations. Such measures are provided for in **Poland** and the **Slovak Republic**. As is laid down in Article 61 of the Polish civil service law, a civil servant's employment contract may be dissolved with a three-month notification of dismissal in the event of two successive negative assessments. In the Slovak Republic, too, the civil service act contains possibilities for the dismissal of staff for poor performance. In **Latvia**, the termination of an employment relationship is possible after two unsatisfactory evaluations, as is the case in **Slovenia**.

It is interesting to note that there is a trend in some of the other EU Member States to give human resource managers more possibilities to act in the event of performance problems with staff. For instance, the new staff regulations of the **EU Commission** include an article on dismissal for incompetence, which applies to statutory civil servants and employees governed by public law. This article stipulates that the various EU institutions must define procedures to identify, deal with and remedy cases of incompetence in a timely and appropriate fashion and that if following this procedure, the civil servant still proves incompetent in the performance of his or her duties, he or she may be dismissed, downgraded or classified in a lower function group at the same grade or at a lower grade. In **Greece**, too, a civil servant may be dismissed in accordance with the code of civil servants (law 2683/99) if that civil servant is registered twice in two consecutive periods in the list of civil servants of the same rank not to be promoted. In **France**, dismissal is possible in the event of inadequate professional performance, while the **Dutch** rules are characterised by a closed system of reasons for dismissal, which include dismissal on grounds of inefficiency or unsuitability other than as a result of sickness and dismissal for "incompatibility".<sup>31</sup>

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<sup>31</sup> This reason for dismissal is generally used if no other reason for dismissal is to be found in the other grounds of this closed system.

In some countries, the existing evaluation system has the function of identifying and managing poor or inadequate performance. In **Belgium**, it is possible to terminate an employment relationship with a civil servant if he or she receives two inadequate scores in the evaluation. In such a case, civil servants may receive unemployment benefits, while the state employer takes care of previous contributions. But as this procedure was only introduced in 2002, it has not yet been applied. In **Austria**, too, it is possible to dismiss a civil servant after two consecutive negative performance evaluations.

Although it is possible in theory to dismiss civil servants in the above countries, this measure is to be seen as a last resort in the event of poor performance and is only applied very rarely. Just to name a few examples, the **Austrian, Polish, Slovenian** responses as well as the response of the **European Commission** explicitly state that the dismissal procedure is rarely used. In 2002 in **France**, 52 civil servants<sup>32</sup> were dismissed for poor performance. The **Latvian** response refers to a single dismissal for poor performance in 2003.

These low numbers can partly be explained by the fact that the procedures for dismissal in case of poor performance are generally protracted, while some responses indicate that preventive measures have been introduced to avoid this extreme penalty. In the case of **France**, these measures include professional training or relocation to another position that is better suited to the performance level of the civil servant. These solutions may, of course, have financial consequences such as the loss of the pay linked to a certain function or the loss of specific benefits linked to certain positions due to their technicality or high level of responsibility.

Compared to the above states, things are different for positions where the working conditions are much more similar to those in the private sector and where the employment status does not imply a guarantee for job security. In this context, the termination of the employment relationship in **Sweden** is regulated in the same way for the entire labour market, although specific regulations exist for the civil service. In **Finland**, where civil servants are also not entitled to life-long employment, the procedure in the event of poor performance is as follows. A civil servant's employment relationship may be cancelled immediately if he or she grossly violates or neglects his or her official duties. He or she may then be suspended from office (in some cases immediately following the dismissal notice) if the act or negligence shows that the civil servant is unfit for office or if the continued performance of his or her duties may jeopardise national security. In **Denmark**, too, dismissal for poor or inadequate performance is possible if based on a reasoned argument relating, for instance, to the conduct of the employee, i.e. lack of aptitude or cooperation problems.

In the **UK**, departments and agencies must have procedures in place for dealing with efficiency that is the result of poor performance, where the work of a member of staff has deteriorated to an unacceptable standard, and where the frequent absence of a member of staff adversely affects the efficient running of the office. If the performance or attendance does not improve and if medical retirement is inappropriate, staff may be dismissed on grounds of inefficiency. In 2002, for instance, 1,160 civil servants were either dismissed or discharged.

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<sup>32</sup> The total number of French civil servants amounts to approximately 5 million.

The comparison of the various countries shows that Member States have developed different approaches to deal with poor or inadequate performance and that many of the measures in this context have only been recently introduced. It therefore appears that discussions about the ultimate solution in the case of continued poor performance by a civil servant in an increasingly performance-oriented civil service have only just started. However, it should not be forgotten that this is a very sensitive subject. For instance, failing to deal with inadequate performance may demotivate good performers and lead in extreme cases to a reversal of civil service values and good working relations. Moreover, taxpayers have to foot the bill for poor performance. On the other hand, the possibility of dismissal due to a performance evaluation first requires the establishment of an objective system for assessing the quantitative and qualitative performance, which in turn depends on a performance management system this is fair, supported by the majority of staff and which is characterised by an effective feedback system and a professional and well-trained leadership. Setting up such a system may take time, but it may be of considerable value, not least because it may contribute to the development of the skills and competences of staff.

Against this background and due to the specific tasks and ethics of the civil service, it is logical that dismissal on grounds of poor or inadequate performance is used with care and that the procedures are protracted and the protection mechanisms extensive. In **Sweden**, where the working conditions of employees in the public and private sector are quite similar, civil servants are better protected. Consequently, a special Job Security Agreement has been concluded for the state sector, which is more beneficial than the Employment Act. For instance, the notice period is doubled, i.e. up to one year on full pay. Furthermore, employees who get a lower paid job after dismissal can claim a pay supplement for up to two years. Those who remain unemployed can claim severance pay equivalent to 80% of their previous pay for over a year, while older employees may be granted early retirement.

The principle of better protection for civil servants as regards employment security also applies in **Finland**, where civil servant are not entitled to life-long employment and where public law and labour law are quite similar. The **Finnish** response to the questionnaire describes the main difference between the public and the private sector as regards employment security as follows. If an employee is dismissed without a legal reason, his or her employment will end although the dismissal was contrary to law. In that case, he or she will receive benefit. But if a civil servant is dismissed contrary to law, the civil service relationship continues and the civil servant will not receive any other benefits.

**To what extent can the life-long employment of civil servants be terminated in the event of poor or inadequate performance?**

Dismissal only by disciplinary legislation	Dismissal in the event of poor performance is provided for in legislation/ the evaluation system	Dismissal in case of poor performance is similar to the private sector <sup>33</sup>
Germany Cyprus Luxembourg Malta Portugal Spain Ireland Italy (except for managers)	Belgium Poland Austria Latvia Estonia Slovenia Slovak Republic EU Commission France Greece Hungary Netherlands Italy (for managers) Bulgaria	Denmark Finland Sweden UK

The comparatively high level of employment security of civil servants is also well illustrated by their protection in case of economic difficulties of the ministerial department or unit or in case of organisational restructuring. Nevertheless, if in the majority of states this security is higher than in the private sector, the European states and the European Commission are also characterised by different approaches in this respect, which show that being a civil servant in Finland, Sweden, France or Hungary is indeed important with respect to employment protection.

All in all, we can distinguish between different approaches. At the one extreme, we find a group of states including **Luxembourg, Spain, Cyprus, Malta, Greece, Portugal, Germany, France, Ireland** and **Latvia**, where it is almost impossible to terminate an employment relationship due to economic or organisational restructuring. In **Luxembourg**, the status of civil servants even specifies that in case of the withdrawal of a position, the civil servant has to be reassigned within one month to another administration. The **Greek** response also specifies that, in practice, civil servants who are employed in positions that will be withdrawn are not dismissed, but reassigned to other public sector positions. In **France**, dismissal for economic or organisational restructuring is a theoretical possibility only.

<sup>33</sup> Although it should be stated that the protection for civil servants is generally somewhat higher.

In some of the countries, however, a reassignment to another position due to structural reasons may entail the obligation of geographical mobility or a reduction of pay, as is the case in **France**. In **Latvia**, for instance, civil servants must also accept a vacant lower grade position.

As compared to these examples, the rules are a less rigid in the **European Commission**, where compulsory resignation is provided for<sup>34</sup>, but is hardly ever applied in practice.

Partly due to different labour market situations and civil service philosophies, several of the European states have adopted a far more flexible solution. At the other extreme are countries such as **Sweden, Finland, Denmark, Estonia, Hungary, Slovenia, the Netherlands, Bulgaria** and the **UK**, where it is easier to terminate an employment relationship for economic or structural reasons. In **Sweden**, for instance, the major ground for dismissal is a lack of work due to economic hardship following the restructuring of the civil service. As a consequence of the strained finances in the 1990s, staff were cut in many agencies. In **Finland**, dismissal is also possible for the above reason. The Civil Servant's Act provides for an authority to give notice to a civil servant if the agency or unit where the civil servant works is closed down or the civil servant's duties or the agency's potential for providing the civil servant with work substantially decrease other than temporarily, and he or she cannot reasonably be relocated within the same agency in view of his or her professional skills and capabilities or cannot be retrained for new duties. In **Bulgaria**, it is even possible to terminate the official legal relationship with one month's notice if the civil servant's position is withdrawn or if the administration where the civil servant works is closed. In **Poland**, a civil servant may only be dismissed if no transfer to another office or no appointment to a position in line with his or her professional competence is possible.

It is interesting to note that most of the new Member States (apart from Malta and Cyprus) appear to have more flexible rules with regard to employment security in the event of organisational restructuring, as was already the case with respect to dismissal for poor or inadequate performance. This may partly be explained by financial reasons, which have resulted in these countries in less rigid attitudes with respect to the traditional principles of the career system (life-long employment, mobility between the public and private sector, special pension systems, etc.) compared to other career systems in the EU. However, they have, in principle, opted for a system in which the ground rules (recruitment, promotion, disciplinary legislation, etc.) are different from those in the private sector.

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<sup>34</sup> In the case of non-fulfillment of the recruiting conditions, a reduction of posts, refusal to be reinstated in the post after a period of leave on personal grounds or a secondment requested by the civil servant in question.

**To what extent can the employment of civil servants be terminated for economic or structural reasons?**

<b>Dismissal is not possible on this ground</b>	<b>Dismissal is possible on this ground, but is seldom applied in practice</b>	<b>Dismissal on this ground is more explicitly provided for</b>
Luxembourg Spain Cyprus Malta Greece Portugal Germany France Ireland	Latvia European Commission Poland	Denmark Estonia Sweden Finland Hungary Slovenia Netherlands UK Bulgaria

This section has shown that dismissal for economic or structural reasons is possible in some states – with generally higher protection as compared to the private sector – while this form of dismissal is not possible in a great many European states where life tenure is laid down in the civil service laws. In a more general sense, it is difficult to say whether it is easier to terminate an employment relationship for reasons of poor performance or for economic or structural reasons, and all the more as provisions relating to poor performance were in most cases only introduced recently. Only the **Swedish** and **Estonian** responses indicate that dismissal is often used in the case of economic or structural reasons.

**5.3. The termination of an employment relationship in the public sector: procedures and rights of public employees**

In most states, the dismissal procedure of civil servants is only used in exceptional cases. It is sometimes regulated by very detailed rules and provisions, whose aim it is to give the civil servant a right to object. In the **UK**, for instance, where working conditions in the public sector are close to those in the private sector, public employees who are dismissed currently have three rights of appeal against that decision. The first is an internal appeal within the department or agency at a level to be set by the Head of the Department. Secondly (subject to meeting eligibility criteria) to the Civil Service Appeal Board, which is an independent body sponsored by the Cabinet Office, which hears appeals from dismissed civil servants. Finally, there is a right of appeal to an Employment Tribunal, which is again subject to the appellant eligibility criteria. According to the UK response to the questionnaire, 1,160 employees were either dismissed or discharged during 2002.

In the **European Commission**, the rule is such that a civil servant can submit a complaint against a dismissal for incompetence. The decision resulting from this complaint is then subject to the European Court of Justice.

In **Finland**, the appeal system is characterised by the following features. A civil servant has a right of appeal to the Supreme Administrative Court as provided in the Administrative Appeals Act if it was a Council of State<sup>35</sup> decision, by which the plenary session of the Council has given him or her notice or cancelled the employment relationship or suspended him or her from office. Rectification of a decision – by which some authority other than the plenary session of the Council of State has issued a civil servant with a warning, given him or her notice, cancelled the employment relationship or suspended a civil servant from office – may be requested from the Civil Service Committee. Finally, a civil service Committee decision on one of the above matters may be appealed to the Supreme Administrative Court.

In **Denmark**, in addition to the ordinary courts of law, public employees may request their organisation to submit a dismissal to industrial arbitration, which is a special negotiating body based on the collective agreement, where an arbitrator (normally a judge) can settle the disagreement without the possibility of appeal.

In **France**, too, an appeal – without suspensive effect – is possible before the administrative courts. The dismissal proceedings are identical to the disciplinary proceedings to be followed: submission of the dossier, examination of the dossier by the administrative parity committee of the interested parties. For public law employees, only the communication of the dossier is officially provided for].

Dismissal in the case of redundancy or the liquidation of an administrative unit is usually linked to certain rights of the civil servant. In **Estonia**, for instance, if the civil servant has been employed for less than three years, he or she will be paid two months salary as compensation. This amount increases the longer the civil servant has been working for the public sector. After three to five years, he or she will be paid three months salary as compensation. For more than ten years service, the compensation increases to twelve months salary.<sup>36</sup> The rights are somewhat different in **Slovenia**, where civil servants whose employment was terminated on these grounds have a priority right to employment in positions for which they are eligible during a period of two years after the cancellation of the employment contract.

**Sweden** has the Job Security Foundation, which was set up in 1990 under the Job Security Agreement, an elaborated support system available when a public employee is given notice. The activities of the Foundation include the support of training, which can qualify employees for new tasks with the same employer, the facilitation of contacts with other employers, the preparation of an employee profile, etc. Financial support may also be given.<sup>37</sup>

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<sup>35</sup> The Council of State is also the appointing authority, if it is not laid down in law or a decree that the President of the Republic, Ministry or other authority must appoint to a post. Generally, it is the top (civil servants) offices that are appointed by the President of the Republic or by the Council of State (Government). The general grounds for appointment are laid down in the Constitution Act.

<sup>36</sup> As regards this matter, see Public Service Act, paragraph 131.

<sup>37</sup> Compare the chapter on the meaning of life tenure.

As was shown in the previous chapter, dismissal in the case of poor performance can lead in quite a few states to the termination of an employment relationship. Usually, two poor or inadequate evaluations may justify a dismissal on such a ground. But as the following examples show, the termination of an employment relationship is preceded by several phases during which the civil servant has a right of appeal.

In the case of **Slovenia** the procedure is as follows. The employer must institute the proceedings<sup>38</sup> if a civil servant receives two successive unsatisfactory evaluations. The facts demonstrating incompetence of a civil servant are determined by a commission appointed by the employer. This commission is made up of public officials with at least the same level of education as the civil servant whose incompetence is being determined, and with no less than five years of service. Officials from other bodies may also be appointed to this commission. Representative trade unions within the organisation must be notified of the proceedings.

Civil servants may appeal to the competent employment appellate commission within eight days of the decision. The procedure is nearly the same in **Latvia**, where the decision of the evaluation commission is also binding on the superior who has appointed the civil servant. This decision may be appealed against.

In the **Austrian** civil service, in particular, this procedure is very protracted and includes the following steps. The civil servant's superior must draw up a report if the civil servant – despite two demonstrable admonitions – fails to perform his or her work as expected. The civil servant must be notified of the intention to draw up the report in order to provide him or her with the opportunity to respond. The report may then be submitted to the employment authority, which will notify the civil servant within four weeks of its evaluation (no judgment). If the civil servant agrees in writing or if neither the civil servant nor the employment authority appeal to the performance assessment committee, this evaluation will be final and will be considered the assessment. In the event of an appeal, this committee must deliver its judgment within six weeks. No further appeal is allowed against this ruling.

For the subsequent period of six months, excluding the first evaluation period, a new assessment may be effected. At the end of the second assessment period, the superior must again report back to the employment authority. Any further proceedings will be similar to the first assessment. Following two negative assessments, the civil servant will be discharged as a result of the legal effect of the second assessment or the conclusiveness of the evaluation].

In addition to these procedures applying in the case of poor performance or redundancy, notice may also be given to a civil servant by way of a disciplinary procedure. A comparison of the European states shows that all of them are characterised by the existence of formal procedures, which vary considerably as regards the structure and composition of the responsible commissions which are involved in the disciplinary process. In this context, a comparative analysis of

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<sup>38</sup> Proceedings cannot be instituted during parental leave, sick leave and compulsory training and additional qualifications for the performance of work in the event of transfer for the reasons of service, or six months after transfer to another position due to work requirements.

**Belgium, Denmark, France, the Netherlands and Sweden**<sup>39</sup> shows how a civil servant is protected against arbitrary dismissal by the establishment of reliable and transparent procedures.

All five states have in common that the procedure is based on the principle of consultation: the accused civil servant has to be heard and he or she is allowed to present an oral or written defence against the accusations. In four of the five states, the procedure also allows the parties (employer and civil servant) to call witnesses and/or external experts so that they can put forward their arguments and positions. In **Denmark**, for instance, the parties are allowed to request the hearing of witnesses, but the judge decides on the validity of such a petition.

A further common characteristic of the five states is that the accused civil servant has the right to appeal against decision – which imposes certain disciplinary measures on him or her – to a superior administrative body (Belgium, France) or to special court (Netherlands, Sweden) or to ordinary courts (Denmark). An employer cannot appeal in any of the states studied against a decision not to impose disciplinary penalties.

In principle, we can distinguish two categories of states: firstly the states that apply specific disciplinary legislation to civil servants and secondly, the states where disciplinary measures are less regulated and where they are based more on collective agreements or similar rules to those applicable in the private sector.

A comparison of the European states shows that the termination of an employment relationship is handled with great care in the public sector. In particular, the case of poor or inadequate performance linked to unsatisfactory evaluations requires effective and transparent procedures in order to safeguard the highest possible level of objectivity as well as the civil servants' rights. This is particularly so as performance in certain sectors of public administration is more difficult to evaluate than in certain parts of the private sector.

#### **5.4. The development and job protection of non-statutory civil servants: towards an alignment with private sector practices**

In the section above, we concentrated mostly on the job security of statutory civil servants. But public employees throughout the entire public sector are not covered by a uniform and identical statute in hardly any of the EU Member States. Their employment relationship is governed by arrangements under public law or else by private sector employment law or by a mixture of both. A comparison of public employees shows that there are huge differences between these different categories of staff.

For instance, while **French** public services are staffed almost exclusively by civil servants in a public-law employment relationship whose conditions differ fundamentally from employment relationships in the private sector, **Polish** civil servants are a very small group of 2.1%<sup>40</sup>, while

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<sup>39</sup> *Institut européen d'administration publique, Etude comparative: Mesures et procédures disciplinaires dans l'administration publique*, Maastricht 2000 (Study carried out for the Luxembourg Ministry of Civil Service and Administrative Reform).

<sup>40</sup> There is a trend towards increasing the number of appointed civil servants to a core group of 15%-20%.

the great majority work as employees under public law. Another notable case is **Sweden**, where only a very small percentage of civil servants are governed by public law, while the overall majority work under private labour law. However, this is discretionary in character and therefore adaptable to the variable demands on the different labour market sectors. Furthermore, **Germany** and **Luxembourg** distinguish three different groups of public employees. Consequently, only about 47% of government staff in Germany are statutory civil servants, while the rest work as *Angestellten* (employees) or *Arbeiter* (workers).

Compared to all other European states, the **Dutch** central public administration seems to be the most homogenous in the sense that according to the Dutch response, all public employees are statutory civil servants.

A review of the ten new Member States shows that the number of civil servants in most of these states is subject to wider fluctuations than in the rest of the states. This is the result of previous definitions of the civil service and the introduction of stricter rules for access, while it is often also linked to political and/or financial considerations. The table below provides an overview of the percentage of statutory civil servants as well as of other categories of public employees, working in the European states.

#### **Public employees working in the central public administration of the European states**

<b>European states</b>	<b>Percentage of public officials governed by private law and partly by public law</b>
Austria	31.07% (2002)
Belgium	25%
Finland	10.7% (2003)
France	12.77% <sup>41</sup> ; 18.50% <sup>42</sup> (2002)
Germany	47.5%
Greece	6.6%
Latvia	41.4%
Luxembourg	21.5%
Poland	97.9%
Portugal	12.4% (1999)
Slovenia	20%
Spain	20.03% (2004)
Sweden	The great majority
European Commission	13%
Bulgaria	65%

This table clearly shows that in some countries, another significant category of public employees exists alongside statutory civil servants, which is working under a different status with different working conditions.

<sup>41</sup> The figures, indicated by France, exclude regional authority and hospital staff.

<sup>42</sup> These figures do not include education sector staff.

As can be seen from this table, particularly the figures for **Germany, Luxembourg, Austria, Italy, Belgium, Poland, Latvia, Sweden and Bulgaria** are due to the relatively high percentage of non-statutory civil servants interesting to study, although the great majority of other states such as Denmark, Estonia, Finland, France, Greece, Hungary indicated that they would employ workers governed by labour law, or rules inspired by labour law, in their central public administrations.

In the following, we will analyse the main features of the working conditions of employees in these countries, such as their employment relationship, their degree of job security compared to civil servants, the functions for which they are employed and their development. Interesting questions in this respect are whether there is a trend towards increasing the number of this group having a lower employment guarantee or to further align their working conditions to those of the private sector in order to dismiss them more easily or to align their working conditions to those of statutory civil servants in order to give them a better status.

At federal level in **Germany**, only 43% of workers are governed by civil servant status, while the rest work under a private law contract of employment.<sup>43</sup> However, most working conditions are laid down in collective agreements, which are negotiated between the public employers (Federation, Federal States, local authorities) and the responsible trade unions. The main differences in the field of working conditions compared to civil servants are the following. They are not recruited for a particular career, but for a specific post or activity. This means that a promotion depends on the employer or on the existence of a vacant position at a higher grade for which the employee may apply. However, a provision is often included in collective agreements that employees can move on to the next grade only if they have performed satisfactorily in the course of their employment.

As compared to civil servants, employees also have fewer opportunities for mobility in the sense that a transfer to another employer is only possible if a new contract of employment is concluded. In the same way, it is not possible to assign the employee to a lower function unilaterally.

It should be noted that job security is generally lower than is the case for civil servants. In the event of poor performance, the same rules apply as in the private sector, e.g. dismissal is possible after several reasoned assessments. Dismissal is also possible in the event of economic or organisational restructuring. However, there is also a trend towards convergence with the highly secure employment status of civil servants. Consequently, employees cannot be dismissed after 15 years of service, a clause applicable no earlier than when the employee reaches the age of 40.

In the case of Germany, employees are not assigned to specific or to lower functions; they can also be found at management level. Keller<sup>44</sup> notes that the decision as to whether newly hired personnel should be employed as civil servants or employees is in many cases arbitrary. Employees doing exactly the same job may have a different status. Consequently, day-to-day practice often contradicts Article 33 of the German Constitution, which stipulates that the exercise of public authority as a permanent function is generally to be assigned to members of the public service whose status, service and loyalty are governed by public law (who are civil

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<sup>43</sup> See in this context, Federal Ministry of the Interior, *The public service in Germany*, Berlin 1999.

<sup>44</sup> See, Bach, above, p. 57.

servants). According to Demmke<sup>45</sup>, a consequence of this inconsistency in the allocation of tasks is that the question constantly arises as to why these differences between *Beamte* and *Angestellte* actually exist and what is the meaning of the concept of the exercise of public authority if *Angestellte* can perform these functions just as well (or badly).

With regard to the development of the number of employees at federal level in Germany<sup>46</sup>, the German response to the questionnaire indicates that there is now a trend to recruit employees rather than civil servants mainly for financial reasons, although this trend has not yet had any measurable impact.

With a percentage of 21.5%, the **Luxembourg** public sector also includes – as is the case in Germany – the status of *Angestellte*. Employees work under a contract of employment, whereas the main principles of this employment relationship are laid down in the law of 27 January 1972, while they are also subject to certain articles of the employment status of civil servants<sup>47</sup>, e.g. concerning the rights and duties of civil servants, certain conditions of pay, holidays, the general protection of the employee, etc. Employees also enjoy the same rights as civil servants as regards mobility from one administration to another in the sense that they remain in the same career and keep their grade.

The main differences in the field of working conditions as compared to civil servants concern the different recruitment mechanisms<sup>48</sup>, the slower pace of career development and pay and differences relating to the social security system. With regard to the pension system, employees adhere to the same system as civil servants after 20 years of service or if the civil servant has reached the age of 55.

A review of the development of the status of employees in Luxembourg shows that their working conditions have been progressively improved. Prior to World War II, their status was the same as private sector employees, this situation later changed under the influence of the trade unions, which requested a convergence of both forms of employment status. The above law of 1972 partly put this requirement into practice, while assimilation has continued since then.<sup>49</sup>

As regards job security, public employees are currently better protected than private sector employees. The unlimited contract becomes permanent after ten years if the employee has reached the age of 35. Nevertheless, the competent minister may terminate the employment contract in the event of prolonged or repeated absence of the employee from work for health reasons.<sup>50</sup>

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<sup>45</sup> See Demmke, above, p. 39.

<sup>46</sup> In addition to the categories of civil servant and employee, Germany also has the category of wage earners, whose working conditions are also fixed by collective agreements.

<sup>47</sup> See the law of 16 April 1979 on the general status of civil servants.

<sup>48</sup> Employees do not have to pass an entry exam as is the case for civil servants.

<sup>49</sup> Jean-Paul Conzemius, *Das Recht des öffentlichen Dienstes in Luxemburg*, in : S. Magiera, H. Siedentopf, *Das Recht des öffentlichen Dienstes in den Mitgliedstaaten der Europäischen Gemeinschaft*, Berlin 1994, pp. 531-601.

<sup>50</sup> Another condition is that the employee does not yet benefit from the pension regime of civil servants to which he adheres after a certain period of service.

The main reason for this differentiation in employment status has been the introduction of flexibility in personnel management, which circumvents the far longer procedure of hiring a civil servant and facilitates more rapid recruitment in times of emergency. It should be stated, however, that there is no trend in the Luxembourg civil service<sup>51</sup> to increase the number of employees. On the contrary, under the influence of the largest trade union of the public sector, the policy is to hire civil servants wherever possible.

Employees can be found throughout the Luxembourg civil service, although they rarely occupy management functions and often work in the education sector.

In contrast to Luxembourg and Germany, there is a clear trend in **Austria** to increase the number of employees (currently 31.07%) while reducing the number of civil servants as compared to the total number of employees. However, this trend does not apply to judges, military staff, public prosecutors, staff in executive services, and supervisors in schools. For most professional groups, a recruitment stop has been issued – at least until summer 2005. At the same time, a reform of employee status is planned, which includes “function related” protection against unlawful dismissal as well as the possibility to consider specific professional requirements.

Austrian civil service employees are governed by private law. Their employment contract is based on the 1948 Contract Staff Act [*Vertragsbedienstetengesetzt*], which lays down the rights and duties of both partners, while certain regulations of the public law are also applicable to employees.

The general working conditions of employees have been improved by the 1999 reform of the law relating to employee status. Since then, this category of staff has been entitled to proper career development, better pay, and access to higher management functions, which were previously reserved for civil servants.<sup>52</sup>

At present, both categories of staff are to be found throughout the Austrian civil service, although the percentage of civil servants is still quite high at management level.

However, this law also made it impossible for an employee to become a civil servant with life-long employment after a period of five years.

In contrast to civil servants, employees do not enjoy life tenure. Their contract of employment may be terminated, although proper reasons must be presented, e.g. a gross violation of duties, physical or psychological inaptitude, failing to attain adequate results in spite of an admonition, refusal of obligatory training, other failings in the performance of work, etc.

In **Italy**, since the reform of 1993 and the privatisation process as it is termed, only a small group of public employees (magistrates, state lawyers, the military, police, diplomats, prefects, etc.) are still statutory civil servants working under public law, while the great majority are governed by a

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<sup>51</sup> In addition to the categories of civil servant and public employees, Luxembourg also has the category of wage earners and private employees.

<sup>52</sup> K. Hartmann, *Das Personal der Verwaltung*, in: G.Holzinger, P. Oberndorfer, B. Raschauer (Hrsg.), *Österreichische Verwaltungslehre*, Vienna 2001, pp. 279-282.

special private status. For this category of public employees, dismissal may occur in the event of redundancy and the rules are similar to those in the private sector. Although it should be added, that there is no complete convergence of working conditions in the public and private sector. Consequently, many exceptions and rules fixed by specific laws still persist in the public sector.

In **Belgium**, according to the royal decree that stipulates the status of civil servants and according to jurisprudence, public employment is the rule and contractual employment is an exception. Therefore, in contrast to the above case studies, the functions of contractual employees are in theory quite limited in Belgium.<sup>53</sup> According to the law on contractual employment of 20 February 1990, such employees may only be hired to 1) fulfil an exceptional and temporary demand for personnel, 2) to replace employees who are absent in some form or other, 3) to staff auxiliary or specific positions, e.g. cleaning tasks, but also tasks that require a specific know-how or broad experience in a certain field, and 4) to fill positions requiring an expert contract.

But as in the case of Germany, practice differs widely from theory.<sup>54</sup> Janssens and Janvier in their latest research have revealed a considerable rise in employees, who constitute 25% of the federal administration. The main reasons stated for this rise, at least at provincial and local level, are financial, in the sense that it is much less expensive to take on contractual personnel, and the lack of flexibility of the status with its rigid rules relating to recruitment, pay and other benefits.

As stated in the Belgian response to the questionnaire and in contrast to Austria, a project is currently underway to reduce the percentage of contractual employees from 25% to 20%.

The main differences concerning working conditions between both categories of staff relate to the fact that employees are governed by labour law, which entails less favourable social security regimes, very limited career development, as well as no life tenure. But the latest research<sup>55</sup> also reveals a convergence of status types with regard to pay development.

In **Poland**, civil service employees make up 97.9% of the national civil service. Consequently, only 2.1% of public employees are statutory civil servants. It is therefore not surprising that there is an ongoing trend to increase the number of civil servants to a core group of 15%-20%. This process will take a long time due to budgetary problems<sup>56</sup> and to the strict requirements before becoming an appointed civil servant, e.g. successful completion of the civil service entry exam after having passed at least a two-year probationary period (with a fixed-term contract). In this context, it should be remembered that the civil service law was only adopted in 1998.

The difference in legal status between civil service employees and civil servants is characterised by the fact that civil service employees are employed on the basis of an employment contract, while civil servants are appointed by a unilateral act. This difference is reflected in the fact that civil servants are entitled to life-long employment, while civil service employees are not. Despite this difference in working relations, the Polish response to the questionnaire notes a certain

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<sup>53</sup> See in this context, K.Janssens, R. Janvier, Statutory and contractual employment in the Belgian public sector: the gap between theory and practice, paper presented at the EGPA Annual Conference, Ljubljana, 1-4 September 2004.

<sup>54</sup> It should be mentioned in this context that this trend can be observed mainly at local and provincial level.

<sup>55</sup> See Janssens above, p. 13.

<sup>56</sup> The number of appointed civil servants for a given budgetary year is determined each year by the budget law. In 2003, for instance, a maximum of 550 civil service employees could be appointed, in 2004: 600 and in 2005: 1,500.

influence on public law of labour law, in the sense that some regulations applying to the civil service members in Poland are taken directly from the labour code and other labour laws.

In **Latvia**, the number of public employees working under labour law (41.4%) is very high, while the remainder is made up of statutory civil servants. The common characteristic of both types of employees is that they are recruited by means of open competition, while the main differences are that social guarantees are in some ways better for civil servants, e.g. holidays, support for training, etc. Most of the employees work in the field of public services such as health, education, etc.

We referred to **Swedish** public employees in the chapter on statutory civil servants, as they are governed by specific regulations, which are not part of labour law.

In **Bulgaria**, too, only 35% of staff are civil servants and entitled to life-long employment, while the rest of the staff is governed by labour law. This low number is also explained by the fact that civil service status in Bulgaria was only introduced in 2000.

The study of the employment relationship, job security, functional attributions and the development of the **Austrian, Belgian, German, Italian, Latvian, Luxembourg, Polish and Bulgarian** public employees has clearly shown that they are hired in principle under labour law, but their conditions regarding job security are – at least in **Germany** and **Luxembourg** – very close to those of civil servants. The same goes for working conditions in general, where the trend in the fields of career opportunities, pay and distribution of functions is to align those of public employees with those of statutory civil servants. Surprisingly, there is a trend in **Germany** (in theory) and **Austria** to increase the number of this category of public employees, mainly for financial reasons, while in **Poland**, the trend is to increase the number of statutory civil servants and in **Belgium** to reduce the percentage of contractual employees from 25% to 20%. In **Luxembourg**, too, there exists a strong preference to hire statutory civil servants.

## 5.5 Towards a growing significance of fixed-term contracts

As the responses to the questionnaire indicate, the great majority of European states and the European Commission employ temporary staff in addition to statutory civil servants and/or contractual staff. According to literature, this form of numerical flexibility is used “to adjust the number of workers, or the levels of hours worked, in line with changes in demand for them”.<sup>57</sup> Numerical flexibility with the objective of matching the number of workers deployed with the number needed, was a major component of Atkinson’s flexible firm. In his model, this could be achieved in two different ways. On the one hand by greater freedom for employers to hire and fire at will, which could for instance be achieved by changing the contractual relationship to a temporary contract of employment or to the introduction of part-time work. On the other hand, this could also be achieved by means of annual hours contracts, flexible rostering, variable shift lengths, etc.<sup>58</sup>

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<sup>57</sup> See Farnham, Horton (2000) above, p. 9.

<sup>58</sup> See Atkinson, above, p. 11 ff.

Since the adoption of the Council Directive of 28 June 1999, working conditions (excluding the social security schemes) of fixed-term employees are regulated to a certain extent at EU level by minimum provisions. The major aims of this Directive are to prevent abuse from the application of successive fixed-term employment contracts and to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination. For this purpose, Member States must indicate in their legislation the number of renewals, the maximum total duration of successive fixed-term contracts, as well as the reasons that justify the renewal of such contracts.

This Directive received criticism from the European Parliament, which put forward the argument that the rules designed to prevent abuse through successive fixed-term contracts contain no qualitative or quantitative obligations, and that no provision was made for priority access to newly created jobs or access to appropriate vocational training.

The adoption of this Directive should be seen as a response to the continued increase of fixed-term contracts as noted by the European Commission.<sup>59</sup> In 2002, for instance, the overall average proportion of employment made up of short-term employment relationships stood at 19.5% according to the Eurostat Labour Force Survey, while the EU average regarding public administration stood at 21.9%, which is considerably higher than the percentage for industry (14.8%). This report also concludes that, if the health and education sectors were to be included, this difference would even be larger.

The table below shows that the percentage of fixed-term employment varies in the different states that gave a precise response to the questionnaire: between 1.2% in Spain and 24.5% in Finland. And what is even more interesting to observe is that in at least six states (**Ireland, Cyprus, Estonia, Germany,<sup>60</sup> Spain and Sweden**), there is an increase of temporary employment in the public sector.<sup>61</sup> Only **Portugal** mentioned that temporary employment decreased between 1996 and 1999, from 8.7% to 5.9%.

The most common reasons stated in the questionnaire for employing temporary staff are 1) to cover extraordinary or special needs or expertise, 2) to meet urgent, unpredictable needs such as projects with limited duration, 3) to replace temporary absent public officials, and 4) to circumvent the sometimes lengthy recruitment and budgetary procedures. One must surely add financial reasons to this list, as in some countries the pension costs for statutory civil servants are so high that it is much less expensive to hire fixed-term employees. However, this is not true for all countries. In **France**, for instance, the costs of fixed-term employees are higher, as their pay is higher than that of statutory civil servants.

The reasons for employees to accept temporary employment in the public sector include the possibility to enter into a more permanent form of employment and the expectation to improve the qualification and competency profile.

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<sup>59</sup> See <http://europa.eu.int/scadplus/leg/en/cha/c10822.htm>

<sup>60</sup> In the former federal states.

<sup>61</sup> This might also be the case in other Member States, who however did not indicate such in their responses. Some other states mentioned that they have no data available.

As mentioned above, the increase may also be explained by budget restrictions and uncertainties and, last but not least, by the introduction of more and more temporary contracts at management level. This the case in the UK, where the new senior civil service includes approximately 3,000 posts.<sup>62</sup> In **Estonia**, too, fixed-term employment has increased somewhat in recent years due to the appointment of top managers on contracts for a definite period of time.

The **Polish** case, where an obligation exists to conclude limited-period contracts for initial employment in the civil service, is also interesting in this respect.

The increase of fixed-term employment has been encouraged by the philosophy of new public management with its key ideas of productivity and of transferring practices from the private to the public sector, which also favours a move to more contractual, flexible and – hopefully – less expensive forms of public employment.

European states	Percentage of public employees with a fixed-term contract
Cyprus	19.7% (2004) <sup>63</sup>
Finland	24.5% (2003) <sup>64</sup>
Germany	9.5%
Luxembourg	7%
Malta	7%
Portugal	5.9% (1999)
Slovenia	4.5%
Spain	1.2% (2004)
Netherlands	10%
UK	2%
European Commission	22%
Ireland	Less than 5%

Despite the undoubted advantages of fixed-term contracts, such as the introduction of additional flexibility, which, in a flexible labour market, may be beneficial to both employee and employer, the potential negative impact of some of the characteristics of this type of employment, e.g. uncertain salary development, lack of career development, fewer opportunities for training, and job insecurity, should not be forgotten. However, it is difficult to generalise as an objective evaluation of fixed-term employment also depends on such variables as labour market characteristics, level of expertise of the employee, the opportunities to find new employment, etc.

In general, an excessive level of temporary employment in the public sector might not be without consequences for traditional civil service values. For instance, if the rules of recruitment differ from those of statutory civil servants, as is often the case, it may lead to a weakening of the rules of merit and competence and favour patronage and nepotism. Other disadvantages of an excess of

<sup>62</sup> See Farnham, Horton (2000), above, p. 215

<sup>63</sup> This figure includes casual staff who are employed on an annual basis. This figure also includes replacements for absent staff, but it will – according to the Cypriot answer – go down.

<sup>64</sup> This figure includes to a large extent fixed-term employees from the university field.

short-term contracts are the loss of valuable experience and competences due to an excessive turnover, a potential lack of organisational continuity, etc.

A comparative review of the functions where temporary staff are employed shows that they are not only recruited for unskilled tasks. In **Austria**, for instance, a certain number of them are working as teachers at federal level in order to replace other teachers<sup>65</sup>, while most of them are employed in ministerial cabinets and as stand-ins [*Karenzvertretungen*]. In the **European Commission**, too, temporary staff are sometimes engaged for special purposes, e.g. to supplement the cabinets of the President and the Commissioners.

In **Portugal**, temporary employment does not include predominantly low-qualified personnel, but aims to contract high-level and qualified professional staff for expert advice.<sup>66</sup> Nearly 75% of temporary employees work in the ministries of health and education. Besides this category of staff, most temporary employment is intended for an occasional replacement of statutory civil servants. The same principle of replacement or substitution of absent officials applies also to **Luxembourg, Poland and Hungary**.

Temporary staff are also employed in the public sector for less qualified work such as is the case in **Cyprus and Greece** or the **European Commission**, where the status of contractual non-permanent staff in the institutions is limited to clerical and secretarial tasks, office management, manual and service tasks. In **Sweden**, temporary staff are hired particularly for positions that do not require core competencies.

This chapter, which is mainly based on the responses to the questionnaire, clearly shows that fixed-term employment plays a role in the public sectors of most European states and that it is showing a slight increase. The relevant literature<sup>67</sup> even notes a quite considerable increase in the past decade and a progressive move away from the traditional pattern of full-time and permanent employment to different patterns of work.

As a consequence of this increase, critics see a threat to the traditional civil service values of professionalism, neutrality, permanency and loyalty, while proponents prefer to consider the advantage of greater flexibility, such as an improved response to the requirements and work that arise.

In general, temporary employees fulfil very different functions in the various states, while they often replace absent civil servants or are hired for very specific or extraordinary needs or projects. They are found predominantly in the education and health sector, and the percentage of women is also much higher.

As the labour markets in the different states also diverge with respect to the working conditions of temporary employees, it is quite difficult to offer a definite judgment on fixed-term contracts in the European states and in the European Commission. However, it should be noted that

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<sup>65</sup> The Austrian answer mentions 3,200.

<sup>66</sup> Usually in the area of local administration.

<sup>67</sup> See Bach, above, for instance on the case studies of the UK, Spain, Germany, etc.

commitment to the work and organisation may decrease if it is clear from the outset that there is no hope of promotion or continuation.

## 6. How is job security perceived by civil servants?

The high level of job security is one of the main differences between private and public employment, which in many cases compensates for the generally lower salaries in the public sector (mainly at management level). As such, it is also an advantage, which should not be underestimated in view of the future demographic challenges and the subsequent recruitment bottlenecks. Job security also helps enhance the continuity and stability of the public sector, which nonetheless should be counterbalanced by an effective mobility policy, being able to prevent a gradual loss of motivation by staff who stay too long in the same position. Consequently, the important catalyst function of mobility for the innovation of the public sector should be taken into consideration.

Research evidence clearly shows that job security or the loss of it are among the worries of civil servants which should not be underestimated. Furthermore, it must be assumed that job security will become even more important during periods of economic instability.

For instance, according to a survey of 1,075 employees working in four metropolitan areas of Southern Italy<sup>68</sup>, “worries about job security” and “improvement of job position” were the most common negative and positive expectations that civil servants associated with the changes in public employment. Another interesting result of this research was that “tenure” proved to be the most satisfactory aspect by far. Moreover, those civil servants for whom professional competencies are the most satisfactory aspect of their work are less concerned about job security, as opposed to those for whom tenure is the most important value. These replies regarding job satisfaction varied considerably according to the position. While higher level civil servants attributed more satisfaction to “job professional competencies”, “tenure” was more important to those at lower levels.

### Main expectations according to most satisfactory work aspects in %

#### Most satisfactory job aspects

Expectations	Tenure	Job competencies	Other aspects
Worries about job security	15.7	11.5	16.1
Improvement of job position	7.8	12	8
Other expectations	76.5	76.5	75.9
Total	100	100	100

<sup>68</sup> F.P. Cerase, New cleavages in a changing public employment, Draft Paper, European Group of Public Administration, Ljubljana, 1-4 September 2004.

Other studies also confirm the importance of job security for the motivation of civil servants. According to a staff survey undertaken in the Irish civil service<sup>69</sup>, job security is among the top six employment-related issues for civil servants.

- earnings and career progression;
- task responsibility;
- reward and recognition;
- job security;
- progressive work arrangements;
- training/development.

These findings are confirmed by other studies. For instance, when asked to list 15 work-related motivational aspects, a survey carried out among 296 public sector employees working in a variety of departments in a large mid-west metropolitan region of the USA<sup>70</sup>, identified “a stable and secure future” as being the most important requirement for satisfaction (for Public Sector Supervisors, the security aspect still ranked second).

In comparison to this answer, private sector employees consider factors such as “high salary”, “chance to exercise leadership” and “opportunity for advancement” as being more important than “a stable and secure future”. The following table, which compares the work motivation of private and public employees, confirms our hypothesis of different motivational incentives for employees from both sectors.

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<sup>69</sup> J. O’Riordan, P.C. Humphreys, Career Progression in the Irish Civil Service, CPMR Discussion Paper 20, Dublin 2002, p. 11 ff.

<sup>70</sup> It is interesting to consider that this survey, which was carried out in the USA, seems to confirm the trend we observed in the European countries. C.L.Jurkiewicz, T.K. Massey Jr., R.G.Brown, Motivation in Public and Private Organizations, in: Public Productivity & Management Review, Vol. 21 No 3, March 1998, p. 234 ff.

**A Comparison of Rank Order of Motivational “Wants” by Public and Private Sector Employees**

<b>Public Sector Employees Motivational Factor</b>	<b>Private Sector Employees Motivational Factor</b>
<p>Rank</p> <ol style="list-style-type: none"> <li>1. A stable and secure future</li> <li>2. Chance to learn new things</li> <li>3. Chance to use my special abilities</li> <li>4. High salary</li> <li>5. Opportunity for advancement</li> <li>6. Variety in work assignments</li> <li>7. Working as part of a team</li> <li>8. Chance to make a contribution to important decisions</li> <li>9. Friendly and congenial associates</li> <li>10. Chance to benefit society</li> <li>11. Chance to exercise leadership</li> <li>12. Freedom from supervision</li> <li>13. Freedom from pressures to conform both on and off the job</li> <li>14. Chance to engage in satisfying leisure activities</li> <li>15. High prestige and social status</li> </ol>	<p>Rank</p> <ol style="list-style-type: none"> <li>1. High salary</li> <li>2. Chance to exercise leadership</li> <li>3. Opportunity for advancement</li> <li>4. A stable and secure future</li> <li>5. Chance to make a contribution to important decisions</li> <li>6. Chance to use my special abilities</li> <li>7. Chance to benefit society</li> <li>8. Working as part of a team</li> <li>9. Chance to learn new things</li> <li>10. High prestige and social status</li> <li>11. Freedom from pressures to conform both on and off the job</li> <li>12. Variety in work assignments</li> <li>13. Friendly and congenial associates</li> <li>14. Chance to engage in satisfying leisure activities</li> <li>15. Freedom from supervision</li> </ol>

## 7. Conclusion

One of the main results of this survey is that the generally higher level of job security in the public sector seems to be part of those traditional elements and characteristics of the public sector, which have been least modified by public sector reforms in the past decade. The least we can say is that the process of privatisation or normalisation, as well as the trend towards a differentiation of employment and working conditions of civil servants have hardly influenced their employment status. Even in Italy, where the whole reform process was carried out under the heading of “privatisation”, civil servants, according to the Italian response, are better protected than private employees. Reforms to revise the high job security of civil servants have also been of little real significance. In addition, in Austria, in particular, and to some extent in Germany, there is no marked trend to increase the number of public officials who are working under a labour law contract. On the contrary, the trend in some countries is to increase the number of civil servants and to reduce the number of public employees, particularly in the new Member States. Furthermore, it is also interesting to observe that in most countries, the employment conditions of public employees under labour law have not really been privatised. Although they may, in general, have slightly less job security and opportunities for career development, the trend is to adjust their working conditions to those of civil servants and not vice-versa.

The only trend which shows a clear development towards a flexibilisation of the employment status of the civil servants is the increase of fixed-term employment in the great majority of European states and the European Commission. Although the reasons explaining this common trend are not always the same, the fact that their recruitment is occasionally less expensive and quicker than the recruitment of statutory civil servants due to shorter and often less formalised recruitment procedures, surely helps to explain this increase, as does the general trend towards more flexible labour markets.

These are interesting results, because they show that a high level of job security still seems to be considered a protection against political influence in the civil service and a guarantee in favour of a neutral and impartial civil service. However, we should note that a public sector with a lower level of job security does not mean *per se* greater political influence and less neutrality and impartiality. This result also shows that public employment is in some ways still distinct from private employment and that the public sector still takes its role as a model employer quite seriously by offering stable and secure positions for a large number of public employees. As the last chapter has shown, if civil servants are different from private sector employees, one reason is because they attach more importance to job security. Job security therefore remains one of the significant factors attracting workers to public employment.

Nevertheless, we have to note that although job security is still more secure in the public sector, the principle of life-long employment is not always to be taken literally. In more and more cases, it can be terminated – at least theoretically – in the event of poor or inadequate performance and sometimes for economic or organisational reasons. Very often, the possibility of dismissal of civil servants in the event of inadequate performance has been introduced in countries that have recently introduced some form of performance management system. In these countries, the

termination of the employment relationship must be seen as a last resort that is only used very rarely. However, as performance management systems have been introduced in some of the countries only recently, it is difficult to judge how they will develop and what this will mean for job security in the longer term, particularly in the case of continued poor performance by public employees. Will performance one day rate higher than neutrality and stability and slowly undermine the high level of job security? The least we can say is that this is a very sensitive issue that has to be handled with great care, as it touches upon the fundamental values of the civil service.

As was the case regarding the differences in the European states and the European Commission, the traditional division between orthodox career systems and civil service systems – where private and public employment conditions show similar characteristics – is largely applicable in this case, too. While it is generally easier to terminate a public employment relationship in the second group of countries for economic reasons and for reasons of poor or inadequate performance, public employment tends to be better protected in the first group of countries, where civil servants are generally more different because they are civil servants! But one must also note that in career systems, this distinction also means that civil servants have fewer possibilities to switch from the private sector to the public sector and vice versa, which means that in case of a dismissal from the public sector, it will be far more difficult to find a new position, as is the case in position systems, where both sectors are far more permeable.

## **8. Annexe – Questionnaire: The flexibilisation of the employment status of civil servants: from life tenure to more flexible employment relations**

The flexibilisation of the employment status of civil servants is part of a general trend towards a flexibilisation of the European civil services that started in the 1980s with the aim of changing rigid monolithic bureaucracies into more flexible and responsive organisations. Other forms of flexibilisation that have been promoted and implemented since then include pay flexibility, task flexibility, flexibility in working hours and geographical flexibility. The main driving forces behind this development are a changing civil service environment characterised by evolving labour markets in general, increased competition, tighter state budgets, rapid technological change and slower economic growth. In this context, it is hoped that greater flexibility in the labour force will help to increase productivity and result in more flexible responses to internal and external constraints such as cost reduction. One way of achieving this goal is to improve the match of civil servants' employment conditions with organisational goals and needs.

Over the last ten years, some EU Member States already introduced more flexibility in existing personnel policies. In some countries this trend has even led to the privatisation of public employment, replacing the separate public law system for civil servants by a contractual relationship where working conditions are concerned. In Italy, for instance, the employment relationship between the government and the civil servant was “privatised” in 1993, with the exception of judges, diplomats, prefects and university teachers. Of course, an interesting question in this respect is what is the impact of this privatisation of the employment relationship between public employees and the state?

Another country that has gone very far in this regard is Sweden, where public employees now have the same job security as employees in the private sector and are no longer governed by public law with a guarantee of life-long employment.

However, not all EU Member States have gone that far in this process, depending on their civil service system and administrative law traditions, the political context, budgetary constraints, etc. In general, within the EU there is a great variety of different employment relationships between the public employer and the civil servant, ranging from life tenure to a contractual relationship. In some countries, the permanent and definitive nature of the employment status of civil servants is deeply anchored in the constitutional and legal framework of the country, while in other countries this employment relationship is governed by labour law. Depending on these differences, the job security of civil servants also varies between countries, which makes it difficult to establish one single definition of job security for civil servants in different contexts.

When looking at current literature on human resource management, one can see signs that the distinction between specific civil service legislation and labour law is blurring, although there is not yet enough evidence of a normalisation of the employment status of civil servants in the

public sector. Against this background, an interesting question to consider is how far the job security of public employees is also affected by this privatisation trend.

Another significant aspect of the flexibilisation of public employment is the possibility of creating other categories of staff in the civil service in addition to statutory civil servants, e.g. contractual staff and fixed-term staff. Such a differentiated approach allows more flexible recruitment with more individually negotiated contracts and, if necessary, pay for specialists or managers that is higher than civil service salaries.

In a small number of countries, only a portion of permanent government employees have the status of civil servant. In Germany, for example, only about 35% of government staff are statutory civil servants, while the rest works as *Angestellten* (employees) or *Arbeiter* (workers). The criterion which distinguishes these two categories and which is laid down in constitutional law is that tasks involving the exercise of public authority are to be fulfilled by civil servants. In Sweden, too, only a small category of public sector staff are working within the scope of civil service law, while the rest are governed by labour law. In other states, such as the UK, the civil service status does not include all groups of public staff, teachers being excluded. These differences are revealing because they clearly illustrate that the size of the core civil service is determined by the number of statutory civil servants and varies between Member States.

## ***The aim of the study under the Luxembourg Presidency***

This study, conducted in the framework of the Luxembourg Presidency, will analyse 1) the development of the “statutory” employment relations between civil servants and the state as employer, as well as, at a more general level, 2) the different types of employment relations in the civil services of the 25 Member States of the European Union. The study aims to find out in how far the public and private sectors are converging in terms of job security, and what factors stimulate such convergence. A distinction will be made between the different civil service systems in the Member States. Furthermore, the differences between the EU Member States as regards flexibilisation of employment relations will be addressed, as well as the employment relations of non-statutory staff of the administration.

The study will also analyse the impact of job security/flexibility on the attractiveness of the employment in the public sector and on the motivation of civil servants in general.

### **Questionnaire:**

#### ***The employment status of civil servants in the public sector of the EU Member States: towards contractualisation and flexibility of life-long employment***

1) Where (constitution, civil service law, labour law, etc.) is the employment status of civil servants laid down? Please attach, if possible, a copy of the relevant article of the legislation.

2) Is there a constitutional provision stating that the central public administration should primarily employ statutory civil servants?

3) If the employment status is laid down in public law, what are the differences with the private sector as regards employment security? If relevant, please distinguish between the following categories:

- statutory civil servants governed by public law;
- employees governed by public law;
- employees governed by private law.

4) Are civil servants/employees governed by public law still entitled to life-long employment and if so, are there plans to change this in the near future?

5) Can civil servants be dismissed, e.g. in case of bad performance or for organisational or economic reasons? If dismissal is possible, please describe the reasons, the legal procedure and civil servants’ rights to object. If relevant, please distinguish between the above-mentioned 3 categories of public employees.

6) Is this procedure used often and how are civil servants protected in case of dismissal (e.g. for organisational reasons)?

7) If the employment status of civil servants has been “flexibilised”, what have been the main reasons for this? Please rank the different options:

↑ Improvement of performance of civil servants

↑ Better handling of under-performance

↑ Reduction in costs

↑ Restructuring of the civil service

↑ General alignment of working conditions in the public sector with those in the private sector

↑ Other

***The development of statutory civil servants: is there a trend to reduce the number of statutory civil servants who have a high level of job protection to a core group of public employees?***

8) What is the percentage of statutory civil servants among the different categories of staff working in the central public administration? What is the percentage of the other permanent public employees?

9) How are the jobs of the other categories of staff protected?

10) Is there a trend to reduce the number of statutory civil servants to a core group of public employees and to increase the number of staff governed by labour law when recruiting new staff?

***The development of temporary employment: is there a trend towards an increase in time-limited contracts?***

11) What is the percentage of temporary (non-permanent) employment in the public sector in your country and how is it developing? For which functions are temporary employees hired?

**Practical information:**

Your answers, in English, French or German, should be returned by electronic mail by **28 February 2005** at the latest to:

- the European Institute of Public Administration (EIPA), for the attention of the person in charge of the study, Danielle Bossaert, Senior Lecturer ([d.bossaert@eipa-nl.com](mailto:d.bossaert@eipa-nl.com)), tel.: 00 31 43 32 96 367 or 00 31 32 96 259.
- the Luxembourg Ministry of the Public Service, for the attention of Jacqueline Betzen ([Jacqueline.Betzen@mfp.etat.lu](mailto:Jacqueline.Betzen@mfp.etat.lu); tel.: 00352 478 31 45).

**Distribution of results:**

A summary report will be distributed to all delegations before the meeting in Luxembourg and – possibly – put on the EIPA and/or Circa website.