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Central Public Administration: Working Conditions and Industrial Relations - Germany

Abstract

[Excerpt] Germany is a federal country made up of 16 federal states (Länder) and the federation (Bund). The Länder are states with sovereign rights and responsibilities that are not devolved from the federation, but are granted to them by the Basic Law. Each state has its own government, parliament, courts and legislative as well as executive powers. Therefore, power is divided between the federation and the states according to tasks and functions. As a rule, the Basic Law stipulates that the exercise of state powers is a matter for the federal states.

The federation has administrative and legislative power only in those areas laid down by the Basic Law. For example, regarding working conditions for public employees, it has very limited scope for the regulation of state officials. At federal and state level, administrative functions are carried out by the 'direct' state administration (by federal and state authorities). However, there are also legally independent administrative bodies and independent or semi-independent agencies that form the 'indirect' public administration (Bach, 2012). The legally and organisationally independent institutions of the 'indirect' administration are subject only to limited state supervision or are completely independent, as is the case with Germany's central bank, the Bundesbank (German Federal Ministry of the Interior, 2009).

However, responsibility for public administration does not lie with the federation and the states alone. Under the Basic Law, local matters are dealt with independently by the bodies of local self-government (local authorities). In addition, local authorities also perform state functions on behalf of the federal and state governments (German Federal Ministry of the Interior, 2009).

Keywords

central public administration, CPA, Germany, Eurofound, public sector, industrial relations, working conditions

Comments

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Eurofound

Central public administration: Working conditions and industrial relations

Germany

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Central public administration in Germany: Reforms, working conditions and industrial relations

Introduction

Germany is a federal country made up of 16 federal states (*Länder*) and the federation (*Bund*). The *Länder* are states with sovereign rights and responsibilities that are not devolved from the federation, but are granted to them by the Basic Law. Each state has its own government, parliament, courts and legislative as well as executive powers. Therefore, power is divided between the federation and the states according to tasks and functions. As a rule, the Basic Law stipulates that the exercise of state powers is a matter for the federal states.

The federation has administrative and legislative power only in those areas laid down by the Basic Law. For example, regarding working conditions for public employees, it has very limited scope for the regulation of state officials. At federal and state level, administrative functions are carried out by the 'direct' state administration (by federal and state authorities). However, there are also legally independent administrative bodies and independent or semi-independent agencies that form the 'indirect' public administration (Bach, 2012). The legally and organisationally independent institutions of the 'indirect' administration are subject only to limited state supervision or are completely independent, as is the case with Germany's central bank, the Bundesbank (German Federal Ministry of the Interior, 2009).

However, responsibility for public administration does not lie with the federation and the states alone. Under the Basic Law, local matters are dealt with independently by the bodies of local self-government (local authorities). In addition, local authorities also perform state functions on behalf of the federal and state governments (German Federal Ministry of the Interior, 2009).

Status differences among employees

About 40 million people are currently employed in Germany. About 4.5 million of them work for federal, state or local government, but only 1.6 million of these are civil servants (*Beamte*). What are the terms of employment for civil servants and how do they differ from those for other public employees (*Angestellte*)? The railways, postal and telecommunications services, as well as air traffic control, which previously were part of the federal administration, have been privatised, with the exception of regulatory and supervisory functions. The privatised enterprises still employ civil servants on the basis of interim provisions. These have not been counted in the statistical information on overall employment in the public service (German Federal Ministry of the Interior, 2009).

According to Article 33 (4) of the Basic Law, the exercise of state authority as a permanent function shall as a rule be entrusted to civil servants. The reason for this is that civil servants are bound by a special relationship of obligation, which is necessary especially in areas where the state must intervene in the rights and obligations of individuals on behalf of the common good, that is, exercise its monopoly on force. This is why all police, fire-fighters, and customs, tax and prison officials must be civil servants. Supervisory functions in the supreme federal and state authorities and in the diplomatic service are also, as a principle, reserved for civil servants.

By contrast, positions in health and social services and in technical professions are largely held by public employees. There is a key argument for this distinction: the fact that civil servants are not allowed to go on strike. This is an expression of their special obligation of loyalty towards their employer and ensures that the police, fire brigades and criminal justice system, as well as the federal and state ministries, always have enough staff to function.

Other special features: Civil servants do not have an employment contract; they are employed on the basis of an official act of appointment and are given a certificate of appointment. Their salary is set by law and is not negotiable. In return, after successfully completing a probationary period, civil servants are granted life tenure and cannot be made redundant. This also gives civil servants a certain amount of independence from the political leadership of the agency where they are employed.

The employer may decide whether to employ civil servants or other public employees. Because Article 33 (4) of the Basic Law says that civil servants should 'as a rule' fill positions involving the exercise of sovereign authority, there is some room to manoeuvre in individual cases. So in practice, there is not always a clear distinction between positions to be held by civil servants and those to be held by other public employees.

(German Federal Ministry of the Interior, 2009)

In Germany, the traditional question of which tasks and which functions should be performed solely by civil servants has never been answered definitively, although the Constitution requires the establishment of a statutory system of official employment. Still, the legal requirements do not exclude the possibility of concluding normal employment contracts in the national civil service. However, public employment should normally consist of civil servants subject to public law and the employment of employees subject to labour law should be an exception in civil service positions. In reality, however, the question as to the differences between public employees and civil servants is handled differently from organisation to organisation. The case study here of the Ministry of the Interior (Bundesministerium des Innern) also shows that the possibility of employing staff in terms of employment contracts is not treated as an exception. Moreover, many civil servants are employed in fields (such as in relation to technical tasks like maintenance, automation or technical assistance) that do not necessarily require the employment of public law civil servants. On the other hand, even fixed-term employees are working in positions that exercise sovereign powers and which (normally) should be reserved for civil servants.

It is precisely because of this inconsistency in the allocation of tasks that the question of why the differences between civil servants and public employees actually exist is being raised continually. If public employees can perform functions that are supposed to be reserved for civil servants, the meaning of the concept of a 'function connected with the exercise of official powers' is being questioned. Until now, no evidence has been presented that public employees carry out their tasks differently to civil servants.

On the other hand, public employees have the same rights as all employees in private industry: they have the right to join trade unions, to bargain collectively and to go on strike. While civil servants are allowed to join unions, they are excluded from collective bargaining and have no right to strike. Their terms and conditions of employment are unilaterally set by their employers, although organisations representing their interests have some legally guaranteed rights to influence decision-making. One further characteristic feature is that these restrictions apply to this status group as a whole and are not limited to specific functions, as in most other market economies.

In contrast, public employees are employed on the basis of a contract under private law. General labour law applies to them, as it does to all employees in Germany. Specific working conditions, however, are set out in collective agreements negotiated between the public employers (the federation, states and local authorities) and the relevant trade and labour unions.

Table 1: Differences between civil servants and public employees in German central public administration

	Civil servants	Public employees
Legal background	Public law (Civil Servants Act)	Private law
Nomination, appointment	Official announcement (<i>Ernennung durch Hoheitsakt</i>)	Work contract
Regulation	Regulation through public and administrative law	Regulation through contract and labour legislation
Guiding principle amongst employers and employees	'Rights and obligations for both sides' (' <i>Alimentationsprinzip, Fürsorgeprinzip, Hingabepinzip, Loyalität</i> ')	Mutual exchange principle (<i>Gegenleistungsprinzip</i>)
Right to strike	No right to strike	Right to strike, sometimes restricted for some categories of staff
Main values	Rule orientation, impartiality, loyalty, neutrality, performance, equality, equity	Performance
Typical contract duration	Permanent tenure	Unlimited contract or limited contract
Career	Recruitment into a career system	Position system as in the private sector, depending on function and position
Pension	Special pension schemes	General pension scheme

Source: Adapted from Demmke (2004)

Employment trends

Public employment in Germany has been drastically reduced since 1991, from 6.8 million public employees in 1991 to 4.5 million employees (including soldiers) in 2010. In the same year, the German public sector employed approximately 4.4 million employees (excluding soldiers), of whom approximately 1.7 million employees were employed as civil servants (excluding soldiers). Whereas 37% of all public employees in Germany have a civil service status, this figure is approximately 50% at the central level. In September 2010, the German cabinet decided to cut a further 10,000 positions by 2014.

In 2011, the central public administration¹ employed 272,000 people (excluding the armed forces), of whom approximately 125,000 people were employed as civil servants and approximately 133,000 as public employees, while 14,000 were trainees (*referendare*).

Overall, approximately 9,000 people have fixed-term contracts (*befristete Beschäftigung*). The latter figure doubled from 4,200 in 1999 to almost 9,000 in 2010 (at the central administration level). Consequently, in contrast to popular assumptions, patterns of non-permanent contracts are becoming widespread in the public sector but are also increasing in central administration.

Strictly speaking, the German public administration employs civil servants and public employees. However, for a number of years, fixed-term contracts are being offered to an increasing number of employees. Most recently, marginal employment (*geringfügige Beschäftigung*), another form of contingent work, has also significantly increased within the public administration, affecting almost 200,000 people (according to the Federal Statistical Office; figures are for 2010).

¹ In this study, central public administration is government administration at national, regional and local level.

Interviews in the Ministry of the Interior confirmed that fixed-term employment has also increased at the federal level, even in positions that normally should be reserved for full-time and unlimited civil service positions. A common feature is that these forms of one-year or two-year contracts are more widespread in lower-level than in top-level positions, women are more affected than men and, due to legal restrictions, civil servants are not affected. These insecure employment segments have consequences not only for job stability, but also for wages, and they significantly increase not only short-term but also long-term social risks.

Overall, Germany has a relatively small central administration (only 20% of the total public workforce works at the central governmental level), but the percentage of civil servants (approximately 37%) represents an average figure in an international comparative context (Demmke and Moilanen, 2010). However, whereas most EU Member States are in the process of reducing civil service employment (and increasing the percentage of public employees), this is not the case in Germany, where the number of civil servants is relatively stable and the number of public employees has been declining since 1991.

Germany therefore constitutes an example of a ‘lean state’ in comparison with the majority of EU or OECD Member States. It remains to be seen, however, if the strategies of downsizing and strict budgetary discipline that were introduced shortly after reunification have come to an end. In the meantime, it is evident that more services (such as IT services, health services, pre-school or education) are understaffed. All the interviewees from the Ministry of the Interior mentioned that further downsizing would lead to staff shortages in an increasing number of areas, especially in information technologies.

Female employment is higher in the public than in the private sector. It has been increasing continuously for several decades, especially since reunification in 1990. In this regard, Germany is in line with other OECD countries. There are, however, some characteristic features: first of all, 1.2 million women were employed part time in 2010, and in 2012 86.8% of all part-time employees were women. Furthermore, women are still overrepresented in lower grades (for example, clerical staff) and are concentrated in specific areas (for example, social services).

The percentage of part-time employees has always been higher at state and local level. It has increased since the 1960s, but it is not related to any part-time employment agenda. One should note, however, that public employment at the state level and the municipal level has been increasing slightly since 2009. However, this is mainly due to the strong increase in part-time work and the increase in fixed-term employment.

Overall, the traditional form of stable employment with life tenure still applies to civil servants. Most public employees have unlimited contracts with a high degree of job security (in some cases, almost identical to civil servants). However, as already mentioned, trends towards the use of fixed-term contracts have accelerated since the mid-1990s. Thus, there are core and secure groups as well as peripheral and insecure groups. Public administration labour markets are increasingly heterogeneous entities that are highly segmented in horizontal as well as vertical dimensions. Overall, access to permanent employment opportunities in the whole internal labour market, including the central public administration, is more difficult than in the past.

Forms of contingent work have increased because all public employers have successfully made an effort to increase their flexibility in general, particularly in terms of numbers and working time. In their personnel policies, public employers can respond to cost increases, for example through privatisation measures and contracting out, by freezing recruitment, by not replacing retirees and by offering limited contracts. Increased flexibility in the public administration, however, is achieved differently than in the private sector: without redundancies and primarily with a medium- to long-term time perspective.

Political and structural reforms

When talking about public sector reforms in Germany, one will hear two competing stories. The first portrays Germany as a reform laggard, especially as regards the implementation of new public management reforms and the existence of a number of traditional Weberian employment features,² such as a high level of job stability, continuity and rule orientation, if not rigidity.

The other story portrays a federal system with a fluid and decentralised organisational structure, many diverse reform programmes at the federal, regional and local level, and bottom-up instead of top-down approaches.

These perceptions do not contradict each other. On the one hand, the German civil service is still very traditional and has a number of classical bureaucratic features, including a general prohibition as regards the right to strike and no collective bargaining powers for civil servants. By tradition, the German civil service has a high level of regulation. Civil servants are regulated by a total of approximately 30 laws and regulations. In addition, recruitment and selection policies are regulated by several legal sources. These can be found in EU primary law (Article 10 of the Treaty on the Functioning of the European Union (TFEU)), EU secondary law (especially Directive 2000/78EC), the case law of the Court of Justice (especially in the field of age discrimination),³ the German Constitution (Article 33, paragraph 2, Grundgesetz GG of the Basic Law), the Federal Civil Service Act, the Federal Regulation on the Career System, the Law on the Status of Civil Servants, and different regulations and administrative circulars in the field of anti-discrimination.

When measuring the central basic elements of a traditional bureaucracy as described by Max Weber, Germany has one of the most bureaucratic civil service systems in Europe (Demmke and Moilanen, 2010) (see Table 2).

Table 2: *Civil services and traditional bureaucracy – post-bureaucracy continuum score by EU27 Member State*

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

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

* Civil service is not a career system.

Source: *Demmke and Moilanen (2010)*

² These features include the existence of a public law status, the principle of hierarchy and subordination, rule orientation, the existence of career structures, career development that is centrally regulated, entrance from the bottom, the impossibility of promotions to other positions at mid-career or top level, special recruitment requirements, central regulation of recruitment, non-relevance of private sector experience, regulation of basic salary by law, a wage system based on seniority not on performance, lifetime tenure (high job security) and difficulty of termination.

³ C-144-04 Mangold, C-45/09 Rosenblatt, C-555/07 Küçükdeveci.

The OECD (2008, p. 23) noted that most OECD countries adopted the following reforms:

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

However, Germany has implemented only some of these reform trends. For example, the percentage of civil service employment is increasing rather than decreasing. Overall, differences between civil servants and public employees remain significant. Whereas the classical career system has been reformed, it has not been abolished. Moreover, cutback policies are directed more towards public employees with a labour law contract and less towards civil servants. Pension systems and sickness insurance also still differ considerably for civil servants and public employees.

Table 3: Comparison of old and new working conditions for public employees

Traditional features	New developments
Three categories of staff: civil servants, public employees and public workers (<i>Arbeiter</i>)	Full harmonisation amongst public employees and public workers, only two categories of staff left; however, more fixed-term employees
Majority of public employees under labour law	Reduction of labour law employees and relative increase in civil service positions
Administrative principles and ethical standards	Classical values (legality, impartiality) remain in place
Increase in public employment until 1991; yearly decreases since 1991	Increasing shortages in certain areas, need for additional recruitment in certain sectors and in some countries, downsizing stopped after 2014?
Civil servants with tenure, most public employees with unlimited contracts, existence of standard employment model (low levels of part-time work)	Importance of job security recognised, lifetime tenure for civil servants and unlimited contracts for public employees; however, increase in fixed-term contracts, standard employment model slowly declining, strong increase in part-time work
Bureaucratic career system, little mobility between public and private sector, 'closed' and hierarchical systems	Career system maintained but mobility amongst the different careers facilitated; more mobility between public and private sector supported
Principle of hierarchy	Remains important; however, there is also a trend towards more communication, feedback and participation
Centralisation of responsibilities, standardised human resource (HR) policies (for example, regarding pay)	Trend towards more decentralisation of responsibilities to line managers; growing awareness of the need for more consistency and coherence in standards, working conditions and HR policies
Little mobility between the public and private sector	Mobility between the public and private sector improving, but still difficult because of problems recognising professional experience and pension entitlements
Leaders as 'bosses'	Due to ongoing trends towards the decentralisation of responsibilities and the changing nature of work leadership, this will further increase in importance; however, there is a growing gap between leadership expectations and the leadership 'reality'
Automatic career development according to the principle of seniority	One of the biggest challenges due to cutback policies, fewer promotion positions available, competency management and lifelong learning on the rise, automatic career development conflicts with principle of (age-related) anti-discrimination
Little international mobility	Ongoing challenges as regards technical issues (coordination of pensions and tax), low cross-border mobility; legitimacy of Article 45.4 of TFEU questioned by societal trends (multinational citizenship, EU citizenship); difficulties still exist in recognising external experience
Restricted definition of discrimination and diversity (mostly concentrating on equality amongst men and women)	Ongoing focus; greater focus on new areas (age discrimination, integration of migrants into the German public sector)

Traditional features	New developments
Hierarchical recruitment procedures, no selection of external top officials	Move away from recruitment to entry level as principle, more flexible recruitment (also at mid-career), low numbers of open competitions for top managers
No performance-related pay	Introduction of performance-related pay for public employees; so far, only performance-related bonuses for civil servants
Technical and mathematical performance management and personnel appraisal systems (ticking boxes)	Greater focus on communication and trust, introduction of annual objectives and targets, competency management
Bureaucratic working conditions	Improved work–life balance, increase in work pressure due to staff shortages, increase in sickness rates, more job responsibility; however, also more job tasks, ‘doing more with less’
40-hour week	All sorts of flexible working times, increase in weekly working time to 41 hours (40 hours with children)
Social dialogue, informal social dialogue for civil servants	Generally no change
Health and safety, IT standards	High standards, sports and health provisions offered (high acceptance amongst employees), increased focus on age management
Little focus on training	Ongoing trend towards more investment in training, lifelong learning, more focus on training for older officials
Specific pension system for civil servants, retirement at 65 years, calculation based on last salary for civil servant, maximum pension for civil servant 75%, other public employees have a pension based on the average life earning	Further alignment with private sector, increase in retirement age to 67, early retirement more difficult, for civil servants calculation still based on their last salary, decreasing pension levels

However, this analysis only covers the situation of civil servants, who represent roughly 37% of the public workforce. Therefore, focusing on the status of civil servants is not sufficient. In fact, the federal character of the German state also implies that the German public sector is a labyrinth of reforms. As such, public management strategies that were implemented from the top down were difficult because of the existing high degree of autonomy of the states and municipalities that had already started to implement their own reforms in the 1970s. Therefore, despite the existence of many important state reform programmes (under names such as ‘Active State’, ‘Lean State’ or ‘Activating State’), explicit references to specific public management reform concepts (for example, new public management concepts) were less important than local reform programmes, cost reductions and ‘classical’ cutback policies (Jann, 2003, p. 95).

Until the 1960s, the federal government was responsible for its civil servants, and the states were responsible for civil servants at state and municipal level. In the early 1970s, the federal government gradually gained the authority to formulate framework legislation to devise guidelines for state-level legislation and to set standards for all civil servants. This centralised form of regulation resulted in a persistent, comparatively high degree of standardisation, largely unknown in other federal states. This situation did not change until the new century.

In 2008, the federation ceded its authority to adopt legislation on the salaries and pensions of state civil servants and judges. Since the federal reform (*Föderalismusreform*) came into force in 2009, the states now have a greater say in organisational and personnel matters, since personnel expenditure amounts to about 40% of the states’ budgets (as the majority of public employees work at the state level, with relatively few at the federal level).

Thus, the federal reform represents a significant shift in political authority. It brought the return of the status quo and reallocated the regulatory competence back to the state level. States are allowed to make autonomous decisions and to unilaterally change employment conditions of state and municipal civil servants.

Nowadays, the states are responsible for their own civil servants and public employees. Thus, the distribution of competences applicable until 1971 has been restored. Apart from the responsibilities for its own staff, the federal level is only responsible for regulating the legal status of all civil servants, judges and military personnel. These framework

regulations contain guidelines for legislation by the states and must be specified and implemented by the respective state parliaments in order to have the force of law for civil servants and judges in the service of legal entities under public law under their supervision (particularly the local authorities).

This federalisation of civil service law (*Föderalisierung des Beamtenrechts*) introduced more flexibility and more decentralisation. These extended opportunities for rules and standards specific to states are likely to lead to formerly unknown, greater and, in the long run, increasingly differentiated employment and living conditions amongst the states and between the states and the federal level. Depending on state labour markets and budgetary contexts, it will possibly even lead to disparities between employee groups. For example, teachers are already better paid in Bavaria than in Berlin. The extent of such differences (pay differentials and heterogeneity in working time and other employment conditions) will depend on the actual use of these new options. Since the economic and financial context of each state differs significantly, they will almost certainly compete for specific groups of employees, such as young teachers and IT experts, by offering different working conditions, especially as regards salaries (Keller, 2011).

Demographic change is leading to an increasing proportion of elderly people in the German population. In addition, the ageing of society will result in a growing number of employees leaving the public sector. On the other hand, the present developments may also lead to increasing demands in different fields, such as data protection, the fight against terrorism, sustainable administration, IT and particularly the field of social services. The demographic problem affects Germany as a whole, but to differing extents in different organisations. At the moment, one of the greatest challenges is to anticipate the exact recruitment shortages there will be in each sector and the amount of possible recruitment. At the same time, another aim is to further reduce the number of public employees, mainly because of budgetary constraints.

Therefore, the situation appears obvious only at first glance: new staff are needed at a time when demographic trends suggest that the supply of employees will not keep up with the pace of demand and the large numbers of public employees who are retiring. However, in reality, public employment is still being reduced due to budgetary pressures. Therefore, the ratio of leavers to entrants over total public employment has been increasing in the past 10 years, influenced by changes such as the restructuring of government functions, privatisation and cuts in personnel spending. Since reunification, a decision was taken to cut public employment by an average of 1.55% per year.⁴ The other important instruments for continuous downsizing were liberalisation and privatisation measures of the federal postal services (Deutsche Post AG) and the federal railway services (Deutsche Bahn AG).

Major reasons for the downsizing policies were of national as well as European origin: the growing deficits of public budgets at all three levels were supposed to be reduced and pressures resulting from globalisation were increasing.

Reforms of working conditions

As regards its organisational structures and organisational models, Germany is a true labyrinth of reforms and a good practice example for many countries. However, Germany has never been very reform minded in civil service reform or human resource management reform at the central administration level. On the other hand, the interviews in the Ministry of the Interior showed that at least some public employees are of the opinion that, by international comparisons, ‘we have done our homework’. For example, working time has been increased to 41 hours, working time flexibility is offered, pension reforms have been implemented (including a long-term extension of the retirement age to 67 years) and career and pay reforms were adopted (the latter with a clear efficiency-based focus and very modest salary increases in the last few years).

⁴ The exact figure varies from year to year. For example, it was -1.9% in 2011.

Moreover, as far as the most recent legal and organisational reforms are concerned, Germany has already introduced many reforms with the adoption of the Civil Service Act (*Bundesbeamtengesetz*) in 2008/2009 and the Anti-Discrimination Act (*Gleichbehandlungsgesetz*) in 2006. Most reforms aim at making the system more flexible and open, making it less prone to discrimination against disadvantaged groups, and enhancing mobility amongst and between the different careers and between the public and private sector.

Due to its incremental and pragmatic approach to reforms, no special reference was ever made to the need to ‘import’ new public management concepts. Still, diverse concepts that share similarities with new public management concepts have been introduced since the mid-1990s, first at the municipal and latterly at the state and federal level. These concepts have attempted to bridge the gap between public and private sector employment models and to introduce market-related concepts and instruments to save scarce public funds and increase public sector efficiency and effectiveness in hard times.

In contrast to many other countries, the economic crisis has not had a significant impact on working conditions so far. For example, pay and holiday entitlements were not made a subject of austerity measures. On the other hand, many structural reforms, such as the increase in working time, the reform of the retirement age and the freeze on recruitment, had already been implemented prior to the economic crisis.

Still, there remains a considerable gap between theory and practice, or between the development of concepts and their piecemeal, gradual implementation. A good example is the introduction of performance-related pay (PRP), which started gradually in 1997. In order to enhance efficiency in the national pay systems and respond to the need to reform the old seniority-based system and the wish to reflect new fairness perceptions and value changes, the traditional grading system based on age, length of employment/seniority and marital status was changed to a system based on individual performance and experience.

Today, the amount of variable payment for public employees is only 1% of the total salary for all public employees. Civil servants are excluded from the PRP system. Instead, they can earn performance-related bonuses (*Leistungsprämien*), which can be much higher than PRP for public employees. Overall, the introduction of PRP neither improved individual performance nor created more fairness (see, for example, Demmke, 2009). Instead, the new system only created new distributional and procedural unfairness dilemmas. It seems that people constantly compare their performance with the performance of their colleagues (and mostly believe that they are better than others). In the case of standardised pay, many employees believe that their pay is not fair since they perform better than their colleagues. However, the problems are not solved once PRP is introduced and civil servants are paid according to performance.

New feelings of being treated unfairly emerge, and in many instances, people are frustrated and even less motivated after the introduction of PRP. Since people constantly compare themselves with their colleagues, they also tend to believe that colleagues who receive bonuses and PRP do not deserve them. Employees who do not receive PRP often become demotivated, since they expect to get bonuses. Another dilemma concerns the fact that many employees do not trust their superiors to make fair decisions on the allocation of PRP. Consequently, many people feel that they are treated unfairly because of their superiors’ unprofessional or unfair pay decisions. In all of these cases, the expectation to be treated individually conflicts with the expectation to be treated equally. Thus, as long as traditional pay systems are maintained, they are seen as unfair and not corresponding with new value developments.

However, the alternative may not be better. Returning to the traditional centralised and seniority-based pay schemes is not an option, as traditional pay systems are seen as procedurally unfair. Rather, it is important to design fairer pay systems under decentralised conditions. To do this, one major challenge will also be to avoid distributive injustice and discrimination in allocating bonuses and PRP.

In most cases, the staff councils have been quite reluctant to negotiate about acceptable distribution criteria or to actively support PRP arrangements, because they are afraid of potential disadvantages for individual employees or specific groups; they are concerned with a wider dispersion of benefits. They frequently believe these new instruments are employer strategies to reduce costs in disguise. Crucially, it has to be mentioned that the introduction of PRP would have been easier in more prosperous times, but the necessity to generate labour cost savings is a severe disadvantage for the implementation of these schemes.

Social dialogue and employee representation

Staff councils

In the German central administration, employment relations are characterised by a dual structure similar to the private sector (Eurofound, 2009). In the public administration, staff councils (*Personalräte*), as institutions with specified rights of co-determination, are the public sector equivalent of works councils in private industry. Their legally guaranteed rights are similar to their counterparts in the private sector, but are formulated in specific legislation (Staff Representation Acts for the Federal and States Level (*Bundes und Landespersonalvertretungsgesetze*)).

Staff councils are legally independent, but often carry out their tasks in conjunction with trade unions and representative organisations. According to Müller-Jentsch (2011), 75% of all staff councils are also members of unions, either the Unified Services Union (Vereinte Dienstleistungsgewerkschaft, ver.di) or the German Civil Service Association (Deutscher Beamtenbund, DBB). Although the number of women employed in public services is higher than the number of men (54% and 46%, respectively), the women make up only 36% of staff councils (Müller-Jentsch, 2011). The coverage rates of staff councils are much higher than those of works councils. So far, employers have not tried to marginalise staff councils, whose legal rights have not been fundamentally changed for decades.

In order to exercise rights of worker involvement, local staff councils are elected by employees in all organisations and agencies. Corresponding to the multilevel administrative structure, in addition to the local staff council, there is a district staff council at intermediate level and a central staff council (*Hauptpersonalrat*) at the highest level (for example, a ministry). In this case study, the central staff council that was interviewed represents 20,000 employees in the German Ministry of the Interior, including approximately 20 subordinate agencies.

Moreover, the size of the staff council depends on the size of the organisation. If there are 5 to 20 employees, there should be at least one staff council. For organisations with more than 601 employees, there should be 11 staff councils. Here, the different groups of employees (civil servants and other staff without civil service status) must be proportionally represented.

Rights of participation are covered in federal and state laws on staff representation, which are largely identical. The participation of staff councils is intended to ensure that the protected interests of public service staff are taken into account. Participation is restricted to internal affairs.

If the head of an organisation or agency intends to carry out a measure requiring the participation of the staff council, they must consult the local staff council. The district or the main staff councils are consulted only if matters concerning the respective subordinate authorities or the entire department are to be decided on, not just employees of the intermediate authority or of the ministry itself. Additionally, the central staff councils are consulted if no agreement is reached at the subordinate level and the matter must then be referred to the superior agency for a decision.

Recently, the tasks and power of staff councils have increased because of the decentralisation of regulation noted already. One important instrument in representing staff interests is provided in the Staff Representation Acts: the conclusion of service agreements (*Dienstvereinbarungen*) by staff councils and management. These agreements specify and adapt the

general arrangements that have been concluded in collective agreements for the specific establishment. The number of agreements and their importance has increased recently. They cover such issues as the implementation of agreements on working time, performance-related pay and performance appraisals.

On the employers' side, representation structures traditionally followed the organisation of the federal state. They remained remarkably stable for several decades. In contrast to other countries, there are no independent agencies or bodies (such as pay review bodies). At the federal level, the Minister of the Interior (*Bundesinnenminister*) is in charge of the regulation of all employment conditions. This is a pivotal position because it not only represents the federal level in collective bargaining, but also prepares legislation for civil servants.

Trade unions

As mentioned, civil servants have the right to join trade unions and associations representing their interests, but (so far) are neither entitled to bargain collectively nor to go on strike. In our case study, the Ministry of the Interior unilaterally decides on the working conditions of all German civil servants at the federal level.

Therefore, from a legal point of view, the dividing line runs not only between the public and private sectors, but also within the public sector between 'career' versus 'non-career' systems. However, the consequences of this distinction should not be overestimated, as collective agreements for public employees are frequently used for civil servants.

In addition, in the future, the total prohibition to go on strike may be changed as a consequence of Germany's adherence to the Lisbon Treaty and the Charter of Fundamental Rights, which implicitly allow for the right to strike (at least for certain groups of civil servants). Consequently, it may well be that in the future, specific groups of civil servants (for example, teachers) may be allowed to go on strike.

On the employees' side, the system of industrial unionism and unitary unions does not apply and organisational structures are more fragmented than in private industry. These divisions can jeopardise necessary strategic coordination and the enforcement of demands. Overall, there are two trade union federations that represent the different groups in Germany: the German Confederation of Trade Unions (Deutscher Gewerkschaftsbund, DGB), with eight member unions, and the DBB, with about 40 professional affiliates (*Berufsverbände*). The DGB had 6,155,849 members in 2011.

The largest trade union within the DGB, which (amongst other things) represents public sector issues, is ver.di, with 2,070,990 members in 2011. Ver.di is the largest public sector union and is involved in collective bargaining at all three levels. However, ver.di's members are almost exclusively public employees. Only roughly 150,000 members are civil servants.

Another important trade union federation, the DBB, with 1,267,572 members in 2011, mainly organises civil servants; however, almost 360,000 members of the DBB are not civil servants. Within the DBB, the VBOB (Verband der Beschäftigten der obersten und oberen Bundesbehörden) represents employees in the federal ministries and federal agencies, courts and within the German parliament. It has more than 10,000 members.

Similar to the situation in many other countries (Ebbinghaus et al, 2011), trade unions in Germany (including the DGB and ver.di) have lost many members (from 2.8 million in 2001 to 2.1 million in 2010 in the case of ver.di). There are various reasons for this (Bryson et al, 2011). For example, ver.di has to cope with competition from a growing number of small, professional organisations with comparatively homogeneous memberships and a high capacity to enforce demands based on the critical functions of their members (including pilots, flight attendants and doctors). Moreover, most employees with fixed-term contracts are not very attracted by membership in a trade union as such. On the other hand, the DBB has seen its membership (which is mostly composed of civil servants) slightly increase.

In Germany, approximately 18% of all employees are members of a trade union. As in the majority of comparable countries, trade union density has traditionally been much higher in the public sector than in the private sector. Also in Germany, the public sector has a higher percentage of unionisation than the private sector. Approximately 40% of all civil servants are members of a union.

Until the 1990s, a specific pattern dominated. Changes in employment conditions took place as a process of mutual adaptation of both sub-systems to ensure harmonization of the employment relationship. First, bargaining took place and led to a new collective agreement for blue- and white-collar employees. Then, all its substantive components were immediately and completely transferred to civil servants by a formal decision of the Federal Parliament (Bundestag). Thus, all three groups were treated equally, and despite different forms of employment and interest representation, changes to working conditions were basically the same. The general view was that both sub-systems were legally different but constituted functional equivalents because they led to very similar or even identical results.

(Keller, 2011, pp. 2,343–2,344)

In the new century, however, this long-lasting principle of ‘unity of employment and living conditions’ has gradually been dissolved. Public employers have increasingly transformed this sector-specific sequence of ‘pattern setting’ and ‘pattern following’ and have uncoupled bargaining processes as well as bargaining outcomes (Keller, 2011, p. 2,344). In times of continuing high deficits and the consolidation of public budgets, as well as the political dominance of deregulation and flexibility, labour cost savings are a dominant consideration. Joint regulation, within a generally accepted balance of power, is no longer the priority of all actors, and the bargaining relationship is characterised by confrontation, power and conflict rather than consensus, trust and cooperation (Keller, 2011, p. 2,344).

Public employers have changed their practice and transformed civil servants’ employment conditions by making use of their legally guaranteed unilateral regulatory power of decision-making.

Pay increases that were agreed in collective agreements for blue- and white-collar employees were either delayed or not transferred to civil servants at all or were only granted for specific groups, mostly the lower grades. Furthermore, ordinary working hours were extended (from 38.5 to a minimum of 40, although in several states up to 42 weekly hours). Last but not least, bonus payments for civil servants (especially Christmas and vacation bonuses) were reduced, then abolished and then reinstalled (in 2012).

Collective bargaining and consultation

For several decades, the bargaining system in the German public administration was highly centralised. With few exceptions, there was only one collective agreement. The national agreements for public employees were first concluded in the early 1960s (*Bundesangestellentarifvertrag*, BAT, and *ManteltarifvertragArbeiter*, MTArb). Public employers at the federal, regional and local levels formed a bargaining coalition and agreed to the same contractual arrangements. The basic motive for the establishment of this coalition was the maintenance of the ‘unity of employment and living conditions’ for all public employees. This bargaining structure was centralised in comparison with private industry as well as from an international perspective. It was stable, led to rather uniform and standardised results for various groups at all three levels and managed to save transaction costs for both sides (Keller, 2011, p. 2,339).

More recently, there have been trends towards a more decentralised and more flexible system, especially in terms of regional and local labour market conditions. Uniform and standardised agreements for the whole public sector no longer exist, and the former bargaining coalition was dismantled after more than four decades in existence.

Employers at the federal and municipal levels still bargain together. In 2005, they concluded the collective agreement for the public sector (*Tarifvertrag öffentlicher Dienst, TVöD*), which according to both sides is intended to be a milestone towards modernising the bargaining system to ensure a viable future for the public sector. It abolished all traditional legal differences between blue- and white-collar employees and also abolished the seniority system (and introduced a system based on experience and performance).

It is likely that these processes of decentralisation will continue and will increase the existing heterogeneity of agreements. They will also augment the influence of staff councils. The first steps have already been taken. The new collective agreement, the TVöD, allows new low introductory pay levels, or rather, the introduction of a low pay band, and more flexible work schedules, including long-term working time accounts. At state level, the new public sector collective agreement on Länder (*Tarifvertrag der Länder, TV-L*) allows individual states to conclude specific differing arrangements. The overall result is a patchwork of weekly working hours (Keller, 2011, p. 2,339).

This situation contrasts with the formerly uniform 38.5 weekly working hours for all public workers. In other words, these small changes can be regarded as the start of a long-term and more extensive process of differentiation and flexibilisation. Another consequence of the change towards less uniform, more differentiated provisions will be that employment conditions, and therefore living conditions, of public employees will differ between states, a situation that the former regulations tried to avoid.

All procedures of negotiating, implementing and monitoring results of collective bargaining have become more complicated because of the increased decentralisation and heterogeneity. Still, international strike statistics show that Germany has never been a strike-prone country. The public sector fits into this overall pattern, and industrial action is very rare. Another reason is that civil servants are generally prohibited from going on strike.

Major strikes by public employees took place only in 1974, 1992 and 2006. More recently, however, this tradition has changed to some extent. In 2006, there were strikes of unprecedented length (of several months) at municipal and federal level as well as in hospitals. The key issue was not remuneration, but an increase in standard weekly working hours. The substantive result was the introduction of more flexible, differentiated working hours (Keller, 2006, as cited in Keller, 2011, p. 2,343). In March 2012, ver.di started ‘warning strikes’ in order to push through its demands to increase public employees’ salaries at the federal and local level by 6.5% (or at least an increase of €200 per person). A strike was avoided at the last minute when employers and trade unions agreed to grant a 6.5% pay increase over a period of two years. It remains to be seen whether the present situation marks the beginning of an altered pattern, with strike activity shifting from the manufacturing sector to the public sector (Keller, 2011, p. 2,343).

In Germany, another new development is a discussion about the right to strike for civil servants. With the Lisbon Treaty coming into force as well as the implementation of the European Convention of Human Rights in the Lisbon Treaty, a new discussion has emerged as to whether Germany can still uphold the general prohibition on striking for all civil servants. In the academic field, a number of experts⁵ are of the opinion that the general prohibition is not compatible with the requirements of the Lisbon Treaty. They claim, for example, that teachers should have the right to strike. If the latter is confirmed, there could be major conflicts between the Federal Constitutional Court and the European Court of Justice.

⁵ A good summary of the discussion can be found in Gooren (2011). For a more critical discussion, see Battis (2011).

Impact of reforms at workplace level

Reforms

Staff in the Ministry of the Interior were interviewed about the impact of reforms on working conditions and industrial relations at workplace level. All interviewees agreed that the European economic crisis (so far) has not had a major impact on the working conditions and social dialogue in the federal public service. On the other hand, as one interviewee stated, the implementation of austerity policies since 1990 (including the ongoing reductions in staff and very low salary increases over time) means that austerity measures had been implemented beforehand and had not been forced by the economic crisis. In addition, many reforms were implemented.

- Federal reform has led to decentralisation trends (*Föderalismusreform*).
- Organisational structures and recruitment procedures have changed (through the new Civil Service Act in 2009).
- Budgets have been reduced (continuously since 1990).
- The weekly working time has been modified (an increase in working time to 41 hours).
- Performance management systems have been adopted (with the introduction of performance-related pay for public employees).
- Pay systems have been reformed (with the abolishment of the seniority principle) and pension reforms have been introduced (younger officials will have to work until they reach 67 years of age).
- More generally, more fixed-term employees are being recruited, replacing public employees and civil servants with permanent contracts.

All interviewees were of the opinion that concepts such as participation, communication, transparency, change management, performance management, decentralisation of HR responsibilities, knowledge management, lifelong learning, competence management, accountability and performance-related pay (PRP) have become popular during the last few years. One interviewee stated that line managers and top officials face an increased workload and more stress as a result of more demands in the field of individual and organisational performance measurement. More specifically, this means the need to communicate more, to give more feedback and to measure individual and organisational performance.

On the other hand, the civil servants seem to be becoming more demanding and critical of the quality of leadership. They are asking for more responsibility and job autonomy, a further decentralisation of responsibilities and more involvement in decision-making. Most interviewees also highlighted the need for better leadership without clearly saying what they meant. The latter also concerns the role of staff councils and HR departments. One interviewee stated that people are becoming more critical of the role of staff councils and HR departments because their expectations are also rising. If working conditions deteriorate and promotion opportunities are diminished, ‘staff councils and HR departments are those who are made responsible for these developments because they did not do enough for employees’.

Overall, working conditions differ amongst the different employees, as do problems and challenges. Whereas the civil servants at the first career level (*Referenten*) suffer from the lack of promotion and career development opportunities (and a certain lack of individual recognition as well), the top-level civil servant interviewed mentioned long working hours (approximately 60 hours per week), the lack of time for thinking strategically, and the high stress level because of the need to communicate and network during the whole day (‘I communicate from 9.00 to 16.00. Only afterwards do I have some time to read documents’).

Working conditions

During the interviews, the discussion about what has been achieved in the field of working conditions during the last few decades was the most controversial issue of all. Whereas it was relatively easy to agree on the positive issues, the identification of challenges and problems varied with the different levels and positions.

Generally, the interviewees agreed on the high standards of working conditions in the ministry:

- a high degree of job security;
- flexible working time;
- decent salaries;
- a high level of job responsibility and job autonomy;
- the ability to balance work with private life;
- a high degree of equality and anti-discrimination;
- professional health management;
- high-quality training on and off the job.

Amongst these, the strongest improvements related to flexible working time. One interviewee pointed out that the ministry offers 160 different part-time or flexible working time models. However, there was dissatisfaction with the extension of the weekly working hours to 41 hours.

Autonomy and control

The interviewees noted that the delegation of job responsibilities and the degree of job autonomy and job control had improved. Overall, they felt that the job content was interesting. In reality, many public employees are very satisfied with the degree of decentralisation of responsibilities and the amount of job autonomy and job control. These overall positive findings contradict the widespread perception that work in the German public services is hierarchical and that employees have little responsibility and job control. However, one interviewee felt that the hierarchical structure is still very strong and that for ‘every detail there is a rule’.

In addition, increasing responsibility entails more job intensity and stress. All interviewees agreed that stress levels were rising and time pressure increasing. Four interviewees explicitly mentioned the rise in sickness rates and psychological disorders, which cannot be explained by the rising age of the employees in the ministry (which is currently at around 45 years). In addition, two interviewees confirmed that due to staff reductions, more employees are required to take over more tasks (even tasks that do not belong to the job profile).

One interviewee attributed the increased sickness rates to higher job intensity because staff shortages meant that people have to do ‘more with less’. Another interviewee pointed out that sickness rates are higher at the second career level (*gehobener Dienst*)⁶ than at the first career level (*höherer Dienst*) (‘because of lower satisfaction levels in the second

⁶ The German career system is divided into the *höherer Dienst*, *gehobener Dienst*, *mittlerer Dienst* and *einfacher Dienst*. The *höherer Dienst* is the highest level.

career level'), are higher for civil servants than for public employees ('because of better sickness insurance for civil servants') and are higher for employees with a permanent contract than for those with a fixed-term contract ('because employees with a fixed-term contract want to make sure that they get an extension of their contract'). Another added that there are three major explanations for the increase in sickness rates: the ageing of the workforce, the increased job intensity and the increased acceptance in society of psychological disorders (in case people fall sick because of psychological problems).

Career development

Interestingly, interviewees at all hierarchical levels and in different functions agreed on the negative effects of downsizing policies and the decreasing opportunities for career development and promotion as a consequence of cutbacks. For example, one interviewee complained: 'I still have 20 years to go but already know that I have almost no chance of being promoted anymore, as there are fewer and fewer advertisements for A 16 positions.' The interviewee explained that she is still responsible for 74 employees and that the numbers are decreasing. Of these, one-third have a fixed-term contract, although many of these fixed-term employees carry out tasks that normally should be carried out by civil servants. Unfortunately, there are no official vacancies for civil servants (*Planstellen*), so there is no other option than to employ people with fixed-term contracts. It is almost impossible to offer chain contracts to this group of employees, as you need 'to give justifications and reasons why you offer limited contracts and this is very difficult to do', according to Directive 1999/70/EEC.

The interviewees were highly critical of the current developments in the field of fixed-term contracts (which are rising). One interviewee not only confirmed that there is an overall trend towards the recruitment of employees with fixed-term contracts ('which can also be used very positively, especially for beginners'), but that there is also a trend towards the recruitment of more employees with limited contracts in areas that should be covered by civil servants with a job tenure.

Most interviewees agreed that many employees in the ministry feel frustrated, disappointed and demotivated because they lack career development opportunities and recognition. One interviewee stated that even if 'you receive the best performance appraisals, this is no guarantee that you will be promoted' because of a lack of promotion advertisements, political considerations and other arguments. Furthermore, 'performance bonuses are not paid to the best performers, but to those employees who carry out politically important projects'. Thus, reward is not based on performance or experience, but on other considerations. Overall, fairness in appraising and rewarding performance was lacking.

Interviewees also felt that there were fewer opportunities for career development for women. While the number of women in top-level positions has been rising in recent years, it remains low – around a quarter of top-level positions are held by women – and has stalled. Several interviewees stated that since most part-time workers are women, it is almost impossible to get a top position part time as 'top positions require full-time work'. As a consequence, mostly men working full time (or, if applicable, women working full time) are offered the top positions. One interviewee mentioned that 'what we need are better fatherhood policies. Otherwise, nothing will change for women.'

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Interviewees

In total, nine interviews were carried out:

- at different hierarchical levels, from director general to technical assistant;
- with different stakeholders, including employees, civil servants, staff council members and an equality officer (*Gleichstellungsbeauftragte*);
- with employees with different functions or tasks, including manager, official and works council;
- with employees of different status – public law status and labour law status.

In each case, the researchers followed the interview guidelines, albeit to a different degree, with a different focus on different questions and depending on the discussion as it progressed. The interviews focused on the following issues.

- How does the implementation of major reforms in central public administration work in practice and what have been the main impacts on working conditions at the workplace level?
- How does collective bargaining for central public administration function?
- Which issues are discussed?
- Ratio of public status and private status personnel. Do the inherent differences in the status matter in performing work? What are the impacts at work organisation level?

The status, positions and sex of the interviewees were as follows:

- director general, first career level, female, Ministry of the Interior, Reform of the Public Service, involvement in social dialogue/collective bargaining;
- civil servant, first career level, female, Ministry of the Interior, Reform of the Public Service;
- civil servant, first career level, member of the staff council, female, Ministry of the Interior;
- civil servant, first career level, female, Ministry of the Interior, Department of Migration;
- civil servant, first career level, male, Ministry of the Interior, Reform of the Public Service;
- civil servant, second career level, female, equality officer, Ministry of the Interior;
- public employee, staff council, female, Ministry of the Interior;
- civil servant, first career level, male, district staff council, Ministry of the Interior;
- civil servant, first career level, member of the HR department, male, Ministry of the Interior.

Most interviews took approximately two hours.