



# CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS



## **IMPRINT**

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# FOREWORD

I The European Commission has designated the year 2006 as the “European Year of Workers’ Mobility”. On the one hand, it aims at stressing the great importance of the Free Movement of Workers to be one of the four freedoms of the European Union. On the other hand, it should set off a debate on the real benefits and challenges of working abroad or changing jobs for EU Citizens within the EU.



The Free Movement of Workers also has an impact on the mobility of public sector workers. Hence, the Austrian Presidency of the Council of European Union wants to contribute to the European Year of Workers’ Mobility and has therefore taken the initiative to elaborate the study on the legal specificities of cross-border mobility of public sector workers. Thus, we are providing comprehensive information on the different rules that apply in the EU Member States’ public administrations in this context. The study will be presented to the Directors General responsible for public administration and the common Trade Union Delegation of public sector workers at their Joint Seminar in Vienna in May 2006.

I want to express my sincere thanks to all Member States as well as to Bulgaria and Romania for their most valuable contributions in the context of the EPAN Human Resources Working Group. Without their help this study could not have been finalized. I would especially like to thank Ms Ursula Scheuer (European Commission) for her expert advice and valuable cooperation.

A handwritten signature in black ink, appearing to read 'Emmerich Bachmayer', written in a cursive style.

**Emmerich Bachmayer**  
**Director General**  
**Federal Chancellery**  
**Austria**



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## CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Study of the Human Resources Working Group of the European Public Administration Network (EPAN) during the Austrian Presidency

### Introduction

Every national of an EU Member State has in general the right to work in another Member State<sup>1</sup> (Article 39 EC and Regulation 1612/68 on freedom of movement for workers within the Community). This right is one of the most important rights under Community law for individuals and an essential element of the citizenship of the Union. The term “worker” was not defined in the Treaty, but has been interpreted by the Court as covering any person who (i) undertakes genuine and effective work (ii) under the direction of someone else (iii) for which he is paid. A migrant worker must be treated in the same way as nationals of the host country in relation to access to employment, working conditions as well as tax and social advantages.

More information on free movement of workers can be found on the Homepage of the Commission DG Employment, Social Affairs and Equal Opportunities:

[http://ec.europa.eu/employment\\_social/free\\_movement/index\\_en.htm](http://ec.europa.eu/employment_social/free_movement/index_en.htm) and

in the Communication from the Commission "Free movement of workers – achieving the full benefits and potential" COM(2002) 694 final:

[http://ec.europa.eu/employment\\_social/free\\_movement/docs\\_en.htm](http://ec.europa.eu/employment_social/free_movement/docs_en.htm)

Civil servants and employees in the public sector are workers in the sense of Article 39 EC; the rules on free movement of workers in principle apply also to them.

However, there is one exception and some specific aspects:

- | Member States are allowed to restrict certain posts to their own nationals (Article 39 (4) EC).
- | In several Member States rules exist which are very specific to public sector employment (e.g. recognition of professional experience and seniority acquired in another Member State, language requirements, particular recruitment requirements) and therefore may cause additional problems of discrimination which do not occur in the same way in the private sector.

The Human Resources Working Group (which developed out of the Mobility Working Group) has already been dealing intensively with the issue of legal obstacles to cross-border mobility of public sector workers. In 2000 a report was drafted (on the basis of information provided by Member States) on the different issues which are specific for mobility in the public sector and the situation in the Member States. Since the report of 2000 several progress reports and additional documents have been elaborated. The Danish Presidency regrouped all the information and reports from previous years together with a cover document into one large information package, which contains also additional information (e.g. on the tasks of the Network of National Contact Points).

The Austrian Presidency took the initiative to update and complement the information previously collected by the HRWG from the EU-15 Member States, to include information provided by the EU-10 Member States and to make a summary of the information.

Part A of the study deals with the legal specificities of cross-border mobility; it focuses on three issues:

- | Nationality Condition
- | Recognition of Professional Experience and Seniority
- | Other legal aspects of cross-border mobility of public sector workers

Part B deals with other aspects of cross-border mobility of public sector workers which can facilitate mobility.

## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. Nationality Condition

According to Article 39 (4) EC, free movement of workers does not apply to employment in the public sector. However, this derogation has been interpreted in a very restrictive way by the European Court of Justice<sup>2</sup> and therefore Member States are only allowed to restrict public sector posts to their nationals if they involve the exercise of public authority and the responsibility for safeguarding the general interest of the State. These criteria must be evaluated on a case-by-case approach in view of the nature of the tasks and responsibilities covered by the post in question.

Recruitment procedures must therefore be open to EU citizens unless the posts accessible via that procedure fulfil the criteria mentioned above.

The Commission considers<sup>3</sup> that the derogation in Article 39 (4) EC covers in particular specific functions of the State and similar bodies such as the armed forces, the police or other forces of the maintenance of order, the judiciary, the tax authorities and the diplomatic corps. However, not all posts in these fields imply the exercise of public authority and responsibility for safeguarding the general interests of the State, for example administrative tasks, technical consultation, maintenance. These posts may therefore not be restricted to nationals of the host Member States.

You can find more detailed information in chapter 5.2 of the Communication from the Commission "Free movement of workers- achieving the full benefits and potential" (COM(2002)694).

### II. Recognition of Professional Experience and Seniority

One of the specific issues that migrant workers often face when acceding to the public sector is

the recognition of their professional experience and seniority acquired in another Member State. In several Member States professional experience and seniority play a role in the recruitment procedure (e.g. professional experience or seniority is either a formal condition for access to a recruitment competition or additional merit points are awarded for it during such a procedure which places candidates at a higher position on the final list of successful candidates). In many Member States working conditions (professional advantages like e.g. salary; grade) are determined on the basis of previous professional experience and seniority. If the professional experience and seniority acquired in another Member State is not correctly taken into account these workers consequently either have no or less favourable access to the other Member State's public sector or must restart their career at a lower level. Following the Court's case law<sup>4</sup>, previous periods of comparable employment acquired in another Member State must be taken into account by Member States' administrations for the purposes of access to their own public sector and for determining professional advantages (e.g. salary; grade) in the same way as applies to experience acquired in their own system.

You can find more detailed information in chapter 5.3 of the Communication from the Commission "Free movement of workers- achieving the full benefits and potential" (COM(2002) 694).

### III. Other Legal Specificities of Cross-Border Mobility of Public Sector Workers

A number of issues other than nationality condition and recognition of professional experience and seniority can influence the cross-border mobility of public sector workers. These issues can be e.g. specific language requirements, specific competition procedures<sup>5</sup> or working conditions (e.g. equal treatment in relation to the civil servant status).

## B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

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Citizens, who are already employed in a Member State's public sector, do not have an absolute right under EC-law to be transferred or detached to the public sector of another Member State or to participate in an exchange programme. Member States are free to provide such possibilities and the applicable rules. Apart from special possibilities of transfer, detachment and exchange, migrant workers must in general participate in the same recruitment process as nationals of the host Member State. The aim of this part of the questionnaire is to collect information about other aspects which can facilitate cross-border mobility in the public sector.

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<sup>1</sup> There are currently transitional periods for the citizens of 8 of the EU-10 Member States for the access to employment in the EU-15 Member States; more information can be found on <http://ec.europa.eu/eures/main.jsp?&acro=free&step=0&lang=en>

<sup>2</sup> Case 152/73, Sotgiu ECR [1974] 153; Case 149/79, Commission v Belgium I ECR [1980] 338; Case 149/79, Commission v Belgium II ECR [1982] 1845; Case 307/84, Commission v France ECR [1986] 1725; Case 66/85, Lawrie-Blum ECR [1986] 2121; Case, 225/85 Commission v Italy ECR [1987] 2625; Case C-33/88, Allué ECR [1989] 1591; Case C-4/91, Bleis ECR [1991] I-5627; Case C-473/93, Commission v Luxembourg ECR [1996] I-3207; Case C-173/94, Commission v Belgium ECR [1996] I-3265; Case C-290/94, Commission v Greece ECR [1996] I-3285. The court gave further interpretation of Article 39 (4) EC in the judgements in Case C-405/01, Colegio de Oficiales de la Marina Mercante Espanola v. Administración del Estado, ECR [2003] I-10391 and Case C-47/02, Albert Anker, Klaas Raas, Albertus Snoek v. Bundesrepublik Deutschland, ECR [2003] I-10447.

<sup>3</sup> In 1988 the Commission launched an action ("Freedom of movement of workers and access to employment in the public service of Member States – Commission action in respect of the application of Article 48(4) of the EEC-Treaty – OJ C-72/2 of 18.03.1988) which was focussed on access to employment in four sectors (bodies responsible for administering commercial services, public health care services, teaching sector, research for non-military purposes). The sector approach was an important starting point for the control of the correct application of EC law in this field. In the Communication "Free movement of work

ers – achieving the full benefits and potential" COM(2002) 694 the Commission explained its current position on this issue.

<sup>4</sup> Case C-419/92, Scholz ECR [1994] I-00505; Case C-15/96, Schöning ECR [1998] I-00047 and Case C-187/96, Commission v Greece [1998] I-01095; Case C-195/98, Österreichischer Gewerkschaftsbund ECR [2000] I-10497; Case C-224/01, Köbler ECR [2003] I-10239; Case C-278/03, Commission v Italy ECR [2005] I-03747 and Case C-205/04, Commission v Spain 23.02.06 (not yet published).

<sup>5</sup> E.g. competitions which are used to recruit people for specific training with a view to filling a post in the relevant field of public service activity. EU migrant workers who are already fully qualified in the field in question must be exempted from the training in question in view of the training and the professional experience already acquired in their Member State of origin. The Court decided (Judgment of 09.09.03, Case C-285/01, Burbaud ECR [2003] I-08219) that a Member State may not oblige a migrant worker fully qualified in the field in question to participate in such a recruitment procedure; for those situations the Member State has to provide for different methods of recruitment.





## CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### Summary

The information provided by the Member States gives in general a good impression of the specific aspects of cross-border mobility of public sector workers in the different Member States; also Bulgaria<sup>1</sup> has provided information, Romania has not yet put into place rules for the cross-border mobility of public sector workers. This summary gives a general overview of the different rules, common aspects and variations whereas most Member States could not provide information on how these rules are applied in practice. Finally this summary indicates where there is still a need for action in order to facilitate and promote the mobility of public sector workers between Member States. The summary covers the different aspects on which information was collected.

## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. Nationality condition

Member States have different approaches for applying Art. 39 (4) EC and the jurisprudence of the Court in relation to the nationality condition for access to posts in their public sectors.

It should be kept in mind that the information provided by Member States does not always concern the whole public sector, but sometimes is limited to parts of the public sector of the Member State concerned.

In most Member States there exist specific rules (e.g. Constitution; laws, presidential decrees) about the public sector posts which are reserved for nationals; all other posts are open to EU nationals.

- | In some Member States the national rules include exhaustive lists (Bulgaria, Cyprus, Finland, Hungary, Ireland, Italy, Netherlands, Slovakia, Slovenia, Sweden) or exemplary lists (Estonia, Latvia, Lithuania).
- | In some Member States the rules provide for a general opening of all public sector posts and in order to restrict specific posts to nationals additional application rules are still necessary (France, Portugal, Spain).
- | In some Member States the posts reserved for nationals are decided on a case-by-case basis and mostly the rules provide presumptions and/or criteria and/or guidelines on sectors/posts reserved, but a case-by-case decision is still necessary (Austria, Belgium, Denmark, Greece, Germany, Malta, United Kingdom).
- | One Member State does not have special rules on this issue, but applies directly Article 39 (4) EC and the jurisprudence on a case-by-case approach (Czech Republic).
- | One Member State (Luxembourg) opened to EU nationals only the sectors identified in the Commission's 1988 action, although a certain number of posts published in the annual budget law can be occupied by foreigners (EU nationals or non EU nationals).
- | One Member States still has a nationality condition for all posts in the public administration and uniformed services (Poland), but reforms are under discussion.

### Conclusions

During the recent past a majority of Member States have opened up large parts of their public sectors to EU nationals. The interpretation of Article 39 (4) EC and the relevant jurisprudence and their application in practice varies strongly between Member States. Nevertheless the vast opening is an important development for the free movement of workers in the public sector.

The information provided by the Member States shows that a number of Member States still have to adapt their national rules in order to bring them into line with Community law. In furtherance of the objective of the development of the free movement of workers in the public sector, Member States are encouraged to undertake the following actions:

- | Member States should open up to nationals of all EU Member States, all posts in the public sector which do not involve the exercise of public authority and the responsibility for safeguarding the general interest of the State; this is independent of any specific sector.
- | Member States should not restrict to their own nationals all posts in sectors which could typically involve the exercise of public authority (e.g. armed forces, police and other forces of the maintenance of order, judiciary; tax authorities; diplomatic corps); posts which, although being a part of those sectors, do not imply the exercise of public authority must be open for EU nationals (e.g. administrative tasks, technical consultation and maintenance).
- | Member States should adopt all necessary rules of application (e.g. legislation, decrees, statutes).
- | Member States should open up to all EU nationals all recruitment competitions unless all posts accessible via a competition fulfil the criteria of Art. 39 (4) EC.
- | If the hiring authorities decide on a case-by-case approach the Member States should seek to provide for the necessary tools for ensuring that the restrictions of individual posts really are in line with the EC rules.

## II. Recognition of professional experience and seniority

It should be kept in mind that the information provided does not always cover the whole public sector; in some Member States there are additional or different rules for regional and communal level or for specific sectors (e.g. health; teaching).

Most Member States have a broad range of rules in which the professional experience and seniority influence the access to posts in the public sector and the working conditions (determination of professional advantages e.g. salary, grade). In only one Member State professional experience and seniority do not play any role for access and working conditions (Slovakia).

In some Member States no formal rules exist, whereas the professional experience may very well play a role for the chances to be employed and for the determination of salary and grade. In these Member States the employers must also

guarantee that comparable professional experience acquired in another Member State is taken into account in the same way as professional experience acquired in the host Member State.

In some Member States professional experience and seniority are important for recruitment to posts in the public sector.

| In one Member State (Italy) the professional experience and/or seniority are a formal condition for access to a recruitment procedure for some positions (e.g. managers, even if applicants with an academic degree, but without any experience, can be selected for such posts too. In fact there are many possibilities of access to the management level).

| In many Member States professional experience and/or seniority play a role during the recruitment procedure (e.g. additional merit points are awarded which gives candidates either access to the final list of successful candidates or places them at a higher position on this final list): Austria, Belgium, Bulgaria, Cyprus, Estonia, Finland, France (for some particular competitions "third way" and "internal competitions" as well as for recruitment of workers at low level), Germany, Greece, Ireland (only professional experience plays a role), Italy, Latvia, Lithuania, Malta, Netherlands (no formal rules; to be determined in each individual case), Poland, Portugal (but not for all professions there exist already rules for the taking into account of professional experience acquired in another Member State), Slovenia, Spain, Sweden (no formal rules; decided in each individual case; for professional experience rather the term "professional skills" is used) and United Kingdom (no formal rules; decided in each individual case).

| In many Member States working conditions (professional advantages like e.g. salary, grade) are determined on the basis of previous professional experience and/or seniority: Austria (periods in the public services in Austria and EU/EEA Member States fully automatically, content and status do not play a role; effect on salary, but not on grading), Belgium, Bulgaria, Cyprus (salary increment annually – also experience in other Member States would be taken into account; for higher grading professional experience in other Member States is not yet taken into account),

Czech Republic, Denmark (for salary, but not for grading), Estonia (but experience in other Member States not yet taken into account), France, Germany, Greece, Ireland (for salary), Italy, Latvia (but experience in other Member States not yet taken into account), Lithuania (for salary; but experience in other Member States not yet taken into account), Luxembourg (for salary; but not for grading), Netherlands (no formal rules; to be determined in each individual case), Portugal (but not for all professions there exist already rules for the taking into account of professional experience acquired in another Member State), Slovenia, Spain, Sweden (no formal rules; decided in each individual case; for salary, but no effect on grading; for professional experience rather the term "professional skills" is used) and United Kingdom (no formal rules; decided in each individual case).

I In some Member States also experience in the private sector is taken into account: Austria (must be in the public interest; to a defined maximum of years and experience must be of significant relevance; otherwise taken into account only half), Belgium (for salary purposes if experience was a requirement for the function; other experience with Ministry's agreement), Cyprus (for access to first entry posts), Denmark, Estonia, Finland, Germany, Ireland (only in respect of competitions for certain professional and technical posts), Luxembourg (recognition of half the time to a maximum of 12 years), Malta, Netherlands, Portugal (private sector experience is taken into account for top management posts and, in exceptional cases, for middle line managers; it can also be taken into account for first entry posts), Slovenia and Sweden.

## Conclusions

In order to be in conformity with Community law on free movement of workers the Member States authorities are obliged to take into account comparable periods of professional experience and seniority acquired in other Member States in the same way as if they had been acquired in the host Member State. This concerns the access to posts as well as the working conditions (in particular the determination of professional advantages like salary, grading). The many requests for information and complaints brought to the attention of the

Commission shows that this issue is very important in practice.

In view of the developments of the jurisprudence since 1994 and also in the framework of numerous infringement procedures many Member States have already adapted their rules in order to take into account professional experience and seniority acquired in other Member States. These Member States have now the task to monitor whether these rules are applied correctly in practice. Several Member States still have reforms fully or partly under way or still have to start such reforms with a view to taking into account also professional experience and seniority acquired in other Member States in the same way as they take into account professional experience and seniority acquired in their own system. This survey should encourage Member States to finalize or initiate the necessary reforms and to monitor the application of new rules.

## III. Other Legal Specificities of Cross-Border Mobility of Public Sector Workers

In a number of Member States several issues other than nationality condition and recognition of professional experience and seniority influence the cross-border mobility of public sector workers.

Information was provided by Member States in particular on the issue of language requirements. In many Member States language requirements exist: Austria (certain level of knowledge of German depending on the level and content of the post), Cyprus (knowledge of Greek; necessary level depends on the post), Estonia (proficiency in Estonian), Finland (excellent skills in Finnish or Swedish), Germany (requested level depends on specific posts), Ireland (ability to communicate effectively in the Irish language is needed for a limited number of posts where Irish is an essential requirement in carrying out the work of the post), Italy (adequate knowledge of Italian), Luxembourg (in general knowledge of the three administrative languages is requested – French, German and Luxembourgish), Netherlands (in general a good knowledge of Dutch is necessary for the majority of posts), Portugal (language requirements exist for teachers) and Slovenia (certain level of knowledge of the Slovene language for some posts).

## Conclusions

In relation to language requirements Member States are allowed to require the level of language which is necessary for the job in question. However, they can neither require only a specific qualification as proof nor that the worker has a mother tongue level of a certain language. These aspects should be taken into account in practice.

## B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Many Member States provide for a number of ways to enable their staff to spend some time in the public sector of other Member States, European and International Organisations and training institutes. The following possibilities exist: short term exchange programs for European Integration Training with Member States, European Institutions and training institutes e.g. ENA and EIPA; bilateral and multilateral exchange schemes between Member States; Twinning; special leave; placement, secondment or transfer to EU Institutions, International Organisations or to the public sector of other Member States. Detailed information about the different possibilities existing in the Member States is listed in the national contributions.

## Conclusions

The many possibilities for public sector staff to spend some time in the public sector of other Member States, European and International Organisations and training institutes are very important and helpful for the workers and their employers in particular by learning about the other system and culture and bringing that information back to the home Member State. Member States are encouraged to keep up, further develop and set up such possibilities as this is an important step to furthering cross-border mobility of public sector workers.

## FINAL CONCLUSIONS

Within the European Union the public sector is an important part of the employment market. The information provided shows that over the last years Member States have made or initiated reforms to bring their specific rules on cross-border mobility of public sector workers into line with Community law on free movement of workers. Some Member States still have to start such reforms. Member States are encouraged to finalize the ongoing and to initiate the planned reforms as soon as possible and to monitor that the application of new rules abolishes legal obstacles to cross-border mobility of public sector workers.

Member States are encouraged to keep up or create possibilities for their staff to spend some time in another Member State, European or International Organisations.

Member States are encouraged to distribute, where necessary, appropriate information on these issues to all departments/organisations which are dealing with these issues, in particular to Human Resources Departments.

Further developments in the field of cross-border mobility of public sector workers will continue to provide an added value not only to the workers but also to the national administrations.

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<sup>1</sup> The term „Member States“ in this text includes the Accession country Bulgaria.

## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. Nationality Condition

#### Posts reserved for nationals

Some posts in the Austrian public administration may require for a special solidarity to Austria which can only be expected of persons holding the Austrian citizenship. Posts reserved for Austrian nationals are directly or indirectly linked to official representation or the defence of the general interests of the State: the police force, the military, the diplomatic service, justice, official representation. The final decision is made on a case by case basis (no list of jobs reserved for nationals).

As regards any other occupation in the Austrian public service, the Austrian nationality or the nationality of a country whose nationals Austria has to grant the same rights due to a state treaty in the context of the European integration is required.

Consequently, all posts in the Austrian public service are open to EU-EEA-nationals except those mentioned in the first paragraph. Thereby no distinction is made between civil servants and contractual employees.

#### Legal basis

- | § 4 Beamtendienstrechtsgesetz 1979, BGBl. Nr. I 119/2002 (civil servants)
- | § 42a Beamtendienstrechtsgesetz 1979, BGBl. Nr. 389/1994
- | § 3 Vertragsbedienstetengesetz 1948, BGBl. Nr. I 119/2002 (contractual employees)
- | § 6c Vertragsbedienstetengesetz 1948, BGBl. Nr. I 10/1999
- | § 4 Landeslehrer-Dienstrechtsgesetz 1984, BGBl. I Nr. 119/2002 (regional teachers); Clause also applicable for contractual teachers
- | § 4 Land- und forstwirtschaftliches Landeslehrer-Dienstrechtsgesetz 1985, BGBl. Nr. I 119/2002; Clause also applicable for contractual teachers

#### Application in practice

Whether the Austrian nationality is required or not for a certain post in the Austrian public service is determined by the notice of competition for the post which is published in the Official Journal of the "Wiener Zeitung" and additionally on the homepage of the Federal Chancellery.

Current examples of posts for which, according to the notice of competition, the Austrian nationality was required are:

Director General in the Federal Chancellery-Constitutional Service; Head of Law Office of the Republic of Austria; Director in Federal Chancellery responsible for staff regulations and general legislative affairs; Government Tax Auditor in the Federal Ministry of Finance; Legal Expert in the Federal Ministry of Transport, Innovation and Technology (participation in formulation of draft laws); Posts in the Parliamentary Directorate.

Current examples of posts for which, according to the notice of competition, the Austrian nationality was not required are:

Representative of the Austrian Archaeological Institute to Turkish national, regional and local authorities; Director in the Federal Ministry of Foreign Affairs-Press and Information Department; Head of the "The Agrarian Teacher and Consultant Training College"; IT-Professional at Regional Courts; Social Worker in Detention Centres.

"There has not been any officially noticed or reported problem with foreign applicants within the last few years." (Report on Free Movement of Workers in the EU in 2002-2003 by the Network on the Free Movement of Workers in the EU, Centre for Migration Law, University of Nijmegen entrusted by the European Commission)

### II. Recognition of Seniority and Professional Experience

When workers move within the public service, prior periods of employment in the public service in Austria (occupation in the federal, provincial and municipal administration or as public or university

teacher) are taken into account fully and automatically when determining salaries (“seniority”); the content of the prior post(s) or a distinction between full-time/part-time does not matter, nor does the status as a civil servant or an employee. This full recognition of seniority achieved in the public sector is based on a constitutional rule that safeguards the opportunity to change posts between all levels of public administration in Austria. Since the accession of Austria to the European Union and due to the principle of equal treatment the same rules have applied to the recognition of seniority acquired by EU-EEA nationals in comparable institutions in the public sector of EU- or EEA Member States.

In the federal administration prior professional experience outside the public service is taken into account for up to 2, 3 or 5 years depending on the level of post only if certain conditions are fulfilled: the recognition must be in the public interest and the prior professional experience must be of significant relevance for the post concerned. Otherwise the professional experience is taken into account only partly (50% up to a maximum of 3 years, later on 1,5 years).

Therefore, it can be said that:

- | a distinction is made between seniority and professional experience,
- | the recognition does not depend on the nature of the previous employment,
- | there is no recognition of seniority and only exceptional recognition of professional experience of previous services in the private sector (as regards determining salaries),
- | recognition of both seniority and professional experience has financial (remuneration) but no grading effects,
- | recognition is carried out by the recruiting HR-department,
- | for civil servants an administrative appeal to the authority concerned and for employees a judicial appeal to Labour Court is possible.

Professional experience can play a role in the recruitment procedure:

For example as an additional merit point it can place the candidate in a higher position on the shortlist in the recruitment procedure of teachers.

In other cases it may influence the candidate's suitability and qualification based on the requirements for the individual post.

Details on “seniority”:

Recognition of seniority acquired in the Swiss public service is given because of the Agreement between the European Community and its Member States and the Swiss Confederation on the Free Movement of Persons (amendment BGBl. Nr. III 133/2002).

Seniority acquired by a university professor at institutions of another Member State comparable to Austrian universities to determine the grant of a special length-of-service increment has been recognized as a reaction to the decision of the European Court C-224/01 (§ 50a Gehaltsgesetz 1956, BGBl. I Nr. 130/2003).

#### Legal Basis

- | § 12 and § 113a Gehaltsgesetz 1956, BGBl. I Nr. 165/2005 (civil servants)
- | § 26 and § 82a Vertragsbedienstetengesetz 1948, BGBl. Nr. I 165/2005 (contractual employees)

#### Application in practice

Relevant decisions of the European Court of Justice regarding Austria are the following:

- | C-195/98: Article 39 of the EC Treaty and Article 7(1) and (4) of Regulation No 1612/68 of the Council preclude a national rule concerning the account to be taken of previous periods of service for the purposes of determining the pay of contractual teachers and teaching assistants, where the requirements which apply to periods spent in other Member States are stricter than those applicable to periods spent in comparable institutions of the Member State concerned. Where a Member State is obliged to take into account, in calculating the pay of contractual teachers and teaching assistants, periods of employment in certain institutions in other Member States comparable to the Austrian institutions such periods must be taken into account without any temporal limitation.

| C-224/01: Article 39 EC and Article 7(1) of Regulation No 1612/68 of the Council are to be interpreted as meaning that they preclude the grant, under conditions such as those laid down in § 50a of the Gehaltsgesetz 1956 (law on salaries of 1956), as amended in 1997, of a special length-of-service increment which, according to the interpretation of the Austrian Administrative Court in its judgment of 24 June 1998, constitutes a loyalty bonus.

Relevant decisions of Austrian High Courts:

| Decision of the Austrian Administrative Court (2003/12/0243) of 16 March 2005: Also recognition of seniority acquired in the public service of another member state prior to 7 November 1968 has to be given (see also 2nd Amendment to the Service Code for Civil Servants 2005, BGBl. I Nr. 165/2005).

Austria has already responded to these decisions and adopted law accordingly.

### III. Other legal specificities of cross-border mobility of public sector workers

Candidates have to prove a certain level of knowledge of the German language depending on the level and the content of the post applied for.

#### Legal Basis

- | § 4 Beamtendienstrechtsgesetz 1979, BGBl. I Nr. 119/2002
- | § 3 Vertragsbedienstetengesetz 1948, BGBl. I Nr. 119/2002

#### Application in practice

There has not been any officially noticed or reported problem with foreign applicants within the last few years.

## B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

- | Secondment for training purposes or as National Expert to EU-Institutions, OECD and Interstate Organisations.
- | Short-term exchange programmes for European Integration Training; Partners: Member States (Sweden, UK, Finland, Germany, Italy), EIPA, EC.
- | Participation in so-called "Twinning Projects" (project-partnerships between the public administrations of a EU-Member State and third states; experts of the Member States support Applicant State in its preparation for the EU accession.
- | In general, opportunity of granting a special leave with a maximum time limit of 10 years.

#### Legal basis

- | Bilateral Agreements with certain Member States, EIPA and EC (in Austria the specific period is legally qualified as a business trip)
- | § 39a Beamtendienstrechtsgesetz 1979, BGBl. I Nr. 130/2003
- | § 75 Beamtendienstrechtsgesetz 1979, BGBl. I Nr. 130/2003 and § 29b Vertragsbedienstetengesetz 1948, BGBl. I Nr. 130/2003

## FINAL REMARK

All regulations and decisions aforementioned are currently available under the following link: [www.ris.bka.gv.at/bundesrecht](http://www.ris.bka.gv.at/bundesrecht)





## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

All public posts, on a contractual as well as statutory basis, are open to nationals of other Member States of the EU, subject to exceptions based on the criteria of public authority. In practice this is done by the competent minister who is free to reserve jobs for nationals on a case-by-case basis. Those jobs are in the diplomatic service, the prison administration or the Ministry of Finance.

Jobs in community and regional government services and of the Joint Community Commission and the French-speaking Community Commission and to associated public-law legal persons are opened up to EU nationals.

With regard to the condition of nationality, a ruling of 11th July 2002 opens up civil service jobs in Government departments in the Brussels – Capital region to citizens of nationalities other than Belgian and who are not nationals of the European Union or the European Economic Area, provided that these jobs do not include direct participation in the exercise of public authority. This ruling was published in the “Moniteur Belge” on 23rd July 2002.

#### Legal basis

- | Belgian constitution
- | Royal decrees dates 6.5.1996, 15.7.1998 amending the Royal decree of 2.10.1937 on the status of agents of the State; circular of 24.2.1995 on detailed rules for the application of Art. 16 of the above Royal decree of 2.10.1937
- | Act of 3.7.1978 on contracts of employment; Royal decree of 18.11.1991 laying down the conditions for employment by contract of employment in certain public services
- | Royal decree of 26.9.1994 laying down the general principles for the administrative and financial status of agents of the State

| Draft royal decree provides for the extension of access to the Federal State Administration to include also nationals of Member States of the EEA

| Royal decree of 22.12.2000 laying down the general principles governing the administrative and remuneration status of State employees applicable to the staff of community and regional government services and of the Joint Community Commission and the French-speaking Community

| Commission and to associated public-law legal persons

### II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

Under the present rules the different parts of the federal administration accept, in general, to take into consideration seniority acquired in another Member State, for salary purposes. Since 1 December 2004 a new career system was introduced in the federal administration for the A level (academic level). The A level consists of 5 levels of salary, with A5 as the highest level. Within each level financial progression is possible and is linked to a certified training system. Recruitment is possible at A1 level, at A2 level for specific diplomas as engineer, doctor, etc. At level A3 and A4 recruitment is possible if there are no competent candidates in the federal administration. For A3 a professional experience or seniority of 6 years is needed. For recruitment in A4 a professional experience or seniority of 9 years is needed.

The professional experience can be acquired as well in the private sector as in the public sector. Professional experience in the private sector or as an independent can be taken into account for salary purposes if the experience was a requirement for the function. Other experiences can be taken into account on demand for salary purposes with the explicit agreement from the Minister for Civil Service.

## Legal basis

Regarding professional experience as a criterion for access to a competition:

- | Article 20 of the Royal Decree of 2 October 1937 on the status of agents of the State, as amended by the Royal Decree of 22 December 2000
- | Article 5 of the Royal Decree of 22 May 2000 concerning human resources units in the Federal ministries
- | Article 5 of the Royal Decree of 2 May 2001 concerning the appointment to and exercising of management posts in the public service of the Federal State
- | Royal Decree of 27 March 2001, which changed several rules on salary, extended the principle of taking into account previous professional experience acquired in the public service of another EU Member State to include professional experience acquired in a Member State of the European Economic Area, in the European Community institutions or in organisations created on the basis of the European treaties.
- | Royal decree of 4 August introduced a new career system for the federal public sector in the A level (academic level).
- | Royal decree of 29 June 1973 concerning the rules on salary of the federal personnel.

## B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Short term exchange programs for European Integration Training

Partners: Member States, EIPA, EC, candidate countries

## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

All posts in the Civil/Public Service\*, on a contractual as well as statutory basis, are open to nationals of other Member States of the EU, with the exception of those which the Council of Ministers has determined as such that involve the exercise of public authority and the responsibility for safeguarding the general interest of the state, e.g. posts in the Customs Department, Inland Revenue Department, VAT Service, Ministry of Foreign Affairs, Director posts in various Ministries etc. The relative lists of posts can be found in the Ministerial Decrees mentioned as legal basis.

\*It should be noted that according to the Public Service Law of 1990 to 2005, the term “civil/ public service” is used to denote any service under the Republic other than the Judicial service, the Educational Service (teachers), the Armed or Security Forces, service in the offices of the Attorney-General of the Republic or the Auditor-General or their Deputies or of the Accountant-General or his Deputies or service in any office in respect of which other provision is made by law. The term therefore mostly refers to employees in Ministries, Departments, Services and Independent Authorities.

As for posts in the Police, Armed Forces and Fire Service, these are reserved for nationals at the moment, based on the current corresponding legislations that govern the terms of service of officers and officials in these bodies. Teacher posts however are now open to all EU citizens.

As for the Judicial, it should be noted that, although it is not considered as part of the civil/public service, yet there are some posts in it that fall under the civil / public service ambit. Such posts, for example, include the various levels of Registrars, Legal Officers, Bailiffs, etc, in the Supreme Court and other Common Services of the Judicial. Some of these posts are reserved for

nationals (e.g. Registrars) while others are open to all EU citizens (e.g. Legal Officers). As for the non-civil service posts in the Judicial (i.e. the President of the Supreme Court and the Judges), these are also reserved for nationals at the moment.

#### Legal basis

1. Public Service Law 1990-2005, Article 31(a) states that “No person shall be appointed to the Public Service unless he is a citizen of the Republic, or - provided that the post is not one that involves the exercise of public authority and the responsibility for the safeguarding of the general interests of the state - a citizen of a member state.

2. Ministerial Decrees (issued by the Council of Ministers) setting out a list of posts reserved for nationals in each Ministry/Department/Service. Prior to the issue of Ministerial Decrees, the necessary preparatory work takes place within the framework of a special committee assigned with the task of carefully examining each post in the public service so as to determine which posts fall under the exception based on the criteria of public authority.

The Council of Ministers then takes into consideration the recommendations of this Committee and decides on the list of posts to be included in each Decree. So far, three Ministerial Decrees have been issued covering the vast majority of public posts but the procedure is ongoing.

#### Ministerial Decrees:

- | No. 560, Date 15.4.2005
- | No. 782, Date 29.10.2004
- | No. 199, Date 14.5.2004

As a result, all vacant posts advertised in the Official Gazette after the issuing of the aforementioned Decrees explicitly state whether they are open to other EU citizens as well.

#### Application in practice

The new legislation regarding the nationality condition and access to the public service by non

nationals has only been in place since 2004 (upon our accession to the EU). It is thus too soon to assess the situation in practice.

## II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

Distinction and difference of treatment between seniority and professional experience is made. No recognition of seniority, other than that acquired from service in the immediately lower hierarchic post in the national public service. There is a clear distinction made between seniority and professional experience, depending on the type of position in question (whether it is a promotion position or first entry position) and the provisions of the respective Job Description for that position. Promotion posts (i.e. positions open only to internal candidates) call for "service", which by law means service in the immediately lower hierarchic position (career system). Thus, within the framework of the national legislation and practice followed in the public service, seniority is a defining criterion for eligibility and selection in a promotion post. First entry posts (i.e. positions open to candidates inside and outside the national public service) may require (or consider as an advantage) relevant professional "experience" which can be acquired by previous employment either in the public sector or in the private sector or both irrespectively to be able to qualify for access to such a post.

The competent authority responsible for the appointment of public servants is the Public Service Commission. It is the responsibility of this authority to examine and determine whether the experience acquired in the national public or private sector or those of another member state meets the requirements stated in the relevant Job Description. Currently there is no specific legislation regarding the method of assessment of comparable experience acquired in the public or private sector of a member state. The evaluation of such experience will nonetheless be based on the general principles and guidelines used for the assessment of experience acquired nationally.

Recognition of professional experience is not related to access in a competition but it can play a

role in the ranking in a competition for appointment in a first entry post.

(i) When a person submits an application for appointment to a position he can participate in the employment competition, unless his/her overall qualifications clearly do not meet the requirements set out in the relevant Job Description. The Public Service Commission which will make the final decision for the appointment based on the results of the written and/or oral competition will examine in detail whether the candidate possesses the necessary qualifications (including professional experience required) so as to determine whether he/she will remain a candidate.

(ii) If experience is required or is considered an advantage for appointment to a position according to the respective Job Description of that post, this will count towards the assessment of this candidate, along with all his/her other qualifications. If the experience is considered an advantage, the candidate will receive a higher ranking, all other things being equal. It is also noted that for many posts in the civil service up to a certain level (posts that require tertiary education qualifications) there is a competitive examination that takes place yearly and the merit points awarded to successful candidates include points for past relevant experience, irrespective of whether it was acquired nationally or in an EU member state (and both from private and public sectors). There is no specific legislation at the moment as to the treatment of comparable experience of EU nationals, but the competent authority will apply the same principles and equal treatment when assessing qualifications of candidates - and in this case, the professional experience.

Recognition of professional experience does not have effects on salaries and grading. Salaries and grades are fixed for each post depending on its salary scale and level, based on the provisions of the Pay Structure/System applied. They apply on the same terms both for national and EU nationals who are appointed to the public service. All appointed employees receive a salary increment annually based on the salary scale of the post where they serve, subject to certain

conditions. However, in the case of a person serving in a position in the national public service who is appointed to another post of the same salary scale, he/she will maintain their current salary advantages and will be placed on a higher incremental point than the normal starting pay for the post in question, in recognition of work experience gained during the previous years of public service. At the moment there is no provision for recognition of work experience gained in the national private sector or the public or national sector of another member state for purposes of receiving higher grading benefits.

Recognition of professional experience does not depend on the legal nature of the previous employment.

Professional experience is taken into account by the competent authority for the appointments Public Service Commission.

Recognition of experience takes place in connection with the assessment of the candidate during a recruitment procedure, according to procedural rules.

When a person applies for a job in the public service, the standard application form used includes a section for previous experience and the candidate must state the employment periods mentioned on the application and describe the relevant duties performed as well as submit official documentation (e.g. statement by previous employers) in support of the information provided on the application form.

As for the appeal procedure, any candidate who is refused appointment has the constitutional right to appeal to the Supreme Court against the administrative decision.

### Legal Basis

The legal basis for the recognition of professional experience and seniority is the Public Service Law, as well as any relevant jurisprudence of the Supreme Court and, recently, of the European Court of Justice.

### III. OTHER LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

In the Cyprus Public Service, certain conditions apply for appointment in a public post. One of these is that the person must possess the qualifications set out in the respective Job Description of the post in question. All Job Descriptions, in addition to the academic and other required qualifications, include a requirement for knowledge of the Greek language (“good”, “very good” or “excellent” level of knowledge, depending on the post). There are also specific criteria as to what counts as evidence for each level of knowledge.

The recruitment for first entry posts goes through at least two or three stages of competition which require the presence of the candidate. First there will be a written and/or oral competition after which a short list of candidates will attend an oral competition before the competent authority which will then make the final decision for the appointment.

According to the current practice followed during the recruitment procedure, no person (national or EU national) can be exempt from the recruitment competitions, on condition of his/her training level or other qualifications possessed.

#### Legal basis

- | Public Service Law 1990-2005
- | Job Descriptions (regulations issued by the Council of Ministers and approved by the House of Parliament)
- | Circulars

### B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Recently, the Public Service Law was amended so as to include the possibility of placement, secondment or transfer of national public employees to diplomatic or other missions of the Cyprus Republic abroad, or to a service or organization of the European Union, or to an International Organization, or to the public sector of another EU member state.

Furthermore, leave without pay for a period up to 9 months may be granted by the Council of Ministers to employees in the national public service if they are recruited by the European Commission.

### Legal basis

- | Public Service Law 1990-2005
- | Provisions for the granting of leave without absences

### Application in practice

Recently there have been some cases of public servants who were granted leave of absence without pay so as to serve in the European Commission.



## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

There is no special law regulating this matter. Employment in the Czech Republic administration follows the Article 39 TEC.

#### Legal basis

[www.msmt.cz](http://www.msmt.cz)

### II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

There is no special law for this matter, concerning the recognition of seniority in the public administration. We are obliged to follow Article 39 TEC.

Ministry of Education of the Czech Republic

## B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

We are not aware of any exchange programmes.





## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

Certain positions within the area of the Ministry of Defence and the Prison and Probation Service

#### Legal basis

- | Constitution
- | Civil Servants Acts
- | Personnel Administrative Guidelines

#### Application in practice

Like Danish nationals, foreign nationals may be employed on collective agreement terms or on individual terms.

Appointment as civil servants is only possible provided the employee has Danish nationality, cf section 27 of the Danish Constitution.

In cases where individuals with Danish nationality are employed as civil servants, individuals without Danish nationality will be employed on terms corresponding to those of civil servants, cf section 58c of the Civil Servants Act. With respect to pensions, they will also be treated like civil servants.

In accordance with the rules on the free movement of labour, citizens from the other countries in the EU and the EEA enjoy the same opportunities of employment in positions where individuals with Danish nationality are employed as civil servants. This right applies subject to restrictions that are justified by regard for public order, public security and public health.

The rules governing the free movement of labour do not apply to positions in public administration. According to the practice of the European Court of Justice, this exemption applies only to positions that entail the exercise of public authority and responsibility for safeguarding the

general interests of the state or other public authorities.

In general, there is no requirement of Danish nationality in connection with appointments in central government administration. However, there are exceptions with regard to certain positions within the area of the Ministry of Defence and the Prison and Probation Service.

### II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

Rules on salary grading/pay determination are applied on the same terms both for Danish nationals and for EU/EEA nationals.

How professional experience and seniority are taken into account depends on whether new pay systems or the old pay systems apply for the specific personnel group in question and on whether employment is on collective agreement terms or as civil servant (or on terms similar to civil servants).

#### Legal basis

- | Collective framework agreement on new pay systems.
- | Collective agreements for different state sector personnel groups.
- | "Cirkulaere om lonanciennitet m.v. for tjenestemaend i staten" (civil servants).
- | Personnel Administrative Guidelines.

#### Application in practice

##### 1. New pay systems

Basic pay consisting of one or few grades or intervals (centrally agreed), supplemented by a superstructure in the form of an allowance component (locally agreed). Locally agreed allowances comprise functions-related allowances, qualifications-related allowances, one-off payments as well as performance related pay.

Old pay systems: Characterised by pay scales with a number of salary grades (centrally agreed); The employee move up on the pay scale

automatically in connection with increasing seniority. In addition, there are limited opportunities of local allowance formation.

When appointed, the salary grading (where a pay scale applies) will be determined on basis of previous employment; there are certain differences between employment on collective agreements terms or as civil servant (or on terms similar to civil servants):

### 2. Employment on collective agreement terms

For appointments that require an educational qualification, seniority shall be determined on the basis of the length of time the person in question has been employed in a job that requires the qualifications in question. Any period of military service after the qualification was obtained shall be counted. The appointment authority may, in special cases, grant additional seniority on the basis of a specific assessment of the previous work experience and qualifications of the employee considered in relation to the post.

For appointments not requiring an educational qualification, the appointing authority may grant additional seniority where the person has acquired specific work experience or specific qualifications of relevance to the performance of the work.

### 3. For civil servants (or employment on terms similar to civil servants)

Salary grading for civil servants shall be determined on the basis of length of time the person has been employed as civil servant. Salary grading from a period before appointment as civil servant can be counted where the person has acquired specific work experience or specific qualifications of relevance to the performance of the work (including appointment in other Member States).

## III. OTHER LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Employment in the Danish state sector is, as a rule, based on public notice of a vacant position. This is to ensure that everybody has the opportunity to apply for the job.

Positions are filled by the best qualified among the applicants. Applicants who already are employed in central government have no preferential right to vacant positions.

### Legal basis

Rules for notices of vacant jobs apply. These rules comprise both a duty to advertise as well as contents requirements regarding the notice.

### Application in practice

The state sector has set up a general job database – [www.job-i-staten.dk](http://www.job-i-staten.dk) - where vacant jobs are advertised.

## B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Short term exchange program for European Integration Training

Partner: UK

### Legal basis

- | Circular of 26 August 2005.
- | Memorandum of Understanding of 12 October 2002 between UK and Denmark on Exchange of civil servants.
- | Personnel Administrative Guidelines

## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

A citizen of another EU Member State may be appointed to a public service position. Positions involving exercise of public authority and protection of public interest are reserved for Estonian citizens.

According to the provision of Estonian Public Service Act (14.04.2004 entered into force 01.05.2004 - RT I 2004, 29, 194), such positions are, for example, those involving management of administrative agencies, exercise of state supervision, national defence and judicial power, processing of national secrets, representing in public prosecution, diplomatic positions, and the positions in which an official has the right to restrict the basic rights and freedoms of persons in order to guarantee public order and security.

#### Legal basis

- | The Constitution of the Republic of Estonia
- | Public Service Act (Chapter 2, paragraph 14 - 14.04.2004, entered into force 01.05.2004 - RT I 2004, 29, 194)

### II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

There is no clear distinction between seniority and professional experience.

Previous professional experience and merit of each individual candidate is taken into account in recruitment to public service positions, based on requirements set for a particular post. Recognition depends on the nature of the previous employment and direct relevance to job.

Recognition of professional experience can have financial effects in determination of salary after the end of set probationary period (maximum 6 months). Length in the public service currently

also has effects on pension and additional benefits (e.g. additional days of holiday based on number of years in service).

Previous work experience in the private sector is not an obstacle when applying for a position in the Estonian public service. It can be recognised as an additional asset, depending on the actual position held and the relevance of that experience to the post applied for. There is frequent mobility between the different sectors (e.g. in 2004 25% of the people recruited to the public service came from the private sector).

Management of human resources in Estonian public service is decentralised and it is possible to enter the public service at every level, including the highest positions. Every ministry and executive agency is therefore responsible for the recruitment, evaluation and development of its officials, guided by the legal framework and centrally set advisory guidelines. In general, each department has its own specific procedural rules and the authority which recruits personnel is in charge of recognition.

Exception concerns top officials (e.g. deputy secretary-generals of ministries, director-generals of executive agencies, heads of departments of ministries) – candidates to be selected or promoted to any of these posts are evaluated by the Competition and Evaluation Committee of Higher State Public Servants at the State Chancellery.

All open competitions to higher civil service positions (starting from the level of head of department) are publicly announced by the Secretary of State.

The following documents are required:

- | Written application
- | CV
- | Written declaration by the applicant that one's qualification and experience corresponds to legal requirements set to employment in the public service
- | Copy of diploma as proof of required qualification or level of education
- | Any other required documents seen necessary

## Legal basis

Public Service Act:

I § 14. Requirements for state or local government officials

I § 17. Establishment of different or supplementary requirements for employment in service

<http://www.legaltext.ee/text/en/X0002K8.htm>

## Application in practice

Based on existing information, there have been only a few cases so far about the actual recruitment of EU nationals from other member states into Estonian civil service. A number of amendments to the current Act or either drafting a completely new Act have been discussed over the last years. The current government has planned to work out a new framework for public service development in the first half of 2006 that will form a basis for the new law. There is a tendency to leave out various additional benefits stemming from seniority in the new Act.

## III. OTHER LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

According to the Estonian Public Service Act, one of the requirements set for employment in state or local government service is the proficiency in Estonian language as an official language of the Estonian State.

## Legal basis

According to the Estonian Public Service Act:

I § 14. Requirements for state or local government officials:

- (1) An Estonian citizen who has attained eighteen years of age, has at least a secondary education, has active legal capacity and is proficient in Estonian to the extent provided by or pursuant to law may be employed in the service as a state or local government official;
- (2) A person who has attained 21 years of age and complies at least with the requirements

provided for in subsection (1) of this Act may be appointed to a position of higher or senior official in the state public service. (20.12.2000 entered into force 27.01.2001 - RT I 2001, 7, 18); (3) A citizen of a Member State of the European Union who conforms to the requirements established by law and on the basis of law may also be appointed to a position. Only Estonian citizens shall be appointed to positions which involve exercise of public authority and protection of public interest. Such positions are, for example, the positions related to the directing of the administrative agencies specified in subsections 2 (2) and (3) of this Act, exercise of state supervision, national defence and judicial power, processing of state secrets, representing of public prosecution and diplomatic representation of the state, and the positions in which an official has the right, in order to guarantee public order and security, to restrict the basic rights and freedoms of persons (14.04.2004 entered into force 01.05.2004-RT I 2004, 29,194).

## B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Short term exchange programmes and detachment possibilities in EU institutions and other member states' public sector institutions.

## Legal basis

Detailed procedures agreed between specific institutions.

## Application in practice

Mostly short term exchange programmes and detachment possibilities in EU institutions and bilateral agreements with public sector institutions in other member states.

## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

The main rule is that all civil service posts are open to non-Finnish citizens and foreigners. However, it is laid down in the State Civil Servant's Act, section 7, that only a Finnish citizen may be appointed to the following posts (comprehensive list):

- | the offices of Secretary General and Referendary Counsellor in the Office of the Chancellor of Justice, and any similar or higher office;
- | the offices of Secretary of State, Secretary General, head of department and head of office at a ministry, and any similar or higher office;
- | an office in the foreign affairs administration;
- | the office of judge;
- | the office of head of a government agency, though not that of principal of a university;
- | the offices of Provincial Governor, and Secretary General and head of agency at a Provincial Government;
- | an office involving the duties of public prosecutor or distraint officer;
- | the office of police officer as referred to in the Police Act;
- | an office in which the appointee is a member of the board of directors of a prison;
- | an office with the Ministry of Defence, the Defence Forces and the Frontier Guard;
- | an office with the Customs.

#### Legal basis

State Civil Servant's Act (750/1994) contains provisions regarding civil service relationships with the State.

#### Application in practice

No special cases are publicly known when nationality would have been an obstacle to recruiting procedure.

## II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

Special requirements for all civil servants have been laid in constitution, and in legislation and decrees for specific recruitments. In public administration, regarding all tasks of an expert (seniority and professional experience) higher academic degree (Master's degree) and experience in field is required either prescribed by law or decree as a qualification requirement or because performing the task of an expert successfully requires for it. Qualifications set down by decrees can set requirements for applicants such as knowledge of certain branch of administration or field of expertise. The Constitution Act contains provisions on the general grounds for appointments such as skills, competence and proven civil merit. According to the decision in principle of the Council of State (2/22/1997) there has been laid guidelines in recruiting senior civil servants. The importance is in leadership and management experience, link: <http://www.vm.fi/vm/liston/page.lsp?r=3678&l=sv>

Principally all vacancies are publicly announced. And announcing must be adequate enough so that anyone interested on position is able to apply regardless of the seniority or not.

Introducing ministry screens all the applications and prepares merit comparison and presents the most distinguished to be appointed to the office. Qualification requirements must be met. There is no system of merit points, but the skills of an applicant are considered upon the requirements the task calls for.

Ministry of Finance launched in 1992 The State Employer's Salary and Wage Policy Programme.

The three main elements of salaries and wages were to be:

- | pay by the demands of the job, and
- | by individual performance, and
- | result-based rewards (= RBR).

"Performance-Related Pay" or PRP covers pay by individual performance which can be influenced by experience and seniority if they enable one to perform more demanding jobs with high results.

The candidates are not separated on grounds of their origin such as internal or external applicants (private/public). Qualifications set down by decrees can set requirements for applicants such as knowledge of certain branch of administration or field of expertise, but the requirements can be filled with an external expertise or seniority also.

Competence of the appointing authority is always laid by legislation. The middle management is mainly appointed by the authority itself but most senior civil servant are appointed by the Council of State or the President of the Republic. The formal procedure is regulated by law.

A decision concerning a civil servant's appointment cannot be appealed. One can complain to the Chancellor of Justice about the appointment or press charges on grounds of the Act on Equality between Women and Men which prohibits discrimination based on gender.

Above mentioned requirement for higher academic degree is valid regardless of the fact whether the employee serves state central, regional or municipal administration.

#### Legal basis

Ones mentioned above and every Civil Service Agency has an administrative decree that sets down their own specific qualification requirements.

### III. OTHER LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Language proficiency requirements for State civil servants are laid down so that in most cases a person to be appointed must have excellent skills in Finnish or Swedish.

#### Legal basis

Act on the Knowledge of Languages Required of Personnel in Public Bodies and language Act

Links:

<http://www.finlex.fi/en/laki/kaannokset/2003/en20030424>

<http://www.finlex.fi/en/laki/kaannokset/2003/en20030423>

### B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

#### Other aspects of cross-border mobility of public sector workers

- | Nordic civil service exchange scheme. Between all the Nordic countries, Greenland, Faroe Islands, Åland. Financed by the Nordic council of ministers. 20-30 Finnish participants annually.
- | Bilateral exchange schemes with Austria, Germany and the UK. Managed by the Finnish International Centre of Mobility. Support financing for travel and accommodation. Usually employer organizations grant leave with pay for the exchange periods.
- | Exchange schemes for professional groups (e.g. customs).

#### Legal basis

More information at: [www.cimo.fi](http://www.cimo.fi)

## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

The general status of civil servants has been modified by the law n° 2005-843 of July 26th 2005, which adapts French public law to the evolution of the European rules on mobility of workers. The law mentioned above inverted the past rule: nowadays the general rule is the aperture of all the “corps” whereas closing is the exception. According to the past legislation, it was the contrary: a selective aperture and a general principle of closing. Therefore it can be stated the France fully fulfils its European obligations.

Consequently, all the “corps” of the French public administration are now opened to the European Union candidates, except the jobs which cannot be separated from national sovereignty, or which include a direct or indirect involvement in public authority. Only such posts, which can be found in the police, diplomacy or justice for example, can be reserved to French candidates. This decision is taken on a case by case basis.

#### Legal basis

- | Law of 26.7.1991
- | Law of 13.7.1983, Art. 5 bis added by Law of 16.12.1996, Art. 49
- | Special rules (depending on the specific rules of the particular status of civil servants, which do not contradict the general rules of opening)
- | The law n° 2005-843 of 26.7. 2005 « portant diverses mesures de transposition du droit communautaire à la fonction publique » introduces new rules into the general status of civil servants, based on the law n° 83-634 of July 13th 1983, in the article 5 bis: « Les ressortissants des Etats membres de la Communauté européenne ou d'un autre Etat partie à l'accord sur l'Espace économique européen autres que la France ont accès, dans les conditions prévues au statut général, aux corps, cadres d'emplois et emplois. Toutefois, ils

n'ont pas accès aux emplois dont les attributions soit ne sont pas séparables de l'exercice de la souveraineté, soit comportent une participation directe ou indirecte à l'exercice de prérogatives de puissance publique de l'Etat ou des autres collectivités publiques. »

Internet link to find more information (in French): <http://www.fonction-publique.gouv.fr/rubrique115.html>

### II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

#### 1. General aspects and principles:

The public administration in France is organized on a career system (regulated by the legal Status). The consequence is that experience, and not only the time passed in a job, is a motor for promotion and professional evolution and grading.

#### 2. Recognition of seniority

Age limitations for competition to enter public administration have been suppressed by law in 2005 (Ordonnance n°2005-901, 2nd of August 2005). This is favourable to experienced workers already in activity (civil servants and employees including those coming from other member states)

#### 3. Recognition of professional experience

##### 3.1. About access to public job

Most competitions include an accession way dedicated to workers coming from the private or associative sector for whom professional and personal experience replaces diploma conditions (“third way”, compared to both “external” competition (for students) and “internal competition (devoted to public agents in activity)).

A reform has been decided for 2006 with labour organizations in accordance with directive 2005/36/EC and in application of the 2002 law to facilitate the process of validation of experience:

- | either through official diploma or



I within a competition through equivalences decided by the jury on that special occasion.

For young workers at low level of qualification, the competitions have been suppressed in 2005 in the name of social integration: the personal experience and character will make the difference. ("PACTE")

### 3.2. About ranking in a competition

The compared interest of the professional experience of the candidates is balanced by the selection committees in internal competition and "third way".

### 3.3. About determination of professional advantages

The civil servants who do not satisfy the conditions for internal promotion to a higher grade (for example, they do not want to enter the ad hoc competition) are often beneficiaries of top grade indemnities.

The reform of individual scoring (decree n° 2002-682 of the 29th of April 2002) opens a larger place to valuable experience and merit in internal promotion and salary (through grants).

#### Legal basis

Nearly every category of workers in the public sector - corps - has its own rules about grading French nationals in the public service.

## III. OTHER LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

There are not any national rules or administrative practices which might cause an obstacle to cross border mobility of public sector workers. Ministerial committees in every ministry are in charge to take into account the foreign diploma with the French one, and another commission is in charge of taking into account the experience of the civil servants when they are integrated in the French administration. The goal of this commission is to

facilitate the integration of people which have a EU experience in another country.

#### Legal basis

The commission of equivalence "pour le classement des ressortissants de la Communauté Européenne ou d'un autre Etat partie à l'accord sur l'Espace Economique Européen » has been created by the decree n°2002-759 (2/5/2002).

More information on the following website: <http://www.fonctionpublique.gouv.fr/rubrique115.html>

## B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Various civil servants exchange programs:

- I Germany: short term civil servants exchange (up to three months); long term civil servants exchange (1 to 2 years).
- I United Kingdom: bilateral civil servants exchange scheme (max. 6 months).
- I Sweden: administrative agreement for a civil servants exchange (max. 3 months).
- I Short term exchange programs for European Integration Training; Partners: Member States, EIPA, EC, candidate countries.

#### Legal basis

A modification of the Status of the civil servants (which should be discussed in Parliament in May 2006) will facilitate the appointment of French civil servants under the authority of a EU member State. It could increase the number of candidates for civil servants exchange programs.

General information is available (in French) on the French Civil Service Ministry web site: <http://www.fonctionpublique.gouv.fr/rubrique45.html>

#### Application in practice

- I Between ENA and BAKöV and various ministries (Interior, Foreign Affairs...);



# FRANCE

- | Presently, 14 German civil servants work in the French administration and 18 French civil servants work in the German one.
- | Moreover, 45 French soldiers are active in German army and 37 German soldiers are in the French one.
- | Each year, 3 to 5 British civil servants propose to integrate different departments of the French administration.



## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

(Note: The responses to the questionnaire concerning civil servants refer mainly to the federal administration and do not take into account comparable regulations in the Länder; the responses concerning other public employees apply to the federal and local levels.)

In accordance with rulings by the European Court of Justice, Article 39 of the EC Treaty allows exceptions from the rules on free movements of workers only for those posts which involve the exercise of public authority, either directly or indirectly, and the responsibility for safeguarding the general interests of the state or other bodies. Exceptions must be decided on a case-by-case basis in view of the nature of the tasks and responsibilities covered by the post in question.

In this context, the federal and state levels have agreed on the following catalogue of criteria as guidelines for legal practitioners to help them determine which posts should be restricted to German nationals according to current law:

- | Posts in core areas of state activity, e.g. in the Office of the Federal President, the Federal Chancellery, the chancelleries of the Länder, the administrations of the Bundestag, Bundesrat or parliaments of the Länder, unless they involve the provision of general services (e.g. typing, translation, etc.), posts entailing responsibility for advising constitutional bodies or members of federal or Land constitutional bodies, high-ranking posts at the executive level of the supreme federal or Land authorities (e.g. directors-general, directors).
- | Posts in the area of military or civil defence.
- | Posts entailing responsibility for representing the state abroad or representing its interests within international or supranational institutions.
- | Posts entailing responsibility for expert preparation of decisions in the field of lawmaking.

- | Posts directly affecting the state's fundamental confidential or security interests, e.g. posts in the intelligence services, posts in the field of nuclear reactor safety, posts in the Federal Criminal Police (BKA), the Customs Criminological Office or the Land offices for the protection of the Constitution, as long as these are not exclusively of a technical nature, or the nature of the task does not warrant the recruitment of a citizen of another EU Member State.
- | Posts entailing responsibility for substantive decisions in the field of law enforcement (intervention in individuals' rights and freedoms) or for expert preparation of such decisions, as long as the activity is not limited simply to enforcing the law or is not exclusively of a technical nature (e.g. heads of organizational units, heads of police operations, etc.).
- | Posts entailing responsibility for decisions in the judicial field (jurisdiction, including public prosecutor's offices, prosecution and enforcement) or for substantive preparation of such decisions.
- | Posts as heads of authorities and their deputies, as long as the tasks of the authority are not exclusively of an artistic, scientific or technical nature.
- | Posts entailing responsibility for supervision or financial oversight of other authorities (including local authorities), legal persons under public law, or to safeguard important public interests (e.g. oversight of cartels), or for expert preparation of decisions by such persons.
- | Posts entailing responsibility for decision-making in divisions concerned with cross-sectional tasks (personnel, budget, organization).
- | Posts entailing responsibility for decision-making in the office of the Federal Disciplinary Prosecutor or comparable offices of the Länder, or for expert preparation of such decisions.
- | Posts in which persons may face a conflict of interest between the rights and duties associated with their foreign nationality and the special relationship of trust and service to their employer (e.g. in the area of law on nationality, foreigners or asylum).

Classification of posts should be based on the primary activity. Classification decisions are made by the employing authority.

Classification that differs from the catalogue of criteria may be justified on the basis of special legal regulations (e.g. for local elected officials) or the special nature of certain administrative areas (e.g. universities).

### Legal basis

Act Defining the Scope of Civil Servants' Rights and Duties (BRRG), Article 4 (2); Act on Federal Civil Servants (BBG), Article 7 (2); and the Federal Ministry of the Interior's recommendations for application in association with the 10th Act Amending Regulations under Public Service Law of 20 December 1993 (Federal Law Gazette I, p. 2136f.).

## II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

### Civil servants

In principle, according to Art. 29 (2) of the Federal Civil Servants' Remuneration Act (BBesG), for nationals of a EU Member State, a comparable activity performed in the public service of that state is considered the equivalent of the activity in the service of an employer under public law, in accordance with Art. 28 (2) of the BBesG. If other criteria relevant for calculating individual salary entitlement are equivalent, nationals of a EU Member State receive the same treatment as German nationals.

In this context, the possibilities for job applicants and their ranking during the selection procedure depend on the relevance of their training and professional experience for the post in question. Here, not only the formal requirements are taken into consideration, but also individual achievement.

This also applies to applicants who acquired their professional experience outside the public service, such as managers employed in the private sector.

As a rule, the employing authority is responsible for evaluating and ranking the professional qualifications and position of applicants; this

authority may seek additional information and advice from other competent authorities as necessary.

### Public employees

According to the collective bargaining agreement for public service employees at the federal and local levels, effective October 2005, relevant professional experience acquired during previous employment may be taken into account when hiring. The employing authority decides autonomously, within the framework of the applicable collective bargaining agreement, regarding the recognition of relevant experience.

The Länder continue to apply the collective bargaining agreement that was replaced for federal and local public employees in October 2005.

### Legal basis

Federal Civil Servants' Remuneration Act (BBesG) Art. 29 (2), Art. 16 of the collective bargaining agreement for the public service.

## III. OTHER LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Specific problems of cross-border mobility are to be dealt with on a case-by-case basis.

## B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I Transfer

Civil servants may be transferred temporarily to another authority within the remit of their employing authority, or to another employing authority, for service-related reasons or upon application. Equivalent possibilities exist for public employees.

## | Secondment

Civil servants may be seconded temporarily to another public institution outside the remit of the German employing authority, or to a private institution; this requires the civil servant's consent. Equivalent possibilities exist for public employees.

## | Leave

Civil servants who are seconded to a full-time post at an international or supranational public institution are to be placed on unpaid leave for the length of the assignment. Equivalent possibilities exist for public employees.

In addition, the following possibilities for advanced training are available through the Federal Academy of Public Administration (BAköV):

- | Foreign stay for the purpose of advanced foreign language training: Max. 1 month in the form of official travel abroad.
- | Assignment to European partner countries for the purpose of specialized advanced training: Max. 3 months in the form of official travel abroad.
- | Assignment to international organizations for the purpose of advanced training: Max. 3 months in the form of official travel abroad.

## Legal basis

- | Art. 27 Act on Federal Civil Servants
- | Art. 4 (1) of the collective bargaining agreement for the public service (federal and local employees) or Art. 12 (1) of the Collective Agreement for Federal Employees (BAT), Art. 8 (6) of the outline collective agreement for workers (Länder)
- | Art. 123a of the Act Defining the Scope of Civil Servants' Rights and Duties
- | Art. 4 (2) of the collective bargaining agreement for the public service (federal and local employees) or Art. 12 (2) of the Collective Agreement for Federal Employees, Art. 8 (6) of the outline collective agreement for workers (Länder)
- | Art. 9 of the Ordinance on Special Leave
- | Art. 28 of the collective bargaining agreement for the public service (federal and local employees)
- | Agreements with partner institutions in the UK, France, Finland, Sweden and Austria



## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

Justice, diplomatic corps, Army, Police

#### Legal basis

I Act 2431/1996 of 30.7.1996 on access by European citizens to employment in the Greek public sector; Presidential decrees

#### Application in practice

According to Act 2431/1996 Greek citizens only can have access to posts that imply direct or indirect participation in the exercise of public authority and involve duties, powers or responsibilities whose subject matter is the safeguarding of the general interests of the state or other public sector institutions.

### II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

Professional experience is recognized in the Greek recruitment system, only if the previous service has the same duties as the ones that have the post in the public sector. Civil servants who have completed a period of actual service prior to their appointment will be admitted upon succeeding permanency up to the immediately superior rank, depending on their total period of previous service, upon the service council's decision. Any period of service spent in the civil service, in a legal person of public law or a local government agency on a public or private law contract will be deemed to consist actual service, as well as any other service, which is recognized as actual service for the purposes of rank advancement. The prior service on a public or private law contract in the civil services of the Republic of Cyprus is taken into consideration towards admission. Only the period of service prior to the appointment with the formal qualifications of

the category to which the civil servant belongs at the time of the admission will be taken into consideration. Any excess period of service after the civil servant's admission, according to para.1 of the present Article, will not be taken into consideration.

Professional experience is also taken under consideration in case of reassignment. As far as seniority is concerned, in the Greek career system seniority is taken into consideration for the purposes of rank advancement as well as for the selection of Head of Sections/Directorates/ Directorates General.

"According to the revision of Civil Servants Code (law 2683/1999), which is going to be introduced to the Greek Parliament the prior service on public or private law spent in the civil service, in a legal person of public law or a local government service of the EU member states or in the EU services will be taken into consideration for the purposes of rank advancement".

#### Legal basis

- I Law 2190/1994
- I Presidential decrees 50/2001, 347/2003, 44/2005
- I Civil servants Code (Law 2683/1999, article 98)
- I Civil servants Code (Law 2683/1999, article 98) & law 3260/2004

### III. OTHER LEGAL SPECIFICITIES OF CROSS - BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Secondment of public servants as National Experts to the services of the European Union or to public administrations of other member states for twinning reasons or to other countries, provided that there is a cooperation agreement between them or exchange of public servants between public administrations is also allowed in order to exchange good practices.

#### Legal basis

- I Law 3320/2005





## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

- | In the national civil service
- | State representation (member of Government, under-secretaries)
- | Member of Constitutional Court
- | Parliamentary Commissioners
- | Certain position in justice (judges, assessors, employee of justice, important and confidential position in prosecution services)
- | Certain positions in finances (e.g.: president and deputy president of State Treasury)
- | Armed Forces
- | Taxation (president, and deputy president of APEH)
- | Mayor, lord mayor

#### Legal basis

- | Act 20 of 1949. Hungarian Constitution
- | Act 32 of 1989
- | Act 64 of 1990
- | Act 49 of 1991
- | Act 23 of 1992
- | Act 38 of 1992
- | Act 59 of 1993
- | Act 53 of 1994
- | Act 80 of 1994
- | Act 43 of 1996
- | Act 67 of 1997
- | Act 68 of 1997
- | Act 79 of 1997
- | Act 58 of 2001
- | Act 65 of 2002

### II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

The information concerning the Recognition of Foreign Qualifications in Hungary in accordance with the Legislation of the European Community is available in English on the following internet link: <http://www.om.hu/main.php?folderID=912&articleD=4695&ctag=articlelist&iid=1>

The principle of equal treatment and the prohibition of discrimination on grounds of nationality are also applicable to employment in the public sector: employment with State companies (commercial companies, telecommunications operators), State bodies or institutions (universities, public hospitals, research institutions).

The rules of Act 23 of 1992 on the legal status of Civil servants reserve certain posts for the Hungarian nationals (see also in the I. part)

#### Legal basis

- | Act 100 of 2001 on the recognition of foreign certificate and degrees is available under: [http://www.om.hu/letolt/nemzet/naric/et\\_angol.pdf](http://www.om.hu/letolt/nemzet/naric/et_angol.pdf)
- | Act IV of 1991 on Job assistance and unemployment benefits.
- | Act 76 of 1993 on vocational training is available under: [http://www.om.hu/letolt/nemzet/naric/szt\\_angol.pdf](http://www.om.hu/letolt/nemzet/naric/szt_angol.pdf)
- | The specification of the recognition of Foreign Qualifications belonging under the Jurisdiction of the Community Law is available on the following internet link: <http://www.om.hu/main.php?folderID=916&articleID=4687&ctag=articlelist&iid=1>
- | Decree No. 8/1999. (XI.10.) SzCsM on Work permit issued to foreign nationals in Hungary.
- | Government Decree No 93/2004 (IV.27.) on the Rules of labour market reciprocity and protective measures to be applied by Hungary following the accession to the European Union.

You can get more information about the world of labour in Hungary. It is available in English on the following internet links:

- <http://www.npk.hu/public/palyak/eu/mappa/magyar>
- <http://en.afsz.hu/Engine.aspx>

### III. OTHER LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

The main rule is that no work permit is required for the employment in Hungary of EEA nationals and their relatives authorized to reside.

However, Hungary has made use of its right to have reciprocal measures and thus requires the citizens of those old Member States which have restrictions for Hungarian citizens to obtain a work permit. Work permit is required of Austrian, German, Dutch, Italian, Swiss nationals and workers from Liechtenstein.

Some nationals can be admitted to the labour market without assessment of the current situation of the labour market. (Belgian, Danish, French, Norwegian nationals and workers from Luxembourg).

Only registration is required of the citizens of new Member States.

Those nationals, whose country does not apply transitional measures against the new Member States, can work in Hungary without any kind of procedure (Sweden, United Kingdom, Ireland, Finland, Spain, Greece, Portugal). The same is true for workers from Cyprus and Malta.

The above mentioned rules are applied to the public sector workers. However some categories of public sector workers from those old Member States which have restrictions for Hungarian citizens can be admitted to the labour market without assessment of the current situation of the labour market (e.g. if the foreign national is invited by an institution of higher education, scientific research institutes or a public cultural institution) or without work permit (e.g. for work performed by foreign nationals at international organizations or if the research scientist works in a field that is covered by an agreement between the Republic of Hungary and another state).

The free movement of workers in the public sector is independent of any specific sector and is linked solely to the type of post .

The list of regulated profession and the competent Hungarian authorities are available on the following internet link:

[http://www.om.hu/letolt/nemzet/naric/list\\_of\\_regulated\\_profession\\_and\\_the\\_competent\\_hungarian\\_authorities\\_eng.pdf](http://www.om.hu/letolt/nemzet/naric/list_of_regulated_profession_and_the_competent_hungarian_authorities_eng.pdf)

## Legal basis

The authorization process for foreign employment is determined by Decree No. 8/1999. (XI.10.) SzCsM on work permit issued to foreign nationals in Hungary

## B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

You can get more information about the world of labour in Hungary available in English on the following internet links:

<http://www.npk.hu/public/palyak/eu/mappa/magyar>  
<http://en.afsz.hu/Engine.aspx>

## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

Posts in the Irish Diplomatic Service (Third Secretary, First Secretary, Counsellor and Ambassador) where the appointee is required to hold a diplomatic passport are reserved for Irish citizens.

All other posts in the Irish Civil Service are open to suitably qualified nationals of the EU and the European Economic Area.

#### Legal basis

- I Civil Service Regulations Acts 1956-2005
- I Public Service Management (Recruitment and Appointments) Act 2004

#### Application in practice

Posts such as those listed for the Irish Diplomatic Service are reserved for Irish citizens.

All other posts in the Irish Civil Service are open to suitably qualified nationals of the EU and the European Economic Area.

### II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

Incremental credit for previous service (experience) is granted to Officers at the entry level for the General Service grades (administrative grades of Clerical and Executive Officer), where a successful candidate has previous relevant experience. The onus is on the Officers to apply for credit and to provide proof of relevant previous service.

Incremental credit given for previous service applies only to salary point awarded at recruitment / entry level and does not play a role in establishing the order of merit under the selection process.

- I How is seniority and professional experience recognized regarding access?

Previous professional experience may play a role in respect of access where such experience is specified as being relevant to a particular post. In particular, in respect of competitions for certain professional and technical posts, credit may be given in recognition of previous professional experience.

Having competed in a competition, credit is given to successful candidates for previous relevant experience.

Incremental credit does not play a role in establishing an order of merit but may be recognised for salary purpose.

- I Is recognition of seniority and/or professional experience still dependent on the legal nature of the previous employment? Which changes have been introduced or are envisaged?

The rules applying to the recognition of seniority and/or professional experience are reviewed from time to time to ensure that they are in line with good HR practice.

- I How is seniority and work experience in previous services in the private Sector recognized?

1. In general, recognition is not given for private sector experience. However, in respect of competitions for certain professional and technical posts, credit may be given in recognition of previous professional experience.

2. The competent authority is the employing ministry. Where there is doubt in respect of qualifying service, the Department of Finance may be consulted.

Successful candidates are required to provide documentary proof of their entitlement. Application should be made at the time of recruitment.

Appeal procedures - the Department of Finance acts as the appeal body.

This reply applies only to the Irish Civil Service and not to the wider Public Service in Ireland.

### Legal basis

- | Civil Service Regulations Acts 1956-2005
- | Public Service Management (Recruitment and Appointments) Act 2004

### III. OTHER LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

The ability to communicate effectively in the Irish language is a required competency for a limited number of posts in the Irish Civil Service. Where relevant a candidate's competency is tested as part of the selection process.

### Legal basis

- | Civil Service Regulations Acts 1956-2005
- | Public Service Management (Recruitment and Appointments) Act 2004

## B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### Inter-Administration Exchanges

Ireland has two formal Inter-Administration Exchange Schemes as follows:

- | UK-Ireland Bilateral Exchange of Civil Servants Scheme: In operation since 1985.
- | Sweden-Ireland Bilateral Exchange of Civil Servants Scheme: In operation since 2001.

### Legal basis

The Ireland / UK and Ireland / Sweden Bilateral Exchange Schemes are based on protocols of agreement between the Governments of the respective Member States.

### Application in practice

- | UK-Ireland Bilateral Exchange of Civil Servants Scheme: The UK and Ireland exchange 3-4 civil servants in each direction each year.
- | Sweden-Ireland Bilateral Exchange of Civil Servants Scheme: Sweden and Ireland exchange 2-3 civil servants in each direction each year.

As well as these exchange schemes, the Irish Department of Finance and the UK Treasury exchange one civil servant in each direction from time to time.

Over the last 15 years, Ireland has regularly received civil servants from the new member States and from the EU candidate countries. These placements are for purposes of training and experience.

## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. Nationality Condition

#### Posts reserved for nationals

- | Management posts in the State administrations;
- | Posts comprising senior administrative functions in branch offices of the State administrations;
- | Judges, administrative, military and financial magistrates, the State Bar and the public prosecution services;
- | Civil and military agents: Presidency of the Council of Ministers, Ministry of Foreign Affairs, Ministry of the Interior, Ministry of Justice, Ministry of Defence, Ministry of Finance.

#### Legal basis

- | Art. 38, para. 1 and 2, of the Legislative Decree n. 165 of 30 March 2001 and Art. 2 of Presidential Decree n. 487 of 2 May 1994 lay down that Italian citizenship for persons from other Community countries is no longer required for access to posts in public administration.
- | Presidential Decree n. 174 of 7 February 1994 provides a list of the posts which still require Italian citizenship (posts reserved are indicated above).

### II. Recognition of Professional Experience and Seniority

When Italian workers change posts within the public sector they keep their status and professional advantages. Italian legislation also allows the recognition of service completed abroad by Italian public sector workers for the purpose of their career development.

However, it has to be noted that professional experience is not a formal qualification for career progression, except for managers.

The Italian authorities have to award points for equivalent academic and professional qualifications in the same way they award them to their nationals; the procedure has been put into practice concerning the subject matter of a

diploma (professional and academic training), but not yet activated concerning professional experience.

Mutual recognition of professional experience and seniority acquired in another Member State's public sector for the purposes of determining professional advantages is now provided for by Italian Law.

The principles that are at the basis of the Italian selection procedures are as follows:

- | No distinction between seniority and professional experience.
- | Recognition does not depend on the nature of the previous employment.
- | Only exceptional recognition of seniority/professional experience of previous services in the Private Sector.
- | Recognition has financial (remuneration) and grading effects.
- | There are rules for recognition provided by law, by interested administrations and by collective agreements.
- | Recognition through recruiting authority or through applicant's authority of work.
- | Deadlines are established with the formal communications of selections.
- | Recognition requires official certificates determined by recruiting authority or applicant's authority of work. Presidential Decree n. 445 of 28 December 2000 provides for the substitution of a number of official certificates through written declarations by the applicant.
- | Administrative appeal within 30 days to a higher authority, judicial appeal within 60 days to the Administrative Court or to the ordinary Court if a question of career development is involved.
- | There are different rules set by administrations in different sectors.

Each administration can appoint a certain number of managers who come from the private sector (10 % of the first-level staff and 8 % of the second-level staff) to leading positions in the public sector.

In the directive for the collective bargaining of the period 2002-2005 (economical period 2002-2003) the Government indicated to the Representative Agency for collective bargaining

for the public service (ARAN) to consider the opportunity to regulate the positions of managers sent abroad for a short period and to recognize the professional experience of these employees.

### Legal basis

- | Article 32, of the Legislative Decree n. 165 of 30 March 2001, for the purpose of promoting the international exchange of administrative experiences.
- | Art. 38, para. 3, of the Legislative Decree No. 165 of 30 March 2001, which requires the same procedure as that used for the equivalence of academic and professional qualifications to be used to establish "equivalence between academic qualifications and service grades relevant for the purposes of admission to a competition or appointment".
- | Art. 28 para. 2 of the legislative Decree n. 165 of 30 March 2001, which concerns the dispositions for the access to the management in the public administrations, states that in the selections may be admitted Italian citizens with academic degree having acquired a working experience in an international organizations in a senior position (for which an academic degree is necessary) for at least four years continuously.
- | Law n. 1114 of 27 July 1962, partially modified by the law n. 145 of 15 July 2002, allows periods of service abroad (international organisations or foreign countries) with recognition of the experience acquired.

### Application in practice

Recent decisions (2003/2005) of the European Court of Justice:

- | C-278/03:  
It concerns the recognition of professional experience for the purposes of access to the Italian teaching sector. The judgment can be found on the site of the Court:  
<http://europa.eu.int/cj/index.htm>
- | C-371/04 (still pending):  
It concerns the recognition of professional experience for the purposes of determining professional advantages (e.g. salary).

Recently, with the decree-law n. 97 of 7 April 2004 (converted into the law n. 143 of 4 June 2004) concerning some dispositions for the State examinations (teachers) and for the University (professors), some additional points are attributed for professional diplomas acquired in any EU-Member State in accordance with Directives 89/48/CEE and 92/51/CEE.

### III. Other Legal Specificities of Cross-Border Mobility of Public Sector Workers

Candidates have to prove:

- | to enjoy the civil and political rights in the States they belong to or they come from;
- | to be in possession of every requisite required of citizens of the Republic, other than the Italian citizenship;
- | to have an adequate knowledge of the Italian language.

### Legal basis

- | Article 3 of the Decree of the Prime Minister n. 174 of 7 February 1994.
- | Article 2 of the Presidential Decree n. 487 of 2 May 1994 (good physical conditions; good behaviour and moral qualities; regular position regarding military obligations...).

## B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Short term exchange programs

Partners: United Kingdom, Austria, European Commission.

### Legal basis

Bilateral Agreements with some Member States according to the dispositions of Article 32 of the Legislative Decree n. 165 of 30 March 2001, as well as law n. 1114 of 27 July 1962.

## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

The civil servants shall have a citizenship of the Republic of Latvia; it means that all civil service posts are reserved for nationals. A civil servant is a person who designs a policy or development strategy of a relevant sector, co-ordinates the activity of a sector, distributes or controls the financial resources, elaborates legal documents or controls observance thereof, prepares or issues administrative documents and prepares or takes decisions related to the rights of individuals. The nationals of other EU Member States can hold an office in Latvian public administration in case this is not a civil service position. Civil service is introduced in the State Chancellery, field ministries, diplomatic and consular service, revenue service, police, the boarder guard, state fire fighting service and in prison administration. But there are also employees in all above mention institutions. Civil service is not introduced in municipalities.

#### Legal basis

- I Constitution
- I State Civil Service Law
- I Law on Judicial Power
- I Prosecutor's Office Law
- I Law on Labour

### II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

Recognition of professional experience and seniority is carried out on a case-to case basis if necessary. It mainly requires submission of relevant notice, certification or information from previous employers.

Public sector workers are recruited by the open competition procedure, thus, if a person considers that his or her professional experience has not been properly taken into account, he or she is entitled to appeal the decision of the competition

committee. Advantages are decided in each individual case according to merit and other qualifications related to the actual post. Professional experience acquired in another EU Member State is taken into account, except as for salary and grading purposes (seniority of service).

#### Legal basis

There is no particular legal regulation in this area. The ordinary acts regarding labour shall be applied.

## B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Nordic Scholarship Scheme for the Baltic Countries "Exchange of Civil Servants"

Development of Networking between Latvian, Danish, Finnish and Lithuanian administration schools and institutes

Partners: Nordic council of Ministers, Denmark, Finland, Lithuania





## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

- | Civil service posts: career civil servants, civil servants of political (personal) confidence, managers, statutory civil servants
- | Posts of State officers: members of committees and councils, judges, prosecutors, notaries, etc.
- | Armed forces

#### Legal basis

- | As regards civil service posts: Constitution, Law on civil service:

#### Article 2, Main Definitions:

Civil service means a sum total of legal relations arising after the acquisition of the status of a civil servant, the change or loss thereof, as well as those resulting from the public administrative activities of a civil servant in a state or municipal institution or agency when implementing the policy of a particular sphere of state governance or ensuring the co-ordination of the implementation thereof, co-ordinating the activities of institutions of a particular sphere of state governance, managing and allocating financial resources and controlling their use, carrying out audits, adopting and implementing legal acts, decisions of state and municipal institutions or agencies in the sphere of public administration, preparing or co-ordinating draft legal acts, agreements or programmes and giving opinions on them, managing personnel, or having public administrative powers with respect to persons, who are not subordinate.

#### Article 9, General Requirements for Recruitment to Positions of Civil Servants:

1. Any person admitted to the office of a civil servant shall meet the following general requirements: "to hold the citizenship of the Republic of Lithuania;"

- | As regards posts of State officers: Constitution, Special Laws

- | As regards armed forces: Constitution, Law on National Conscription, Law on the Organisation of the National Defence System and Military Service

### II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

- | For salary purposes in Civil Service positions
- | Other positions: No seniority recognition; advantages are decided in each individual case according to merit and other qualifications related to the actual post; generally the previous professional experience influences strongly the candidate's suitability and qualification for the individual post.

#### Legal basis

- | Law on Civil Service:

#### Article 25, Bonuses:

1. Civil servants shall be paid the following bonuses: 1) for the length of service for the State of Lithuania (hereinafter – the length of service); 2) for a qualification class or qualification category; ...

#### Article 42, Length of Service:

Pursuant to this Law, the length of service shall consist of the number of years served for the State of Lithuania from 11 March 1990 in the office of a public servant, including the positions specified in points 1 to 6 of paragraph 3 of Article 4 of this Law (except for members of municipal councils, who were not a mayor and deputy mayor).



## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals:

Posts in the sector other than research, education, health, rail and road transport, post and telecommunications, water, gas and electricity distributions

#### Legal basis

##### I Act of 17.5.1999, Art. 1B and 2B

A reform of the State civil servants' general statute has been voted in 2003 (Act of 19.5.2003). Although the question has been discussed, no changes in the sense of a wider opening of the civil service to workers of the EC have been adopted. However, the government declaration of 2004 states that "The government will consider a wider opening of the civil service for posts where recruitment difficulties have been noticed, although the knowledge of the three administrative languages continues to be requested".

### II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

There exists a rule concerning the taking into account of seniority for calculating the starting salary, but only at the beginning of the career of a newly nominated civil servant.

Work for the Crown, the communes, the communes' trade unions, public undertakings and the National railways company, as well as professional training at the Teachers training institute is treated as work for the State. These rules do not differentiate between civil servants and employees.

Apart from these rules, there does not exist any system allowing the taking into consideration of the experience of workers who come from other public organisations; therefore one cannot talk of mobility within the public sector, with the exception

of mobility between parts of the central State administration.

The rules of Article 7 apply equally to Community workers with the same conditions and restrictions foreseen for Luxembourg citizens with the difference that since the Act of 19.5.2003 reforming the civil service statute general seniority in the public sector of an EC Member State is taken into account in the same way as for nationals.

The following precisions can be added concerning the Luxemburgish system:

- I No distinction between seniority and professional experience.
- I Recognition does not depend on the nature of the previous employment.
- I Recognition of half the time of previous services in the Private Sector to a maximum of 12 years.
- I Recognition has financial (remuneration) but no grading effects.

General administrative procedural rules applicable to recognition:

- I Recognition through recruiting authority after application
- I Recognition requires certifications bearing evidence about previous services
- I Administrative appeal to Ministry of Civil Service, judicial appeal to Administrative Judge and Administrative Court
- I Regulations apply to all State territory

#### Legal basis

Article 7 of the modified law of 22 June 1963 about the general rules on State civil servants' salaries, professional experience as a full-time worker is counted entirely if it had been undertaken for the State and half if it had been done in the private sector.

### III. OTHER LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

There are specific language conditions required for all candidates to the civil service. In this respect the knowledge of the three administrative

languages is requested (French, German and Luxembourgish). For some posts there are somehow regulations which permit an exemption of one of these languages. The government considers actually if there might not be an enlargement of these exemptions, eventually to a second language or to posts which are not yet focused by the regulation. Management positions in the public sector are not accessible to candidates from the private sector.

#### Legal basis

I Article 2, Act of 16.4.1979; Regulation of 5.3.2004  
Internet link: [www.fonctionpublique.public.lu](http://www.fonctionpublique.public.lu)

#### Application in practice

In general there is an oral examination by a special committee for candidates who have not accomplished their secondary studies in Luxembourg.

## B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Short term exchange programs for European Integration Training

Partner: EIPA

## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

The nationality restriction to positions in the Maltese Public Service is applied to posts which involve the application of public authority and the safeguarding of the interests of the State. So far posts which on this basis have been restricted to Maltese Nationals include the following:

- | The Armed Forces
- | The Police Force
- | The Judiciary
- | Tax Authorities
- | The Diplomatic Corps
- | Staff at sensitive offices such as the Cabinet Office, the Office of the Principal Permanent Secretary, the Management and Personnel Office, Offices of the Permanent Secretaries and Ministerial Secretariats

#### Legal basis

Public Service Management Code (Art. 1.2.3)  
Basic Eligibility Requirements; [www.mpo.gov.mt](http://www.mpo.gov.mt)

### II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

Entry into the Malta Public Service takes place by public competition following the publication of a call for applications, in which the salary, eligibility requirements and duties are defined. Entry can take place either to a substantive grade or to a position.

In the case of substantive grades eligibility parameters are determined by classification agreements between the Maltese Government and the relevant unions. In the case of positions, eligibility parameters are established in accordance with benchmarks which are adopted service-wide. Eligibility requirements would include (a) academic, or comparable, qualifications; or (b) relevant work experience; or (c) a combination of

both. Provided that it is relevant to the duties that are being advertised in the call for applications, proven professional/work experience is recognized irrespective of whether it has been acquired in the Private or Public Sector and in Malta or abroad.

#### Legal basis

- | Constitution of Malta
- | Public Service Commission Regulations 1960
- | Public Service Management Code

## B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Short term exchange programs for European Integration Training

Partners: Member States



## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

Posts in the civil service corps (governmental administration), the state administration (e.g. chancelleries of President, Sejm, Senat, Supreme Chamber of Control, Ombudsman Office) and the self-governmental administration (community, county and regional offices) are reserved for nationals. Also candidates to posts in uniformed public services (e.g. armed forces, police, the State Fire Service, the Border Guards) have to be the Polish citizens.

#### Legal basis

The Law on Civil Service of 18 December 1998 (O.J. of 1999, No 49, item 483 with amendments):

Article 4 of this Law: Any person may be employed with the Civil Service, who is:

- | a Polish citizen,
- | a holder of a full scope of civic rights,
- | has not been penalised for a felony committed by wilful action,
- | holds qualifications required for the Civil Service,
- | enjoys an impeccable reputation.

This Law is available on:

[http://www.usc.gov.pl/gALLERY/23/27/2327/Civil\\_Service\\_Law\\_1998.doc](http://www.usc.gov.pl/gALLERY/23/27/2327/Civil_Service_Law_1998.doc)

There is being prepared broad amendment of the Law on Civil Service. On the very first stage of this work, there is a proposal to limit possibility of this obligation only to the posts involved in the exercise of public authority and the responsibility for safeguarding the general interest of the State.

The Law of 16 September 1982 on employees of the state's offices (O.J. of 1982, No 31, item 214 with amendments):

Article 3 of this Law states that in order to become a public official a person has to:

- | be a Polish citizen,
- | be over 18 years old and have full legal capacity and enjoy full citizens' rights,
- | enjoy an impeccable reputation,
- | have a proper education and undergone an administrative training,
- | be in a health condition which allows to be employed at the given post.

The Law of 22 March 1990 on self-government's employees (O.J. of 2001, No 142, item 1593 with amendments):

Article 3 paragraph 1 of this Law states in order to become a self - government employee a person has to:

- | be a Polish citizen,
- | have professional qualifications required to work at the given post,
- | be over 18 years old and have full legal capacity and enjoy full citizens' rights,
- | be in a health condition which allows to be employed at the given post.

### II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

Due to a lack of possibilities of employing foreigners in the offices of public administration in a present legal status, we are unable to answer questions concerning the recognition of the professional experience and seniority while employing foreigners.

#### Legal basis

The provisions in this scope concern solely the Polish citizens.





## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

According to the Portuguese Constitution, aliens enjoy the same rights and duties as all Portuguese citizens. The exception concerns the political rights and duties that are reserved in accordance with the Constitution and the law exclusively to Portuguese citizens and public tasks, the nature of which is not predominantly technical (understood as those that involve the State sovereignty).

Therefore judges and magistrates of the public prosecution service, diplomatic service, armed forces, police, and managerial posts in the administration are restricted to Portuguese citizens.

#### Legal basis

- | Constitution (article 15)
- | Decree-law n.º 204/98, 11th July 1998, Article 29

### II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

In the Portuguese public sector there are rules under which professional experience plays an important role. In cases where applicants for promotion have equal grades, seniority takes first place.

In some sectors professional experience is taken into account.

In the health sector there should be no problems with doctors; concerning nursing staff professional experience is not taken into account if the activity had not been exercised in Portuguese public health institution and if the person had not been integrated in the career structure.

In the teaching sector experience is taken into consideration for University professors.

The professional experience of kinder garden, primary and secondary school teachers that is acquired in the EU member states or in the EEA – therefore, outside the Portuguese national education system - is taken into account for competitions and for career progression, since it has been obtained in a similar activity as demanded in Portugal for practicing the profession.

- | Recognition of seniority depends on the nature of the previous employment (only when services rendered under Public law).
- | Exceptional recognition of professional experience of previous services in the Private Sector when management posts are concerned.
- | There are special procedural rules concerning the recognition of professional experience in open competitions.
- | There is a seniority listing to facilitate its recognition.
- | Recognition of seniority does not require certification as a personal record is kept. For the recognition of professional experience a statement issued by the employer is needed.
- | Possible claim concerning the recognition of seniority before the Personnel Service; concerning the recognition of professional experience administrative appeal to Higher Authority, judicial appeal to Administrative Court.
- | Regulations apply to all State territory.

There is a possibility of secondment for managers (Directors-General and Deputy Directors-General) and specialists from private companies in the public sector subject to certain conditions.

There is also the possibility of secondment for line managers from the private sector, subject to certain conditions.

#### Legal basis

- | Article 37 of decree-law n.º 204/98, 11<sup>th</sup> July
- | Decree n.º 48/97, 19<sup>th</sup> August, for primary school teachers
- | Decree n.º 12/2004, 3<sup>rd</sup> March
- | Law n.º 51/2005, 30<sup>th</sup> August

### III. OTHER LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Language requirements exist for kinder garden,  
primary and secondary school teachers.

#### Legal basis

Decree-Law n. ° 139-A/90, 28th April.

### B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Short term exchange programmes for European  
Integration Training

Partners: Member States, candidate countries



## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

- I Civil service in general:  
Judiciary, prosecution, armed forces e.g. military, police, custom officers.
  
- I Civil service (state administration):  
Managerial posts in the civil service, all posts of extraordinary significance, all posts dealing with classified information, all posts in the Ministry of Foreign Affairs, Supreme Audit Office, Ministry of Defence, International cooperation, legislation, control, audit, industrial property, interior section, protection of classified information.

There is a regulation issued by the Civil Service Office on the state employment posts reserved for the nationals of the Slovak republic.

#### Legal basis

- I Laws dealing with the specific groups of civil servants
- I Civil Service Act 312/2001 Coll. as later amended
- I Regulation of the Civil Service Office 596/2004

[www.upss.sk](http://www.upss.sk)

### II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

Information applies for civil servants according to 312/2001 Civil Service Act (exc. judiciary, armed forces etc).

Seniority and professional experience plays no role either when accessing the civil service or for other purposes at the moment.



## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

Officials, judges, police force, defence, diplomats

#### Legal basis

- | Constitution (arts 44, 128)
- | Civil servants act (Official Gazette of the Republic of Slovenia, No. 35/2005):

[www.mju.gov.si](http://www.mju.gov.si)

The Act stipulates the conditions for appointment to title of officials, stating in Article 88 that one of the requirements for appointment to title is citizenship of the Republic of Slovenia, whereas it does not require the mentioned condition for professional-technical posts but rather refers to the applicability of the regulations governing employment and collective labour agreement.

Article 22 of the Civil Servants Act stipulates that particular issues relating to judicial personnel, personnel in state prosecutor's office, state attorney's office and in independent bodies competent for violations, diplomats, professional members of the Slovenian Army, civil servants in the field of defence, civil protection and rescue, police officers, inspectors, employees in the customs and tax administration, personnel in the service for execution of sentences, authorized public officers in security services and other public officers with special authorizations, may be governed by law in a manner different in respect of the provisions of the mentioned Act, if so necessary due to the specific nature of the tasks or the performance of special duties and authorizations.

- | The Judicial Service Act (Official Gazette of the Republic of Slovenia, No. 19/94, 8/96, 24/98, 48/01, 67/02, 2/04-ZPKor, 71/04):

Article 8 stipulates that only a citizen of the Republic of Slovenia who, in addition of fulfilling the criteria set forth in the mentioned Act, can be

elected judge of any court in the Republic of Slovenia.

- | The Defence Act (Official Gazette of the Republic of Slovenia, No. 82/94, 44/97, 13/98-odl. US, 33/00-odl. US, 87/01-ZMatD, 47/02, 67/02, 110/02-ZGO-1, 97/03-odl. US, 40/04): Article 88 stipulates that professional members of the Slovenian army must be citizens of the Republic of Slovenia.

- | The Police Act of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 49/98, 66/98, 93/01, 52/02-ZDU-1, 56/02-ZJU, 26/03-ZPNOVS, 48/03-odl. US, 79/03, 43/04-ZKP-F, 50/04, 54/04-Zdoh-1):

Article 67 stipulates that an employment relationship to perform tasks within the police service may be entered by a person who, in addition to the criteria set forth in the regulations on the employment of civil servants, fulfils several requirements, among them, that he or she is a citizen of the Republic of Slovenia with permanent residence in the Republic of Slovenia.

- | Foreign Affairs Act (Official Gazette of the Republic of Slovenia 45/2001, 78/2003, 113/2003) – diplomats:

Article 27 stipulates that an employee of the diplomatic mission with a status of a diplomat can only be a Slovene citizen.

#### Application in practice

Whether Slovene nationality is required or not for a certain post in the Slovene public administration is determined by the notice of competition for the post which is published on the website of the Ministry of Public Administration and in the Official Gazette of the Republic of Slovenia.

Other posts in public sector are according to the Employment Relationship Act (Official Gazette RS, No. 42/2002) published in the media and also in the public areas of the Employment Service of the Republic of Slovenia.

## II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

This area is regulated in general – private and public sector, by the Employment Relationship Act (Official Gazette of the Republic of Slovenia, No. 42/2002). Civil Servants Act (Official Gazette of the Republic of Slovenia, No. 35/2005) is legis specialis which covers the scope of public administration. Taking this into account public sector except public administration is regulated by the general act.

Considering Slovenia endorses career system in public administration seniority is of relevance. According to the Civil Servants Act there is no prejudice where (other country) years of experience were gained as long as there is an appropriate document confirming it (for a Slovenian citizen or a citizen of other EU country). Also the Employment Relationship Act does not hold any provisions on this issue – in this case it is up to the employer to define the requirements.

- | Art. 6 (10) of Civil Servants Act provides us with the definition of “years of employment”:  
“10. “years of employment” means the period spent in employment relationships;”
- | Art. 6 (11) of Civil Servants Act provides us with the definition of “years of service”:  
“11. “years of service” means the years of employment as a civil servant in state bodies or local community administrations”.
- | Art. 6 (13) of Civil Servants Act provides us with the definition of “working experience”:  
“13. “working experience” means the years of employment at work posts demanding the same level of education, and the period of apprenticeship demanding the same level of education, regardless of whether a person entered into employment or apprenticeship with the same employer; working experience shall also include the working experience that a civil servant has gained by working at work posts demanding a one-degree lesser level of education in the same line of profession or the same occupation, not including the period of apprenticeship at one-degree lesser level of education;”

For officials and professional-technical civil servants the Decree sets the standards of working

experience while for the posts of civil servants in position (a work post carrying managerial authorisations and responsibilities) the advantages are decided in each individual case according to merit and other qualifications related to the actual post.

Other employees in the public sector are submitted to the Employment Relationship Act (Official Gazette RS, No. 42/2002) which is the general act (also for the private sector). Nevertheless Employment Relationships Act does not specifically set the standards of professional experience and seniority. In accordance with Article 20 of Employment Relationships Act a worker who concludes an employment contract must meet the prescribed conditions for carrying out work laid down in the collective agreement or employer’s general act required by the employer, which are published in accordance with Article 23 (the employer who recruits workers has to advertise the vacancies in public; public advertisement of vacancy must contain the conditions for carrying out work; a public advertisement shall also be published in the public areas of the Employment Service of the Republic of Slovenia).

Regarding the salary – the Employment Relationship Act determines in Article 129 that an employee is entitled to extra payment for years of employment. The amount is laid down by the branch collective agreement.

### Legal basis

Civil Servants:

- | Civil Servants Act (Official Gazette of the Republic of Slovenia, No. 35/2005) [www.mju.gov.si](http://www.mju.gov.si)
- | Decree on internal organisation, posts classification, posts and titles in the bodies of public administration and justice (Official Gazette of the Republic of Slovenia, Nos. 58/03, 81/03, 109/03, 22/04, 43/04, (58/04 – revis.), 138/04, 35/05, 60/05, 72/05) [www.mju.gov.si](http://www.mju.gov.si)



For Employees:

| Employment Relationship Act (Official Gazette of the Republic of Slovenia, No. 42/2002)

[www.gov.si/mddsz](http://www.gov.si/mddsz)

| Branch collective agreements in the public sector

### III. OTHER LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Candidates have to prove a certain level of knowledge of the Slovene language if so required by the employer.

#### Legal basis

It depends on the working post. Civil Servants Act allows requiring certain knowledge of Slovene also for the post of professional-technical civil servant.

#### Application in practice

There has not been any officially noticed or reported problem with foreign applicants within the last few years.

### B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

| Bilateral agreements mainly concluded between various ministries across European Union

| Twinning projects

#### Legal basis

PHARE, CARDS, TACIS, MEDA





## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

Armed Forces, Police, Taxation, Financial Control, Labour Inspectorate, Foreign Affairs, Justice, Prison, Economical Affairs, State Juridical Affairs, Nuclear Security, Health Inspectorate, Intellectual Property, Economic control at local level.

#### Legal basis

| Law 17/1993, of 23.12.1993, modified by Act 55/1999 of 29.12.1999, establish that all EU nationals have the right to access to public employment under the same conditions than Spanish nationals, except for the posts which imply direct or indirect participation in public power exercise and which undertake functions affecting the safeguard of State or Public Administration interests. This regulation is basic, which means all levels of the Administration (national, regional, local) must comply with it.

| Royal Decree 543/2001, of 18.05.2001

According to the Law 17/1993, the General State Administration has specified with this Decree the Corps to which access for non-nationals is denied. All Corps not included in the list are open to equal competition for all EU nationals.

| Autonomous Communities are also implementing the regulation determining the Corps to which the access of EU nationals is forbidden.

Andalucía: Royal Decree 299/2002; Aragón: Royal Decree 141/1996; Baleares: Law 1/1995, art 1.1a; Canarias: Royal Decree 31/2006; Castilla-La Mancha: Law 7/2001, art 4.1a; Castilla y León: Law 7/2005, art 46.1a; Cataluña: Royal Decree 389/1996; Extremadura: Royal Decree 170/2002; Galicia: Law 3/1995, art 8; La Rioja: Law 8/1994; Madrid: Royal Decree 230/2001; Murcia: Royal Decree 3/2003; Navarra: Law 10/2001, art. 1; País Vasco: Law 16/1997, art 5.1.1d; Valencia: Legislative Decree, 24/10/199, art. 12

## II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

Public workers in Spain can be civil servants or employees (ruled by general labour law with some specialities).

Concerning civil servants posts, EU civil servants, after being successful in the selection procedure, have to have recognised their professional experience in the foreign public sector. These rules should be applicable not only in State General Administration, but also in Local and Regional public administrations.

Spanish authorities also have to recognise the financial effects of previous periods of employment in the public service of other Member State.

Concerning employees, an Agreement signed by the State General Administration and the Trade Unions defines that previous service is taken into account when seniority increments are granted. If an application for a seniority increment were submitted to the Spanish State General Administration by an employed member of staff from another Member State the same criteria would be applied as to employed staff of Spanish nationality.

State and Autonomous Communities are committed to guarantee that, according to article's 39 of the European Union treaty principle of equal treatment, professional experience acquired in other Member States must be recognised.

#### Legal basis

| Civil Servants:

Law 30/1984 of 2.08.1984, which rules civil servant legal regime (additional disposition 26)

| Employees:

Agreement signed by the State General Administration and the Trade Unions on 11.03.99.

| Autonomous Communities:

State-Autonomous Communities Agreement made in Albarracin (Aragon) June 2000

### III. OTHER LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Civil servants from other EU Member States, have to pass the same selection procedure than the Spanish candidates to accede to posts not reserved to Spanish nationals. Prior, as the Spaniards, they have to accede to a civil servant corp.

Concerning labour posts (employees) they also have to pass the same selection procedure than the Spaniards.

State and Autonomous Communities are committed to guarantee that EU nationals will receive treatment in the conditions to accede to public post except for those which imply direct or indirect participation in public power exercise and which undertake functions affecting the safeguard of the Administration. Calls for proposals must take it into account.

Management positions in the public sector are not accessible to people from the private sector.

#### Legal basis

- | Law 17/1993 of 23.12.1993
- | State-Autonomous Communities Agreement made in Valencia (April 1999)

### B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Exchange programme of civil servants with United Kingdom.

Partner of the Bellevue Programme (Robert Bosch Foundation)

#### Legal basis

Memorandum of understanding

### Application in practice

Contact point:

[misabel.hernandez@map.es](mailto:misabel.hernandez@map.es)

## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

- | Judges
- | Positions reporting directly to Parliament (e.g. Directors of some agencies), Government or a Minister
- | Magistrates, police force or armed forces

#### Legal basis

- | Constitution "The Instruments of Government, Chapter 11, Art. 9"
- | The Public Employment Act (Arts. 5-6)

Swedish citizenship is demanded for some government officials, but further proposed deregulations, submitted by a Parliamentary committee, are still under progress.

#### Application in practice

Employment in the Swedish government administration is position based and recruitment is normally made in full and open competition, the absolute majority of positions do not demand a Swedish citizenship.

Many types of work demands formal professional competence and proved standards of education. The Swedish Constitution sets out the criteria for selecting staff to central government posts. Merit and competence and other reasonable grounds are to be decisive. Competence, however, is given precedence. For most kinds of work, skills and competence for the task are weighed by the actual employer at each recruitment opportunity and is defined by the requirements of each post.

Nevertheless knowledge in the Swedish language is mostly required to qualify for a job in the Swedish government administration.

## II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

a) Recognition for normal position based employments:

- | Recognition of professional experience only.
- | Recognition does not depend on the nature of the previous employment.
- | Recognition of professional experience in the Private Sector when relevant to the job
- | Recognition has financial (remuneration) but no grading effects.
- | There are no special procedural rules.
- | The contracting authority is in charge of the recognition.
- | Complaints against the decision to appoint someone else are tried by the Government.

b) Recognition for career based positions:

There are still a few more formal careers left in the Swedish Civil Service. These are mostly connected to uniformed staff, like the armed forces, customs, police force etc, but also exist in the judicial sector. For a position in a career based structure, formal national career prerequisites are demanded.

#### Application in practice

For the position based employments there is no seniority recognition. Advantages are decided in each individual case according to merit and other qualifications related to the actual post. Generally the previous professional experience strongly influences the candidate's suitability and qualification for the individual post.

In the few left career based systems individual and differentiated pay is increasingly used.

## III. OTHER LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Most leading positions are accessible to anyone from the private sector with the required qualification.

## B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORK- ERS

Short term exchange programs for European  
Integration Training

Partners: Member States, European  
Institutions, EC

## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. Nationality Condition

#### Posts reserved for nationals

More than 80% of all posts in the public sector are open to non-Dutch nationals. There is only a limited number of posts concerning national interests and core tasks of the Kingdom such as jurisdiction (art. 3 Wet op de Rechterlijke Organisatie; 08-04-1827), internal and external security (art.12g Militaire Ambtenarenwet, 1931 en art. 125e Ambtenarenwet; 12-12-1929), national ombudsman (art.3 and 9 Wet Nationale Ombudsman; 04-02-1981) and representation of the Netherlands abroad (art. 27/ 6 Reglement Dienst Buitenlandse Zaken; 24-11-1986), where access is restricted. Those are the posts in the armed forces, police, diplomatic corps, magistrates which are reserved for the Dutch nationals.

#### Legal basis

- | Art. 1 of the Dutch Constitution guarantees to the nationals of other origin the possibility to be employed in the public service provided that for the function in question there is no specific nationality condition;
- | By Dutch law (art. 5 Equal Treatment General Law; 01-09-1994) there is an equal treatment granted for the nationals and non-nationals as to the appointment, working conditions, training possibilities and dismissal;
- | Recruitment procedure in the public sector is open to all EU citizens; the competitions in the public sector are accessible via internet; there may be conditions requiring a good knowledge of Dutch language or a certain level of education; however the capacity to function on the level associated with a certain diploma is more important than the diploma itself (except for medical functions)

### II. Recognition of Professional Experience and Seniority

The Netherlands does not apply any career system – there is no automatic promotion but instead the candidate has to apply himself for the higher post/ function.

Whether the professional experience will be taken into account does not depend on the country where the working experience has been acquired but on the function/ post which the candidate is applying for (relevant working experience). Advantages concerning the seniority and professional experience are decided in each individual case according to merit and other qualifications related to the actual post. Generally, the previous professional experience influences the candidate's suitability and qualification for the individual post. The same rules as for the Dutch nationals are applicable for the nationals of other member states.

#### Legal basis

There are no explicit procedural or legal regulations on the recognition of seniority / professional experience;

More information:

[www.beroepserkenning.nl](http://www.beroepserkenning.nl)

[www.professionalrecognition.nl](http://www.professionalrecognition.nl)

### III. Other Legal Specificities of Cross-Border Mobility of Public Sector Workers

#### Equal treatment

There is no special competition procedure or special rules for the nationals of other member states; the foreign applicants are free to apply for posts in the public sector.

In general a good knowledge of Dutch language is required for the majority of the posts. The working conditions and application procedure are the same as for the Dutch nationals.

### Condition of legitimate residence

A general rule (Art. 5 Algemeen Rijksambtenarenreglement 01-12-2005) is that non-Dutch nationals wishing to work in the public sector must qualify for a legitimate residence in the Netherlands based on Article 9 or 10 of Dutch Immigration Law (Vreemdelingenwet; 23-11-2000). Furthermore, the legitimate residence must not exclude the possibility of paid employment. According to Article 8 of the Dutch Immigration Law all EU-citizens qualify for the legitimate residence. At this moment, there are working restrictions applicable for the eight new member states.

### Legal basis

Article 5e Equal Treatment General Law; (01-09-1994)

### Private sector

| Recognition of professional experience for the position in the public sector does not depend on the nature of the previous employment but on the fact whether the gained experience is relevant for the post/ function in question.

| Generally, recognition has financial (remuneration) and grading effects.

| The candidates from the private sector can be appointed to leading positions in the public sector.

### Legal basis

Equal treatment is specified in Article 5 of Equal Treatment General Law (01-09-1994).

## B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

There are exchange programmes and detachment possibilities for the public servants; The Dutch civil servants may be detached to the international organisations like NATO, OECD, Council of Europe, EU-institutions and Permanent Representation of the Netherlands in Brussels. There is also a possibility of the bilateral detachment in the public administration of the most European countries. These detachment possibilities are also open to employees of other origin already in service in the Dutch public sector.

## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. NATIONALITY CONDITION

#### Posts reserved for nationals

- | Auditors (e.g. National Audit Office for posts involved with areas reserved for UK nationals), Crown Prosecution Service (Case Review Officers determining whether or not to prosecute), Defence where special allegiance to the State is of direct relevance to, and essential for, the post
- | Departmental security staff (including IT security)
- | Enforcement powers of arrest, entry, search or seizure
- | Fast-stream trainees (most posts)
- | Foreign and Commonwealth Office (all posts in HM Diplomatic Service and most Home Civil Service posts)
- | Department for International Development (dependent on level of grade)
- | International negotiators (determined by grade)
- | Judicial appointments (administration of)
- | Department for Constitutional Affairs Court Staff
- | Policy advice and legislation proposals (primarily at the former G7 level and above)
- | Ministers' Private Offices
- | Revenue departments' collection and revenue assessment
- | Security and Intelligence Agencies (all posts)

#### Legal basis

Advisory "Indicative Criteria" established at national level.

#### Application in practice

These criteria are applied at departmental level as each department is responsible for the assessment of its posts and the exercise of its recruitment procedures. A post is labelled as reserved if it is decided that it complies with the criteria. A reserved post will be advertised with the restriction to UK nationals to prevent ineligible applications.

## II. RECOGNITION OF PROFESSIONAL EXPERIENCE AND SENIORITY

No seniority recognition; advantages are decided in each individual case according to merit and other qualifications related to the actual post; generally the previous professional experience influences strongly the candidate's suitability and qualification for the individual post.

- | Only professional experiences recognized.
- | Recognition does not depend on the nature of the previous employment.
- | Recognition of professional experience in the Private Sector if relevant to the job.
- | Recognition of seniority has financial (remuneration) and grading (pre-requisite for a job) effects.
- | Each department has its own procedural rules.
- | The authority which recruits personnel is in charge of recognition.
- | Each Department is autonomous regarding the application of the applicable rules.
- | No further information provided on procedural aspects.

Leading positions are accessible to anyone from the private sector with the required qualification.

An increasing number of civil service posts are being advertised for candidature outside the civil service and a higher number of senior posts are being taken up by candidates from the private sector. As recruitment is undertaken on the basis of competence and experience rather than seniority, only reserved posts would prevent non UK nationals from applying. Seniority will only influence starting salary negotiations as would any applicable qualifications.

#### Legal basis

The UK Civil Service recruits under the principles of fair and open competition as laid down by the Civil Service Commissioners. This states that in accordance with the Orders in Council everyone recruited into the Civil Service must be selected on merit on the basis of fair and open competition, apart from those appointed



under the exemptions and exceptions specified in the Orders.

More information can be found at:

[http://www.civilservicecommissioners.gov.uk/publications\\_and\\_forms/html/recruitment\\_code/part\\_2\\_applying\\_the\\_orders\\_in\\_council/appointment\\_on\\_merit/index.asp](http://www.civilservicecommissioners.gov.uk/publications_and_forms/html/recruitment_code/part_2_applying_the_orders_in_council/appointment_on_merit/index.asp)

### III. OTHER LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Please refer to exclusions shown in answers to Section 1.

#### B. OTHER ASPECTS OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

Short-term exchange programs for European Integration Training. This is increasingly being devolved to departments to make their own arrangements although a number of services are agreed and implemented through the Cabinet Office.

Partners: Member States, European Institutions, EC.

## A. LEGAL SPECIFICITIES OF CROSS-BORDER MOBILITY OF PUBLIC SECTOR WORKERS

### I. Nationality Condition

#### Posts reserved for nationals

In the Constitution of the Republic of Bulgaria are defined the positions that are reserved for citizens of Bulgaria only: the judiciary, the tax authorities, some posts that are related to the exercise of public authority, the civil servants and the customs. All these positions are described in different laws and articles.

#### Legal basis

The Constitution

#### Application in practice

This legislation is strictly applied.

### II. Recognition of Professional Experience and Seniority

Some of the positions in the State Administration require a certain level of professional experience. This is mentioned in the Approved Classification of the Positions in the State Administration. It is divided into 5 sections: position level, position title, required education level, required rank and required experience.

#### Legal basis

It is set in the Regulation for the Official Status of the Civil Servants.

### III. Other Legal Specificities of Cross-Border Mobility of Public Sector Workers

A legal specificity of the cross-border mobility is the requirement of at least an agreement of the three parts: the present employer, the new employer and the civil servant.



## ACCESS ON CIVIL SERVICE POSITIONS IN THE ROMANIAN CIVIL SERVICE SYSTEM

### 1. Legal background

The access to civil service in Romania is settled by the provisions of the following normative acts:

- | Law no. 188 from 1999 regarding the Statute of civil servants and Government Decision
- | Government decision no. 1209 from 2003 regarding the organization and the development of the civil servants' career.

The Law no. 188/1999 was republished in 2004 and comprises general provisions regarding the classification of the civil service positions and of the civil servants, the establishment of a new category of high ranking civil servants, the responsibilities of the National Agency of Civil Servants, the register of the civil service positions, the rights and the duties of the civil servants, provisions on the civil servants' career (recruitment, probation period, nomination, promotion, parity and discipline commissions, discipline sanctions and civil servants' accountability), provisions on the modification, the suspension and the ceasing of the service relations.

In 2006 a new draft law on the Statute of Civil Servants has been prepared as a result of assessing the implementation of the current legislation. The law is currently under discussion in the Parliament.

In accordance with GD no 1209/2003, the National Agency of Civil Servants (institution subordinated to the Minister of Administration and Interior) is the institution responsible for the recruitment of the leading civil servants, besides the chiefs of services and the chiefs of bureau. The examination board and the conditions for participating to the contest are approved by order of NACS's president. The contest is announced and organised by NACS, upon request of the line ministry.

In 2005 was endorsed the Emergency Ordinance no. 179 for modifying and completing Law no. 340/2004 regarding the prefect institution. Thus, starting with 1st of January 2006, the

prefects and sub prefects are high civil servants, whose selection is supervised by a permanent Commission established by decision of the Prime minister. Also, the function of prefecture general secretary becomes sub-prefect function. The prefects and sub-prefects are politically neutral and they follow the general rules on mobility, applicable to all high civil servants.

In 2006, the Emergency Ordinance no. 1 regarding certain measures on strengthening Romania's administrative capacity with a view to EU accession was endorsed. The purpose of the ordinance is to ensure a sufficient number of staff within all structures responsible with EU accession and management of EU funds.

### 2. Access modalities on civil service positions

The vacant public positions can be filled in by promotion (internal recruitment), transfer, redistribution, or by contest (external recruitment).

#### 2.1. Promotion

As regards the promotion, civil servants can promote from a lower ranked executing public position to a higher ranked one by passing an exam and by fulfilling certain conditions – a minimum period of length in the rank, at least the 'very good' mark obtained in each of the last two appraisals and meeting the job description requirements of the new position.

#### 2.2. Transfer

As regards the transfer, as a means of recruitment, it may take place between public authorities and institutions, as follows:

- | in work interest;
- | at the civil servant's request.

Transfer is possible to a public position for which the respective civil servant meets the job description criteria.

### 2.3. Redistribution

As per the redistribution, the law stipulates that the civil servants released from the public positions on grounds not related to their guilty form the reserve body. They have priority in occupying the vacant public positions before the organization of a contest in this regard. The National Agency of Civil Servants reassigns the civil servants from the reserve body to a public position equivalent to the civil servant's one, but may be done also to a lower-level vacant public position, with the civil servant's written agreement.

### 2.4. Contest

The contest is based on the principles of open competition, transparency, professional merits and competency, as well as the equal access to public position for each citizen who fulfils the legal conditions to participate in the contests.

The contest conditions are published in the Official Journal of Romania, in largely published daily newspapers, made public by displaying them at the headquarters of the institution that organizes the contest and on its website as well, in order to attract as far as many competent candidates.

#### 2.4.1. Institutions responsible with the contests

The contests are organized and managed by:

- | The examining board decided by the Prime Minister - for the high civil servants;
- | The National Agency of Civil Servants for the public leading positions (except for Head of Unit and Head of Office);
- | Public authorities and institutions within the central and local public administration - for the executing public positions, leading public positions of Head of Unit and Head of Office and for the vacant specific public positions, with the prior notification of the National Agency of Civil Servants;
- | The National Institute of Administration - for the specialized professional training, with the aim of being appointed to a public position, with the prior notification of the National Agency of Civil Servants.

#### 2.4.2. The Annual Manpower Plan

The National Agency of Civil Servants has the legal responsibility of planning the human resources management within the public administration via a managerial tool called the Annual Manpower Plan, meant to provide a better management of civil service and public positions. This Plan is drawn up on the basis of the proposals of the public authorities and institutions concerning the number of vacant public positions and the way of occupying these public positions, based on consultation with the civil servants' trade unions that are representatives at the national level.

The plan is subject to approval by the Government. Since the content of the plan sets the nominal ceiling for recruitment and promotion (some easements are allowed), it is worth setting out in full. It provides the following:

- | The number of public positions reserved for the promotion of civil servants who meet the legal conditions.
- | The number of positions to be reserved for the graduates of the programmes of specialized training in public administration organized by the National Institute of Public Administration or by similar institutes abroad.
- | The number of public positions to be filled by contest.
- | The number of public positions to be established .
- | The number of public positions to be subject to reorganization.
- | The maximum number of public positions for each class, category and professional grade.
- | The maximum number of leading public positions.

Exceptionally, it is possible to organize a contest where the vacancy is not included in the Annual plan. Public authorities can do this, or ask for it to be done, depending on the grade of the post, when a public position becomes vacant during the year due to unforeseen circumstances.

### 2.4.3. Requirements for filling a public position

The requirements for filling a public position refer to:

- | being a Romanian citizen residing in Romania;
- | knowing spoken and written Romanian;
- | being at least 18 years old;
- | having full exercise capacity;
- | being in a health state that fits the public function for which he/she competes; health fitness shall be attested to by special medical checking;
- | meeting the legal requirements related to the education background needed for the public position;
- | meeting the specific requirements entitling him/her to the public position;
- | not having been sentenced for crimes against humanity, offences against the State or the authorities, job offences, obstruction of justice, forgery, corruption or any other knowingly committed offence that would make him/her incompatible with holding a public position, with the exception of cases when rehabilitation occurs;
- | not having been dismissed from a public position in the past seven years;
- | not having conducted political police actions as defined by the law.

### 2.4.4. Procedures

#### | Preliminary activity regarding contests

A public institution or authority is obliged to seek the approval of the National Agency of Civil Servants at least 45 working days before the date of the contest. The Agency is required to respond to the request within 10 working days from its receipt. The request for approval must cover the following:

- | The date, time and place of each test of the contest.
- | The vacant public position(s) for which the contest is organized.
- | The educational qualifications needed.
- | Specific conditions within the job description.
- | The score for fulfilling the last two conditions.
- | The bibliography and theme for the contest.
- | Other information about organization or conditions of the contest.

In cases where the contest is to be run by the National Agency of Civil Servants, all the preceding arrangements apply. The only difference is that the contest is approved by order of the President of the National Agency on proposals made by the public institutions and authorities on whose roll the vacant public positions occur. Publication of the details about the contest in these circumstances is the responsibility of the National Agency of Civil Servants.

#### | Notification of contest requirements

The National Agency of Civil Servants must be informed of the contest requirements for occupying a general public position and must give its approval before the contest takes place. The notification is made by the public authority of institution proposing the contest. The approval of the Agency is not required for contests for specific public positions. In that case the contest requirements are to be settled by the concerned public authorities or institutions. But the Agency must be given prior notice of the contest.

#### | Public notice

When a contest is to be held, its requirements shall be published on the Official Journal of Romania, at least 30 days before the contest date. This is to be done by the public institution or authority organizing the contest. There is also a requirement to give notice of the contest and to publish its requirements on the web page of the public institution or authority and at its headquarters.

#### | Appointment of the successful candidates

Candidates who meet the minimum pass mark of 100, with the condition of scoring at least 50 in any test, are placed in descending order according to their final mark. The candidate with the highest mark is the successful candidate. Similarly, the candidates with the highest marks are the successful candidates if more than one position is being offered. Appointment is then offered to the successful candidate(s) under the arrangements set out in Law 188/1999 and dealt with above. An administrative order is issued by the head of the public institution or authority (within 15 days

from the announcement of the results of the contest) and attached to it is a description of the duties of the post. If a candidate declared successful does not take up appointment on the due date, the post is offered to the next successful candidate on the list, and so on. If there is no successful second or subsequent candidate, the post remains vacant and a new contest is organized.

Directors General responsible for public administration and TUNED met on 29 May 2006 for a joint seminar on the topic of mobility in Vienna. At this seminar Mr Jérôme Vignon, European Commission, gave a keynote speech on mobility the wording of which is reflected below. Furthermore the study on cross-border mobility of public sector workers conducted under the Austrian Presidency was presented to the delegates. This study built the basis for the joint declaration on mobility which was agreed at the joint seminar. The wording of this document you can find at the end of this Annex.

### MOBILITY OF WORKERS AND PORTABILITY OF SOCIAL RIGHTS IN THE EUROPEAN LABOUR MARKET

Speech of Jérôme Vignon,  
Director "Social Protection and Integration"  
DG Employment, Social Affairs and Equal  
Opportunities, European Commission

I feel very honoured to have the opportunity to present the interrelated issues of mobility of workers and the ongoing protection of their social rights, in the context of this open seminar and as part of the social dialogue between the DG for public administration and representatives of the public services Union across the EU.

Following your focus on mobility, I shall mainly speak to four issues, and continually try to reflect on the particular aspects pertinent to civil servants' mobility across the EU:

- | Firstly, I shall review the basic legal framework established by the EU for free movement of workers.
- | Second, I shall look at the recent facts on the mobility of workers, across the EU and also within Member states.
- | Third, I shall set out the extension of the scope of the basic legal framework, while considering the portability of supplementary (occupational) pension schemes.
- | Lastly, I shall introduce the aims of the European Year of Workers Mobility.

### 1. Reviewing the basic legal framework for workers' mobility across the EU

1.1. As the anniversary of the Treaty of Rome approaches, it is good to remember that the original and fundamental feature was the aim of establishing the Four Freedoms (freedom to exchange goods, services, capital and freedom for workers to move across the EU). The fact that the recent Enlargement could be undertaken only after the negotiation of a seven-year transition period, emphasises the key importance of free movement of workers.

This entitlement to free movement is not an abstract or theoretical issue: it is supported by the principle of equal treatment, which underpins in particular the key Regulation 1408/71, whose aim is to ensure that, as far as statutory social security schemes are concerned, EU citizens and their families travelling or residing abroad, benefit from the social security rights as if they were nationals of the host Member states.

One of the branches of social security to which the Regulation applies concerns old-age benefits. I will concentrate on this issue because the continuity of pension rights is the general focus of your discussion.

With regards to pensions, the EU Regulation adopted in 1971 provides that each Member State where a person has acquired pension rights during the working life is obliged to pay a pension commensurate with the insurance periods completed in this Member State when the person reaches pensionable age. The Regulation therefore does not provide for the transfer of contributions from one Member State to another. If a person has completed pension periods in more than one Member State, but does not fulfil the qualifying period that might be required by one of the Member States in order to acquire an entitlement to a pension, the periods completed in the other Member States will have to be taken into account – this is referred to as "aggregation of periods".

Importantly, the Regulation also stipulates that the pension must be exportable, i.e. it must be paid without any reduction, change or suspension



if the pensioner resides or stays in another Member State.

Furthermore, the Regulation has specific rules on how each Member State has to calculate the pension if a person has completed pension periods in several Member States.

1.2. These rules apply for pension periods completed under a statutory general pension scheme.

With regards to the public sector it means that it applies to those persons who work in the public sector and who are covered by a general statutory pension scheme. As a consequence of a Court Ruling (the Vougioukas Case), an amending Regulation to 1408/71 entered into force in 1998, extending it to special schemes for civil servants.

The same rules therefore also apply for pension periods completed under a "special scheme for civil servants", but with one exception: there is derogation from the aggregation principle. In fact, the Regulation provides that periods completed in another Member State do not have to be aggregated with periods completed in the special scheme for civil servants of a Member State, if this Member State's national legislation does not provide for it. But where national law does not provide for such an aggregation, the Regulation nevertheless avoids a possible loss of periods and pension rights by providing that this Member State must then take into account these periods under the general scheme.

The Regulation therefore ensures that a civil servant who has completed periods under a special scheme for civil servants will not lose pension periods. The pension may, however, be a pension under the general scheme and not under the special scheme for civil servants. This may again imply that the person will receive a lower pension than that which he could have received had he only worked in one Member State - as pensions under a special scheme for civil servants can be higher than under a general scheme. However, the Court clarified that the Treaty does not guarantee that extending, or transferring, one's occupational activities into other Member States must be neutral as regards social benefits.

## 2. Some new evidence about workers' mobility

2.1. Now, I wish to reflect on present trends and statistics with regards to workers' mobility in general.

At the beginning of the seventies, when the Treaty of Rome was being implemented, the main issue was the enforcement of European citizens' fundamental social rights and in practice for EU policy makers, there was not a great deal of discussion about its working in practical terms. The exception to this was the Administrative Commission for the Social Security of Workers, which accumulated a tremendous amount of expertise and an impressive record whilst establishing a solid network of relations across national Social Security administrations. Indeed at this stage nobody cared about the significance of workers cross-border mobility.

Things have changed with the emergence of an EU-wide Policy on this issue, dealing first with the European Enlargement Strategy from 1998, and to an even greater extent following the adoption of the Lisbon Strategy on Growth and Employment. In 2005, the revised strategy for Growth and Employment, identified mobility as a key instrument to achieve the objectives set by the Heads of State and Governments in 2000. It highlights occupational and geographical mobility as useful mechanisms to boost growth. It emphasises how mobility can help us to exploit job opportunities more widely in the EU, and how it can make our markets more efficient and responsive to change. We need to allocate our labour force potential in the most productive way possible to confront declining working age populations, especially when structural changes in our economies are increasingly linked to jobs being destroyed in one enterprise or sector and new more innovative or productive jobs being created somewhere else. Making it easier for workers to move from one job to another is paramount for growth and employment.

At the same time, people in Europe also feel strongly about mobility and the right to free movement of workers. A recent survey, conducted by the EU among 25,000 people, reveals that two-thirds of European citizens consider mobility as a

useful means to acquire new skills, experience new cultures and working environments, and adapt to the rapidly changing labour environment in the EU. Moving around the Union is a fundamental right and something that people feel is positive.

Yet, when it comes to specific figures, certain elements of mobility remain extremely low. As regards cross border mobility, less than 2 % of EU citizens of working age actually live and work in another EU Member State, a percentage that has not increased significantly for over 30 years.

The picture is somewhat different for job-to-job mobility. Around 8 % of workers change jobs every year and slightly more than a quarter of all workers are with the same company for less than 24 months. This is juxtaposed against a figure of around 40 % of workers remaining with the same employer for 10 years, a figure that reaches almost 50 % in several countries. The average duration within a specific job for a US citizen is 6.5 years, against between 8 to 10 years in the average EU Member state.

These numbers are indicative of the emergence of a dual labour market with a small, highly mobile group of workers in contrast to a static majority. A large group of these mobile workers are often obliged to change jobs because of sectorial factors or due to the precarious employment relationships they are in whereas there is little or no 'mobility culture' amongst the rest of the European workforce. Paradoxically in the EU work has become mobile while many workers have not.

If I may summarise, the wealth of recent information which the Commission and Eurostat were able to collect in the last two or three years (notably since the monitoring of the first phase of Transitional Arrangements after the recent enlargement to 10 new Member states) highlights 4 major facts and trends which are worth considering:

I EU citizens continue to attach a fundamental value to the freedom of moving within the EU. It is after the maintenance of peace, the second most valued benefit from membership.

I Measured through static observation (Population Census, Labour Force Survey), very few EU citizens make an effective use of that right, at least for occupational motivation. Cross-border mobility and more generally geographic mobility is still perceived, despite of the facilitating EU framework, as ensuring huge costs, essentially because of the effects of uprooting from a local region.

I Evidence from labour market trends nevertheless suggests that occupational mobility, hence geographical and cross-border mobility will increase in the future. Therefore more and more European citizens and their families, notably spouses, will be confronted with the need to face a geographical move..

I Evidence also suggests that cross-border mobility is de facto increasing within the EU, but not in the form of "expatriation". More and more, the stagiaires, the researchers, the detached workers are moving for short duration across the borders. These short term moves present us with new problems, but also new opportunities:  
- New problems because it is much more difficult to comply with complex EU legislation, if the duration is short,  
- New opportunities, because short duration moves will pave the way for longer term moves later on.

2.2. To what extent are these considerations also true for the mobility of civil servants?

Well firstly there are currently almost no available figures though we would expect the percentage of EU citizens working in public administrations (outside their country of origin) in the majority of Member states to be less than 1%. Nevertheless, as I mentioned earlier, there are compelling reasons for young academics involved in research to travel abroad in order to improve their curriculum vitae. I could also mention the evidence of cross-border moves for medical professionals. The need for geographical mobility will also increase in the public administrations. Some regional administrations, as in Bavaria, make it compulsory for recruitment adverts to ask for international experience.

In addition, it is not possible to disentangle the cross-border mobility of private and public workers. Mobility is very often the mobility of a couple and many two-breadwinner couples consist of both public and private workers.

2.3. Therefore, even if your main concern is about public servants, you might share the motivations of the European Commission, when promoting or facilitating the cross-border mobility of workers in general. Not only do we work to remove obstacles to receiving the full benefit of existing EU rights, but we also work to stimulate co-operation in order to alleviate the individual costs of cross-border mobility.

This is what I wish to illustrate now, by presenting two specific and recent initiatives of the European Commission.

### 3. Extending the scope of portability of social protection rights to supplementary pensions.

3.1. The first issue is much focussed. It deals with extending the scope of portability of social protection rights to supplementary pensions. We call it in Brussels "the Portability Directive" even if it is centred upon occupational pensions (predominately funded pension schemes).

As I said from the beginning, the EU Regulation on co-ordination of social security entitlement covers only statutory legally based rights. As pensions reform across the EU tend to give an increasing importance to "supplementary" occupational pension schemes (one expects that by 2040, around 60% of workers will be covered by such occupational pension schemes and it might represent 10 to 15% of pension's coverage), the issue of securing "portability" has been a subject of discussion for a long time.

3.2. Since this is an issue of particular interest to the public sector, I would like to give a short overview of the state of play at the European level.

The proposals resulted from two consultations of the social partners at the European level - that despite the recognition of the need to take action,

negotiations between employers and employees' organisations at EU level were not forthcoming. Therefore, after more than a decade of discussions on this matter, a proposal for a directive was prepared by the Commission together with all relevant stakeholders and adopted by the Commission on 20 October 2005.

The proposal takes an important step to increase the compatibility of supplementary pension schemes with the requirement of a more mobile and flexible work force combined with a high level of social protection.

It covers those supplementary (employment-related) schemes, including public sector schemes, not falling under the Regulation 1408/71.

It respects the diversity of supplementary pension provision in the Member States and concentrates on the most important obstacles to mobility identified in partnership with the representative stakeholders of the Pensions Forum. To that end, it sets out three main types of basic requirements which should apply across the EU:

The first requirement aims at facilitating the acquisition of occupational pension rights

This contains the following measures:

- | A worker who has not yet built up any acquired rights within the supplementary pension scheme but who has already paid contributions should not lose them. Accordingly, these contributions should be reimbursed or transferred in full.
- | The requirement for a high minimum age for accrual of pension rights is a major disincentive to the mobility of young workers if an individual moving before reaching this minimum age loses their pension rights. A worker must therefore have vested pension rights at the latest by the age of 21.
- | The waiting period during which a worker cannot yet become a member of the scheme should be reduced. This period should not exceed one year (unless a minimum age has not yet been reached).
- | The period of membership to be completed before the worker obtains acquired rights (vesting period), should be limited. This period should not

exceed two years. The proposal foresees here some flexibility to take into account the financial sustainability of schemes; Member States can apply a transitional period of five years to implement this provision.

The second group of provisions aims at guaranteeing an adequate protection of dormant rights of outgoing workers

A mobile worker should not have to suffer a considerable reduction in the acquired rights he has left within the supplementary pension scheme under his former employment relationship. Member States have different instruments for making this adjustment, depending in particular on how the rights of active members develop. The proposal does not impose any specific measure, but recognises the existing practice in some Member States while giving other Member States the incentive to do likewise.

The third group of provisions aims at facilitating the transfer of acquired pension rights

Under the proposal, the outgoing worker should have the choice between maintaining his rights within the supplementary scheme of his former employment relationship and the transfer of his acquired rights, unless his new job is covered by the same supplementary pension scheme.

The proposal contains flexibility in order to take into account the financial situation of unfunded schemes (bookreserve, pay-as-you-go).

And last but not least, the final provision aims at ensuring appropriate information of workers in the event of professional mobility

The proposal builds upon already existing information requirements and aims to ensure that every potentially outgoing worker, irrespective of whether or not he is a member of a scheme, receives information on how terminating an employment relationship could affect his supplementary pension rights.

The proposal recognises explicitly the role of the social partners in this area and foresees the

possibility to implement the provisions of the directive through collective agreement.

Finally I would like to highlight that the proposal does not deal with fiscal matters. The Commission has decided to examine possible obstacles created by fiscal regulations directly on the basis of the Treaty principles of non-discrimination, free movement of capital, workers and services. In the field of cross-border contributions, the Commission, supported by several Court rulings (Skandia-case in particular), has already made good progress in getting Member States to adapt their fiscal systems to avoid infringements of these Treaty principles. It is expected that the Commission will examine over the coming year the fiscal treatment of transfers.

As indicated, this proposal is only a first step, but it is an important one, particularly in the context of efforts to introduce more "flexicurity" in Europe's labour markets. It will now be up to the Member States and the European Parliament to find an agreement on the basis of the Commission's proposal.

#### 4. The European Year of Workers' mobility

Nevertheless, beyond the relevance of the legal EU framework ensuring that mobile workers are not penalised in their social rights, there is clearly a need to broadly encourage what I would call a "European mobility culture". It is not advocating mobility as a panacea, even if calculations suggest that the number of Job vacancies unfilled because of lack of geographical mobility is around 2 to 3 millions. It rather aims at:

- | Encouraging potentially mobile workers
- | Mobilising the various partners involved in order to reduce or better share the costs of mobility.

4.1. More concretely, the objectives of these years European Year for Workers' Mobility are threefold:

- | to spread awareness about the fact that mobility is a right, enshrined in the EU treaties;
- | to enhance the exchange of experiences and good practice, particularly from those categories of the population that have promoted mobility in the past – larger companies, for instance;

I finally, to develop our knowledge base about the role, impact, costs and benefits of mobility for the European workforce.

Three types of activities are organized under the umbrella of the European Year:

I EU level events and activities: we had a successful launch conference which gave wide publicity to labour mobility, there will be a social partners conference, a seminar for lawyers, and for those interested in practical mobility a Europe-wide job fairs organised simultaneously in a score of cities in the EU,

I Community financed events and activities: the Commission launched three calls for proposals I highlight a few of the supported activities:

- The European Confederation of Executives and Managerial Staff (CEC organised on 5 May in Vienna a conference on Managers' Mobility and Employability by) and the European Trade Union confederation will organise a conference in November in Brussels on life-long learning and mobility.

- 31 projects out of 240 applications on awareness raising were chosen: for example a bus travelling over Europe with the aim to explain to citizens their rights. Mobility in action!; TV sessions about mobility on ARTE; we also support a study on mobility of nurses and midwives.

- (Open call (2 Mio €) for the organisation of co-operation activities and pilot projects related to the overall objectives of the year – published on 25th May (in OJ and on the site of the EY))

I Other events and activities: Initiatives undertaken by any public or private organisation can gain added publicity by linking into the EY. As long as the activity contributes to the Year's objectives, it can use the logo and other materials associated with the EY.

Given the large scope of the issue and the number of actors involved, the European Year has been designed as a bottom up initiative open to all stakeholders and to all sectors of the economy. All initiatives will contribute to a new set of policy orientations to be developed at the end of the Year.

In a practical demonstration of the year's goals the Commission is ensuring that the EURES system fully supports mobility. There are now about 1 million jobs available on the new EURES Workers'

mobility portal (in 20 EU languages), which provides direct access to all job vacancies published by the public employment services. The portal also offers comprehensive and up to date information on living and working conditions in Europe in all EU languages. People can post their CV free of charge and employers can find suitable candidates.

4.2. All these issues are relevant for the public sector; in many Member States the public sector is a large part of the employment market and we know that especially in the teaching and health sector there is a lot of mobility between Member States.

With one exception (some posts in the public sector may be restricted to their own nationals if they involve the exercise of public authority) all public sector workers (civil servants and employees) benefit from the right of free movement of workers in the same way as any other migrant workers (in particular equal access to employment; equal treatment in relation to working conditions and social and tax advantages etc.)

Mobile public sector workers are however confronted with some additional obstacles not present in the private sector: The Austrian Presidency took the initiative to update and complement the information previously collected by the HRWG (Human resources Working Group) from the EU-15, to include information from the EU-25 + Bulgaria). As the next session is dedicated to this study I do not want to elaborate further on this now, safe to say that we have had numerous comments and complaints and we recognise the importance of this issue.

## 5. In conclusion

EU action on different levels is already promoting mobility in the EU across and within Member States. I have mentioned the EURES system offering job vacancies. I have emphasized the importance of the coordination of social security which helps workers who move from one country to another to preserve their social security rights, hence contributing hugely to cross-country mobility being a practical option. The most recent initiative on the portability of occupational pension rights will com-

plement these important efforts for the removal of obstacles to mobility, in a changing social security landscape. Many of these actions are of relevance for the private sector and increasingly so for the public sector. As the public sector evolves and adapts in all Member States your views, comments and experiences are vital to ensure that these developments provide for a mobile, skilled and modern workforce in the future.

### JOINT DECLARATION

In the framework of the informal social dialogue between EPAN and TUNED both sides came to the following conclusions during their discussions at the joint seminar held in Vienna on 29 May 2006.

Pursuant to the first joint seminar held in Gateshead in December 2005 Austria has introduced the theme of Mobility in the first semester of 2006 for substantive discussion between Directors General and the trade union delegation. This topic respects both the work of the EPAN Human Resources Working Group and complements the European Year of Workers' Mobility 2006. During an informal consultation process the trade union delegation agreed to hold a further joint seminar on this topic in Vienna in May 2006 and to jointly prepare this seminar during the second Troika Secretariat Meeting in Vienna in March 2006 as a further contribution to an improved European informal social dialogue.

Thus, the joint seminar especially focused on two issues concerning Mobility:

- | European Year of Workers' Mobility 2006 – Mobility (geographical and occupational), Portability of Social Rights in the European Labour Market
- | Cross-border mobility of national administration workers

The presentations during the seminar highlighted the progress in the legal framework and administrative practice in the implementation of the EU workers' right to cross-border mobility in the national administrations of the Member and Accession States. It also displayed initiatives on the European level to foster mobility and remove obstacles as well as the importance of jointly devel-

oping measures for the benefit of employees, employers and quality administrations. These stimulated valuable discussions within the informal social dialogue.

Directors General and the trade union delegation are aware that Europe needs to adapt to population ageing, rapid structural change and globalisation and that public administration play an essential role as employers and guarantors of the general interest. In this context the revised Lisbon Strategy highlights, among other policies, the importance of mobility of workers within and across Member States for improving the growth and employment. With the campaign of the European Year of Workers' Mobility 2006 the Commission promotes mobility in many practical ways such as through establishing the EURES Portal but also through making progress in removing obstacles for mobility and developing a framework on competences, skills and qualifications and other workers' rights. There are a number of actions on the Community level relevant for this aim including the coordination of social security across Member States and the proposal for a Directive on the Portability of occupational pension rights. Many of these issues are also relevant for those responsible for public employment, notably as the public sector is undergoing change and mobility is becoming a more and more integral part of working life, also of those working in the public sector.

Directors General and the trade union delegation acknowledge the conclusions drawn in the study on Cross-Border Mobility of Public Sector Workers presented by the Austrian Presidency and encourage all public administrations and social partners in the Member States to further improve, jointly, the legal framework of mobility of public sector workers, taking due account of the civil service specificities.

They recognise that improving the quality of mobility goes hand in hand with investment in jobs on all levels of the Member States in both the public and the private sector as a guarantee for territorial, social and economic cohesion across the EU.

Vienna, 29 May 2006, signed by Mr Emmerich Bachmayer, Chair EPAN, Mr Peter Waldorff, Chair TUNED



