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## From Statute to Contract Regulating the Employment Relationship in the Public Sector

by

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### *Abstract*

*The public sector in European countries has been swept up in general economic restructuring. This has had a marked impact on many aspects of industrial relations and personnel management in the public sector. In most countries, the growth of public employment has been slowed, while structures of bargaining, pay determination, job classification, career structures and so on have been the subject of reform projects. In Belgium, there is one constant which keeps turning up in all reform projects: doubt concerning the tenability of the principle of statutory employment. In the present work we will attempt to lay bare the core of the debate concerning the future of statutory employment.*

### **Introduction**

Governments intervene in industrial relations in many ways, and thus influence these relations to quite a large extent. Hence, differences between national systems of industrial relations can partly be related to the types of government intervention found in the various countries (Van Waarden, 1995). It is important to note, however, that the government also acts as a direct negotiating party. Each government has to deal with organisations representing its employees: civil servants, employees working in the subsidised sectors and those working in state-owned companies. Several governments have even tried through their own employment policies to set an example for private employers (Beaumont, 1981).

The public sector in European countries has been swept up in general economic restructuring. This has had a marked impact on many aspects of industrial relations and personnel management in the public sector (Ferner, 1994). In most countries, the growth of public employment has been slowed, while structures of

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bargaining, pay determination, job classification, career structures and so on have been the subject of reform projects (OECD, 1995). In Belgium, there is one constant which keeps turning up in all reform projects: doubt concerning the tenability of the principle of statutory employment. In the present work we will attempt to lay bare the core of the debate concerning the future of statutory employment<sup>2</sup>. This will be done in five steps.

1. *Statute and contract: functional equivalents.* Firstly, we point out the differences between statutory and contractual employment. The statutory appointment is the usual manner of regulating the employment relationship in the Belgian public sector.
2. *The problem: fossilisation of internal markets.* The principal criticisms of statutory employment are set forth in the second section. The main point is that the statutory rules increase the rigidity of the internal labour market.
3. *The remedy: decentralisation.* An accelerated decentralisation of collective bargaining is taking place in the Belgian public sector. Decentralised regulation is meant to enable the creation of custom-designed statutes for the various segments of the public sector. We outline the process as it is taking place in the sector of the state enterprises.
4. *The loophole: subsidiarisation.* Although decentralisation already enables greater differentiation in the personnel statutes, most public managers have their sights set on employment by contract. It is particularly because of the processes of 'subsidiarisation' that increasing numbers of personnel are seeing their employment relationship contractualised.
5. *The alternative: a flexibility debate.* In the concluding section, we argue that the controversy about 'statute versus contract' should make way for a serene debate on the proper degree of functional and numerical flexibility within the various segments of the public sector.

## 1. Functional equivalents, different effects

The term 'employment relationship' can be traced in the English-language literature to such authors as Fox (1974), Littler (1982), Barbash (1984) and Williamson (1985). The term refers to the conditions under which an employer decides to pay for the labour of an employee and under which this employee decides to sell his labour to the employer in question. Under these conditions, the employer expects

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<sup>2</sup> A previous version of this paper was presented at the IREC Conference 1996 on 'Industrial Relations in Europe: Convergence or Diversification?', FAOS, University of Copenhagen.

an overall orientation in conformity with the formal action-related expectations in force in the organisation (Luhmann, 1972).

In the private sector, the employment relationship is partly concretised in a labour *contract* between employee and employer (Huiskamp, 1995). Men and women become members of the organisation by signing a contract whereby the employee promises the employer to obey his orders, to work under his control and to follow his instructions. The employer promises to reward the services rendered in accordance with the principles laid down in the contract. The fundamental principle of employment by contract is the possibility of negotiation concerning the provisions to be written into the contract. Whereas, in the private sector, the relationship between employee and employer arises after the signature of the contract, in the Belgian public sector this is often governed by a *statute*. The statute can be described as a regulation of the relationship between the government and its employees, as established by general administrative order (Janvier and Rigaux, 1987).

Various details concerning the importance of statutory employment in different branches of the public sector are presented in Table 1.

**Table 1.** Percentage of personnel employed under a statute versus employed by contract (1995)

	Employees	Statutory	Contractual
Federal Government Ministries <sup>1</sup>	59.432	78.6	21.4
Ministries of Communities and Regions <sup>1</sup>	25.133	76.4	23.6
Local Authorities and Provinces <sup>1</sup>	244.729	55.0	45.0
Education Flemish Community <sup>2</sup>	131.982	80.8	19.2
National public interest bodies <sup>1</sup>	21.192	65.8	34.2
Public interest bodies Communities/Regions <sup>1</sup>	30.440	58.6	41.4
Post Office <sup>3</sup>	46.597	90.1	9.9
Belgacom (parent company) <sup>4</sup>	24.908	90.0	10.0
Railway company (parent company) <sup>5</sup>	41.891	97.9	2.1

Source : <sup>1</sup> 'Aperçu des effectifs du secteur public', Ministry of the Interior and the Public Service

<sup>2</sup> 'Statistisch Jaarboek van het Vlaams Onderwijs', Ministry of the Flemish Community

<sup>3</sup> Annual Report 1995 of the Post Office

<sup>4</sup> Annual Report 1995 of Belgacom

<sup>5</sup> Annual Report 1995 of NMBS/SNCB

Statute and contract are *functional equivalents*. Both contribute to the solution of the same problem: the stabilisation of mutual expectations of employer and employee (Luhmann, 1972, 1992). The elements that make up the labour contract, in other words the performance of work in return for a wage under the authority of an employer, are also present in the statutory employment. Subordination to an employer is common to both systems. Whereas subordination in the private sector

has a contractual basis, it generally ensues from entering into a statutory regulation in the public sector. Moreover, it is important to note that, in the private as well as in the public sector, the employment relationship covers a field much wider than does the individual labour contract (private) or the personnel statute (public). Only part of the employment relationship is written down in the contract or the statute. Statutory or contractually regulated, the employment relationship is given shape in a permanent system of negotiation, since under modern conditions of economic action under uncertainty the precise nature of the activities required by the employer in the future cannot be known at the time of concluding the contract or entering a statutory regulation (Barnard, 1950; Barbash, 1984; Streeck, 1992).

As well as functional equivalencies and similarities, there are also many differences between statute and contract. The major difference between these two techniques of regulating the employment relationship rests in the fact that, in case of statutory employment, the government can unilaterally determine the terms and conditions of employment. The 'principle of variability' implies specifically that the personnel statute must be capable of being unilaterally adapted to the 'ever-changing requirements of the general interest' (Déom, 1990). The legal regulation of the employment relationship in the public sector is therefore not, in principle, open to negotiation. Although public authorities are obliged to bargain, they are not legally bound by the outcome (Vilrocx and Van Leemput, 1992). Whereas the contractual relationship is (in theory) a coming together of free wills<sup>3</sup>, the statutory appointment is best described as the entry into a general regulation, or as the 'subordination of the individual will to the general interest'.

The most striking difference concerns the *security of employment*. The private-sector employer enjoys de facto the power of dismissal. True, this right is limited to some extent by employment protection measures, but no employer can be made to continue to employ a person he wishes to dismiss. Personnel employed under a statute can only be dismissed in certain exhaustively described cases. This principle forms the basis of security of employment. The most important function of this employment security is that of providing a legal guarantee against arbitrary dismissal or relocation. Security of employment must protect the public servant against political capriciousness and give him the necessary independence to use

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<sup>3</sup> In spite of the voluntary agreement principle of contract, the entrepreneurial right of management (essential to the utilization of labour as a commodity), implies a continuous one-sided redefinition of the employee's duties of performance by the employer. The fully developed labour contract is an unequal contract insofar as it contractually specifies the rights of the employee and the obligations of the employer, while the rights of the employer and the obligations of the employee remain in principle 'open', that is 'diffuse' and status-like (Streeck, 1992).

his expertise to the full. In this sense, it guarantees continuity of authority (Weber, 1978). It is precisely the instability of politics which justifies the stability of the civil service.

A second function of statutory employment security is much less obvious. One essential feature of organised social systems is that membership can be terminated. Rebellious behaviour frequently leads to dismissal. The threat of dismissal is an instrument of power for the organisation (Luhmann, 1979, 1991). However, members can also decide to take action themselves. They can decide to leave. The finite nature of membership therefore also implies risks for the organisation, in that it threatens its stability and continuity. In situations where members are tempted to leave the organisation or during periods when there are sufficient alternatives (e.g. labour market shortage), organisations will need structures which block the 'exit' tendency and make them less dependent on their members when changing their rules (DiPrete, 1993; Hirschman, 1970; Luhmann, 1975). Government bureaucracies have therefore turned their doors into fishnets. Members can get in but, once inside, find it hard to get out. After all, personnel employed under a statute cannot resign except in a number of exhaustively described cases. This must permit government unilaterally to impose and amend measures affecting its employees, without provoking them into a mass exodus.

Another major difference between statute and contract is the *statutory post system*. In the public sector, applicants are usually exclusively recruited for one specific post. Moreover, statutory personnel is appointed into a grade corresponding to a certain rank. The rank indicates the relative value of the grade at that level. The level reflects a certain level of educational achievement. Employment under a statute also goes hand in hand with the *statutory career system*. The statutory career enables the public servants to rise through a succession of hierarchically defined posts (Hondeghe, 1990). The possible career movements are nearly completely pre-programmed in statutory regulations. This constitutes a significant difference with employment based on a labour contract. Whereas labour contracts seldom include any provisions concerning the future internal career, such provisions are statutorily regulated in the public sector. The private employer therefore enjoys a much greater freedom in developing his promotional policy.

## **2. The problem: fossilisation of internal markets**

The extreme stability of employment and the statutory post and career systems result in most state-owned organisations having highly closed internal labour markets. Internal labour markets are described here as job systems:

- where the allocation of the work force and pricing are subject to one single administrative regime;
- which are arranged in hierarchical structures;
- where internal promotion is more important than external recruitment for the filling of vacancies;
- where the remuneration ratios between the respective jobs are isolated from direct price competition from outsiders (Glebbeek, 1993).

Internal labour markets can fulfil various functions in both the private and the public sector. The most important of these are:

- a *Stabilisation function.* Especially in the private sector the relative freedom of the labour contract translates into uncertainty for employers concerning the cost-effectiveness of possible investments in the skills of their employees (Streeck, 1989). The risk inherent in substantial training investments is that employees will leave and take the training investment with them. Internal labour market structures that create incentives to remain are a solution to this problem (Osterman, 1995). Labour market theorists claim that the prospects of employment stability and sponsored career mobility via firm-specific internal labour markets reduce turnover, especially in large bureaucratic organisations (Althausser, 1989; Baron and Bielby, 1980).
- b *Development function.* Internal markets often grow up around jobs for which company-specific skills are needed. These skills are more difficult to 'turn into money' (Oosterhuis, 1992). Employees thus have an interest in continuing the employment relationship. The employer wrestles with the problem that company-specific skills are not available off-the-peg on the labour market. Internal markets have an important function in this connection, since they make a supervised development of skills possible (Doeringer and Piore, 1971). Career profiles can then be planned so as to produce a progressive multiplication of skills as more rungs are climbed up the ladder.
- c *Buffer function.* Internal markets make organisations less dependent on the external labour market. If skill requirements change, it is no longer necessary to wait until these skills become available on the external market. The internal market thus becomes a safeguard against imbalances which cannot be remedied in the short term by the external market - a buffer which can reveal its advantages at times of organisational changes.
- d *Motivation function.* The prospect of a career can provide motivation, so long as the criteria applied are sufficiently transparent, employees have the impression that selection decisions are made on the basis of objective standards, they are



convinced that 'equal candidates' also have equal opportunities and that they see a clear link between achievement and promotion (Luhmann and Mayntz, 1973). Under these conditions, the internal market is a reliable, efficient and affordable motivation mechanism.

- e *Selection function.* Thanks to its internal market, the organisation supplies candidates for higher in-house positions (Cappelli, 1995). The organisation has the time to test its members over longer periods.
- f *Legitimisation function.* Authority structures are effective in organisations only if the organisation's members consider them legitimate. If the authoritative positions in the organisation are, in theory, open to a large group of members and if the rules of the promotion game are clear, the legitimacy of the authority structure will probably increase.

At first sight, internal markets offer mainly advantages. Yet discordant noises can be heard in most public sector employing organisations. A number of mechanisms of the internal labour market are the actual objects of criticism. The *stabilisation function* is the most debated. Employment security and internal careers were deliberately introduced into the personnel statutes for their supposed stabilising effect. It was thought that the continuity of the operation of the State and the changeability of its institutions would benefit from a reduction of the 'exit' alternatives. But what was once hailed as a condition for changeability and continuity is now looked upon as a 'ball and chain' (Van de Velde, 1992). Many public organisations wishing to streamline run up against the rigidity of the relationship with their personnel. The principle of statutory employment has therefore radically changed its objective: conceived to help government operational conditions adapt flexibly to the changing requirements of the general interest, it has become a system of rights which is seen as an obstacle to change.

The *development function* has also come in for criticism. The statutory career system that controls the traffic in the internal market is apparently unable to offer sufficient guarantees for an adequate dovetailing of the internally available with the required skills. Whether a career system offers any meaningful assistance in perfecting the balance between required and available skills depends on a number of conditions. First, these skills must be capable of being adequately objectified. Otherwise, it becomes more tempting to apply extrafunctional criteria which are not linked to competence or performance. Secondly, it should be possible to examine each position to see whether internal recruitment via the career system can provide better guarantees than external recruitment of finding the right person for the job. Moreover, the selection criteria applied must, first and foremost, assess the suitability of the candidates for the vacant posts. Finally,

available and required skills must be regularly matched so as not to give problems of balance the time to develop (Hondeghe, 1990; Mayntz, 1973).

The conventional statutory career system in the public sector does not satisfy most of these conditions. Competition is institutionalised in statutory seniority systems. The great weight of the seniority criterion in the pre-selection of candidates for promotion impedes the matching of available and required skills. The evaluation of performance or competence plays a negligible part in this pre-selection. The conventional evaluation system is failing in its main function - differentiating between 'good enough' and not 'good enough' - since in most public services, the vast majority of the employees (up to 95%) receives the most favourable evaluation score (Sels, 1996). So past failures are forgiven and past successes forgotten. In addition, careers are rigidly pre-programmed into statutory career lines. The possible access grades are stipulated for each grade. The speed at which the rungs on the ladder can be climbed is largely predetermined. Careers follow fixed paths and set routes. This high degree of career pre-programming also results in a rather long waiting period before promotion to a position with real responsibility. This can impair innovation capacity (Hondeghe, 1994; Sels, 1996). Moreover, since the evaluation system is failing in differentiating between employees, the link between promotion and achievement is too loose to have an incentive effect. This means that the *motivation function* of the internal market is also negligible. This also applies to the *buffer* and the *selection functions*. The internal markets are seen as too closed. For far too many of the posts, external applications are not accepted. This is perceived as an undesirable restriction on the pool of available talent.

### **3. The remedy : decentralisation**

With the passing of time, the rules which regulate the traffic in the internal labour market can become rigid (Lutz, 1987; Fruytier, 1994). This problem is not peculiar to the public sector. In earlier research into the degree of dissemination of new production concepts in the automobile, the chemical and the machine-tool industries, we pointed out comparable processes as factors which explain in part 'the delayed transformation' in trade and industry (Huys, Sels and Van Hootege, 1995). In most Belgian state-owned organisations, however, the internal labour markets are characterised by an extreme rigidity. This can in part be explained on the basis of the fact that nearly all aspects of the employment relationship have with the passing of time been formalised in statutory regulations. The statutory employment can be described as a highly specified and restrictive way of regulating the employment relationship (Watson, 1987). Consequently, personnel

responsibilities remain limited within the narrow area of ensuring compliance with detailed and prescriptive procedures.

Having researched the failure of reorganisation plans in Belgian state companies for some years now, we can state that this excessive formalisation is an obstacle to the redesign of the production and work organisation (Sels, 1996). Superficial operations which leave the general architecture undisturbed do not address these obstacles. In such cases, formalisation is even functional, in the sense that the work force is more amenable to changes at work if the conditions of their membership are guaranteed. However, once the step is taken from cosmetics to corrective surgery in the organisational structure, the full restrictive force of formalisation via statute is revealed.

Next to this excessive formalisation is the strong homogeneity of the different personnel statutes also object to criticism. The cornerstones of the civil servants statute are to be found in the statutory regulations for the local sector, state-owned companies and even education. This homogeneity would be squarely opposed to the heterogeneity of the public sector (Pirlot, 1989). There are many public authorities, each including several employers. Therefore, the call for greater differentiation in personnel statutes grows louder. Decentralisation of collective bargaining is thought to be a way of achieving this goal (Brynaert, 1994; Damar, 1992).

This is a curious turn of events. During the mid-80s, various commentators forecast such decentralisation of collective bargaining taking place mostly in the private sector: a system with less binding arrangements at sectoral or national level, allocating a broader role to consultation at company level (Blanpain, 1984). So far, the prediction has not come true, which may in part be ascribed to a major error of analysis: failure to recognise the advantages that employers, too, can gain from central consultation. The most important benefit is the avoidance of snowball effects (the 'trade union domino strategy'): high wage increases in some companies triggering increases in others. A second benefit is that at that level central government can more easily be moved to intervene. A third benefit for the individual employer is that the trade union can more easily be kept away from the shop floor. The mid-80s also saw sectoral negotiations acquire an additional function: taking up slack in the labour market. The sectors felt an increasing need for a sectoral labour market and training policy.

Anyone wanting to observe the process of decentralisation in Belgium should not therefore look to the private sector. In the public sector, by contrast, decentralisation is used to break down the contested homogeneity of the statutory regulations. Decentralisation is leading to a growing differentiation in the terms and conditions of employment in the different branches of the public sector (Vilrocx and Van Leemput, 1992). The most decisive step in this process was taken during

the restructuring of the state companies. Under the Law of 21 March 1991, Belgacom<sup>4</sup>, the Belgian Post Office and the National Railway Company (SNCB/NMBS) were transformed into autonomous state companies. The conditions under which autonomous state companies fulfil the tasks of a public service have since been laid down in a management contract between the government and the company. In this contract, the government undertakes to provide the necessary resources and to guarantee the required management scope. The state company undertakes to carry out, within an agreed period of time, clearly defined public service tasks. The Law of 21 March 1991 therefore creates room for manoeuvre, by demarcating an area in which the state companies can operate under their own responsibility.

The state companies now have considerable scope to make 'first-order' strategic choices : decisions about their purpose, mission and the range of activities they will be involved in (cf. Kessler and Purcell, 1996). It is remarkable, however, that the principle of statutory employment survived this reform. The recruitment of contractual staff remained strictly limited and is still treated as the exception to the statutory rule (Jacqmain, 1992). Thus, despite the extension of the companies' scope for strategic decision making, the distinctive set of traditional public sector employment practices continues to play an important ongoing role in the determination of terms and conditions of employment.

However, this confirmation of statutory employment creates the mistaken impression that the homogeneity of the personnel regime in the public sector does not suffer at all. The autonomous state companies were given a number of instruments enabling them to develop a tailor-made statute and personnel policy. Specifically, the law states that all due attention should be paid to the specific characteristics of each company when defining the statutory regime. The authority to establish the personnel statute now resides with the administrative bodies of the company.

A State Companies Committee was established and invested with the authority to conclude collective agreements for the approximately 120,000 employees in the autonomous state-owned companies sector. This Committee was intended to provide the state-owned companies with a common social base and to regulate affairs relating to the coherence of all autonomous state-owned companies (Brynaert, 1994). The government's intention was thus to create a 'third pillar' in the Belgian system of industrial relations (Damar, 1992), since the collective agreements concluded by the State Companies Committee are meant to be independent of the conventions

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<sup>4</sup> As part of what is called 'strategic consolidation', shares in Belgacom were offered to the private sector in 1995.

agreed upon within the Joint Committee for all public services, as well as of the interprofessional agreements entered into by the employers and employees in the private sector.

All that has happened thus far in 1996, however, is that the chairman of this Committee has been appointed. There is no question of a common social base. Consequently, the decentralisation of collective bargaining has been fairly extensive. A specific personnel statute has been negotiated at the level of each individual state-owned company. This has resulted in a number of significant changes which fit in closely with the shifts which have occurred in numerous other European public sectors (Richards, 1990; European Industrial Relations Review 233, 1993):

- despite the perpetuation of the principle of statutory employment, wider opportunities now exist for recruiting personnel by contract under conditions which are comparable to those in the private sector. Increasingly, public managers are being recruited from the private sector;
- more jobs higher up the career ladder are now open to external recruitment. An internal labour market is still in place, but it is now less closed;
- the structure of the career system in levels, grades and ranks has been maintained in the respective companies, but has to some extent been simplified. This enhances functional flexibility and makes the career paths easier to control;
- performance evaluation now carries more weight in selection decisions. This leaves room for more tailor-made and fewer off-the-peg decisions. In addition, performance bonus experiments have been introduced as a means of strengthening the pay performance linkage (compare OECD, 1993; 1995b). In the civil services, similar systems of staff appraisal are planned to take effect from 1997 for the top two levels and from 1998 for the lower ones.

#### **4. The loophole: subsidiarisation**

The trade unions are conscious of the fact that the reform process will not stop at the decentralised renegotiation of the statutory regulations. It is especially the far-reaching divisionalisation projects currently being planned by the state-owned companies which are causing concern among the trade unions. First, there is the fear that the divisionalisation will push the decentralisation of the collective bargaining even further. Secondly, the contractualisation of the employment relationship comes back onto the agenda in the wake of the divisionalisation projects. In order to explain both points, we once again outline the process as it is taking place in the sector of the state enterprises.

### *Further decentralisation of collective bargaining*

There have been important similarities in the organisational forms which have emerged across the sector of the state companies. Each of the companies has been broken down into smaller, quasi-autonomous units. This has been presented as involving a delegation of responsibilities for the resources needed to provide services, with 'the centre', variously defined, retaining a strategic, co-ordinating and controlling role.

- In July 1995 Belgacom launched the so-called TURBO Plan. Belgacom was split into divisions, which each enjoy a large measure of independence and take responsibility for their own costs and revenues. Previously, the organisational structure made up of 13 districts was but a reflection of the central organisation, with a general directorate and a wide range of specialised directorates for technical, commercial, financial and social areas. At the centre of the Turbo-plan is the creation of three divisions, each fully responsible for a specific product/market-combination, developing its own repair services as well as separate telephone shops, and therefore more able to respond to differential market pressures: the 'corporate' division, the 'business' division (SMEs) and the 'residential' division. Their autonomy is gradually becoming so great that they can be viewed as mini-companies, be it within the contours of the parent company.
- The Post Office has also been gripped by enthusiasm for unit management. Since 1994 there has been an effort to gradually 'decentralise the entrepreneurship' within the organisation. Staff functions such as purchasing, sales, marketing, personnel policy, etc., are gradually shifting from the top to the units. This transition to unit management is accompanied by a more product-oriented division of activities. Separate units are being set up for philately, express post, letter post and financial post. Each unit is responsible for its own products or services. In so doing, the aim is to bring about more one-to-one relationships between those who develop the services, those who have to run the services, and those who ultimately sell the services.
- The railway company is also striving towards divisionalisation. The reorganisation boils down to division into business units managing the infrastructure and other units running the infrastructure. This distinction is in line with the spirit of EC Directive 91/440, which requires all European railway companies to distinguish between infrastructure and operation. It is the directive of the free market, designed to allow any carrier to appropriate the right to purchase a train and some carriages and to make use of the infrastructure created by the member states.

The emergence of multidivisional or M form organisational structures (Williamson, 1983) has been explicitly informed by foreign competitors' practices. This is most clearly evident when we compare the 'new Belgacom' with the other European telecom companies, such as British Telecom. Britain was originally divided into 27 districts. The district authorities enjoyed a high degree of autonomy. Then, in 1991, these districts were pushed aside to make way for three business units. Each of these units was aimed at a specific user group. A similar movement can be observed in Italy, for example. In the case of the Italian SIP the abolition of zones was followed by a reorganisation of market areas following the new users' subdivisions by product/market (large users, users' systems, residential users, public telephones) (Negrelli and Treu, 1993). The reorganisation of telecom operations in Germany and in the Netherlands reveals a similar profile. The Dutch PTT Telecom divided its organisation into five business units back in 1989, each unit specialising in a well-defined product/market combination: national network, international telecommunications, business communications, residential market and telematics services.

Divisionalisation and organisational decentralisation are considered indispensable to be service and cost competitive with other European companies. Although the idea of divisions becoming each other's customers is a dramatic break with the past, nevertheless the trade unions are also convinced that a certain divisionalisation is necessary in order to have a strong position in the liberalised markets. But it is the impact of 'second-order' decision-making related to organisational forms, on 'third-order' decisions concerning employment relations which worries trade unions more (cf. Kessler and Purcell, 1996). There remains considerable uncertainty about the effects, arising from a much looser organisation structure, on such items as pay, working hours, personnel evaluation and general working conditions (Pirlot, 1995). The discussion is tending to concentrate on two dimensions: the impact of organisational decentralisation on the personnel decisions and on collective bargaining.

Firstly, the choice of role for the personnel function remains very much 'up for grabs' in the 'fragmented' state companies. It is presently uncertain to what extent personnel management issues will be viewed as strategic and handled at the corporate level, or operational, and handled at the unit level. There are forces seeking to drive personnel management issues from the corporate level and towards line management control. As in all situations thus far dominated by good centralised industrial relations, here too the trade unions fear that greater discretion on personnel issues shall weaken worker representation within the company itself.

Secondly, it is not inconceivable that collective bargaining will increasingly be shifted from the national to the unit level as the M form structure is created.

Moreover, there remains considerable uncertainty about the responses of unit managers to a possible increase in the discretion to bargain at the unit level: whether they will take advantage of this discretion or continue to be party to multi-unit agreements. A glance at comparable companies abroad shows us that such a devolution of bargaining responsibilities to units or divisions only has taken place in Sweden (Wise, 1993), the Netherlands (EIRR, 1992) and Great Britain (Negrelli and Treu, 1993 on British Telecom; Ferner, 1994 on the Post Office and British Rail). In Britain, there is a trend towards the fragmentation of national agreements and the development of local bargaining arrangements. In local government, authorities are seeking greater discretion within the national framework. In the health service the prospect of local bargaining emerged from the decision to create an internally managed market, with purchasing of health care by district health authorities and fund-holders separated from the provision of health services undertaken by hospitals and community units (Bach and Winchester, 1994). In the civil service it arose from the decision to establish 'executive agencies' (Bailey, 1994), with considerable management autonomy over pay and conditions.

The experiences in the Netherlands, Sweden and especially Great Britain with such decentralisation of collective bargaining to the level of separate divisions have certainly not given evidence of unqualified success. Decentralisation may bring to an end the notion of the 'unified career bureaucracy' (Corby, 1991; Ferner, 1994) and, paradoxically, discourage mobility between different units or divisions. Besides, there is often tension between the central financial departments (common services) on the one hand, which want to maintain maximum control over the global budget for the purposes of making savings, and the local negotiators on the other hand, whose task is precisely that of gearing their human resources strategies towards more market-oriented remuneration methods (Kinnie, 1991). In specific cases, some rather remarkable differences have been recorded between separate units, which are difficult to justify (Wise, 1993). Where trade union presence is strong, decentralisation means that even more can be pocketed. The weak become even weaker. Finally, decentralisation may leave its mark on the pattern of conflicts. Strikes become more whimsical and chaotic (Negrelli and Treu, 1993). This is not only because of decentralisation as such, but also because of the concomitant loss of authority of the central trade union bodies.

#### *Contractualisation of the employment relationship*

Parallel to the divisionalisation processes a shift 'from statute to contract' can be observed. The Belgacom and the SNCB/NMBS plans in particular are followed especially keenly by the trade unions. In the medium to long term, the railway company intends to transform itself into a holding company, an umbrella covering



an extensive network of companies in which the private sector is also expected to participate. A holding company of this kind is a divisionalised structure, but the cement between the divisions is extremely brittle. In a holding structure, the coordination centre's control over the divisions is often weak and unsystematic (Williamson, 1983). The weaker the cement, the greater the chance that divisions of the parent company today will become separate companies tomorrow. In addition, this form of divisionalisation facilitates the influx of private capital, since it makes it possible to separate profitable activities from less attractive ones. Such creeping privatisation is made possible under the aforementioned Law of 21 March 1991 (Déom, 1992). The law makes provision for the possibility of setting up subsidiary companies, thus making room for a number of hitherto unknown synergies between private and public-sector partners.

The transformation from divisions into subsidiary companies causes trouble among trade unions for the future of the personnel employed in subsidiary companies is uncertain. The law of 21 March 1991 says nothing about the system (statute or contract) under which that personnel is to be recruited or deployed (Jacqmain, 1992). The creation of subsidiaries is, in that sense, a legal loophole through which state companies can escape from the statutory rules of the internal labour market (e.g. security of employment). We take the case of Belgacom as an example. Two divisions have been transformed into fully-fledged subsidiaries. First, the much talked-of Belgacom Mobile, the mobile telephone operator in which Air Touch has a 24.99% participating interest. Secondly, there is Belgacom Directory Services which markets the telephone directories. Staff in these subsidiary companies are, by definition, recruited under labour contracts. Staff crossing over from the parent company to the subsidiary are in a different situation. They can stay with their original Belgacom statute for a maximum of two years. Anyone wishing to keep that statute after two years must go back to the parent company. Those wishing to stay in the subsidiary have their employment relationship contractualised.

## **5. The alternative: internal flexibility, external rigidity**

The processes of subsidiarisation, creeping privatisation and contractualisation put pressure on the existing division of labour within the trade unions. The present 'division of labour' between the member federations of the respective trade unions is to a large extent determined by the conventional difference between the public and the private sectors, while the boundaries between the two are becoming very blurred and increasing numbers of state company divisions are crossing the line (Van Gyes et al., 1994). From this point of view it is fully com-

prehensible that the trade unions attempt to consolidate the existing organisational structures and statutory principles.

Nevertheless, one should dare to inquire whether the public servant's job is still special enough to warrant any special legal position. The rather archaic oath-taking ceremony is meant to impress on him that, as a representative of the general interest, he is expected to lay his self-interest aside. The public servant does not work for the state - he *serves* the State (Camu, 1937; Molitor, 1974). The state has since lost much of its sacred character. Furthermore, it is clear that the work being done in state-owned companies differs only slightly from the work done in certain private companies. In an increasing number of activities, state companies are even competing with private companies.

Moreover, the increased impact of collective bargaining in determining the personnel statutes in certain branches of the public sector rather takes the steam out of the special status of the public servant. Within the autonomous state companies for example, the autonomy of the administrative bodies in establishing the personnel statutes is limited by collective bargaining. It is the joint committee which has the power to establish the statute. This involvement of joint bodies in defining the statutes may be surprising, since we stated earlier that the statutory appointment differs from the contractual relationship precisely in that the government can unilaterally determine the terms and conditions of employment. The greater role of collective bargaining in defining the statutes departs from this principle. In the autonomous state companies, an unusual mixture has been brewed from two principles of legal position: *negotiated statutes*<sup>5</sup>.

The differences between statute and contract become blurred. This is the result of two converging tendencies. On the one hand, collective agreements set bounds to the freedom of individual contracting and subject the market-rational action of the parties on the private labour market to binding regulation (Streeck, 1992). In many cases the labour contract is reduced to an entry document that does not always offer much room for negotiation. On the other hand, the aspect of unilateral establishment of the terms of employment by the government is being put into perspective by the increasing participation of the public sector trade unions in working out the terms of employment. This blurring has taken place in numerous European countries. The doctrine of state sovereignty suffered erosion during the 1980s in countries such as France, Italy, the Netherlands and Spain (Ferner, 1994; Treu, 1987).

For these reasons, a contractualisation of the employment relationship in certain public services should not be a problem, although trade unions may not view

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<sup>5</sup> We must remember that this is still a long way from the basic 'autonomy of will' as experienced by the contracting parties in the private sector. The state company and the trade unions only negotiate a general ruling that applies to all members joining the statute.

things so rosily. Much more important than the difference between 'statutory' and 'contractual' is the intended degree of numerical flexibility. Contractualisation is no real threat until it is synonymous with an increase in atypical employment or a radical relaxation of dismissal procedures. It is precisely the Belgian Government's singularly poor reputation in terms of atypical employment which has destroyed the calmness of the debate on the future of statutory employment. Analyses of the Labour Force Survey (Table 2) show that the volume of temporary work has assumed vast proportions (Sels, 1996).

**Table 2.** Estimated likelihood of temporary employment <sup>6</sup>.

Education	Age	Blue collar		White collar		Public sector	
		Men	Women	Men	Women	Men	Women
PE	14-29	8.46	12.95	7.20	11.14	13.19	19.70
	30+	1.22	5.91	0.67	3.18	2.32	10.32
HSE	14-29	5.02	9.56	6.74	12.53	16.55	28.21
	30+	1.95	6.92	0.97	3.55	1.51	5.42
HE	14-29	10.25	18.51	7.48	13.87	16.96	28.92
	30+	3.76	8.37	1.31	3.00	1.88	4.28

Table 2 presents the statistical likelihood of the population of blue-collar workers, white-collar workers and public servants being in temporary employment. The high risk of temporary employment especially for young public sector employees is particularly striking. The risk is higher in the public sector than for private sector blue-collar and white-collar workers regardless of their level of education. In this sense, the figures have a demystifying effect. The public sector offers no guarantee for employment security right down the line, rather the opposite.

Contractualisation all too often means a significant increase in the volume of temporary employment. The use of temporary employment was initially motivated by the need to recruit staff for temporary tasks. It was stimulated by the introduction of unemployment absorption programmes and was accelerated by the blocking and deceleration of statutory appointment as part of budget savings. Non-statutory employment formulae were devised which directed a huge number of unemployed people towards the public sector. Some public services thus ended

<sup>6</sup> This Table is the result of log-linear analyses of factor response models, applied to the results of the 1992 Labour Force Survey. The variables used are status (blue-collar worker, white-collar worker, government official), sex, age, educational level (PE = primary education; HSE = higher secondary education; HE = higher education).

up with more temporary than statutory staff, producing atrociously high staff turnover (Van de Velde, 1992).

The fact is that unemployment would have reached catastrophic proportions without the considerable growth of the public sector in the nineteen seventies and the beginning of the nineteen eighties (Delpérée, 1990). Both young recruits and the government have paid a high price for this employment support. For the government this has led to a collapse of public finances, whereas the young recruits have seen employment security being replaced with temporary, uncertain contracts (Gevers, 1989). These newcomers stand outside the walls of the internal labour market since, as contractual staff, they are not eligible to compete for internal promotion.

As long as contractualisation remains synonymous with an increase of atypical employment and uncertainty, the trade unions' attempts to consolidate the existing statutory rules are perfectly comprehensible. In the public sector, attention must therefore be focused primarily on a debate concerning the functions of stable employment relations. Traditionally, there are two opposing points of view on this issue. The first assumes that the slowness with which production structures adapt is related to excessive regulations and contractual rigidity. The second puts more emphasis on the operation of internal labour markets and maintains that not only the employees and trade unions, but also the employers, can benefit from stable employment relations (Büchtemann and Neumann, 1990). Two different strategies for creating flexibility follow from these two different points of view.

The first strategy aims at achieving a far-reaching degree of numerical flexibility. The other side of the coin with this approach is that to fill job positions, the required skills have to be purchased directly on the external labour market. This can admittedly be advantageous in certain markets (Lutz, 1987). Thus this 'direct purchasing' is feasible in recruiting for positions requiring low-level skills, as well as for true professions. Indeed, in the latter case there is a corresponding professional market in which the required skills are available on a more or less 'ready-made' basis. On the other hand, the creation of numerical flexibility usually offers a solution only to the need for volume flexibility. It can even give rise to new rigidities. Problems arise mainly once these bought-in skills need to be adapted to qualitative changes in jobs (Buttler, 1990). Employers who continuously alter the skill mix of their staff by flexible hire and fire techniques seem to find it more difficult to achieve a balance between available skills and rapidly-changing skill requirements. Boyer (1993, 96) therefore ventures to conclude, albeit with a measure of caution, that job tenure or employment inertia may be an inducement to organisational flexibility.

The second strategy implies that companies themselves take care of developing the needed skills. This can be achieved by means of a targeted training policy or a career policy that enables employees to be given a succession of positions requiring

increasingly higher skills. This strategy is therefore aimed at the development of internal labour markets. It offers a greater adaptive capacity for internal change. In this sense, it expands the possibilities for designing production processes in such a way that they take on the characteristics of inherent flexibility. Even when the operational flexibility is thus increased, there is a need for the flexible allocation of personnel. However, this flexibility does not derive from a changeable work force, but rather from fluctuations in working time, high internal mobility, multifunctionality, active retraining, etc. The aim is therefore to achieve a higher level of internal (temporal and functional) flexibility, be it in combination with external (contractual) rigidity. The price which may possibly have to be paid for this gain is a lower level of volume flexibility.

However, we must not overstate the adaptability of internal markets. There are limits to this adaptation capacity. Dramatic organisational changes often collide with the limited degree of mobility among internal staff. This happens because the rules of the internal market can become fossilised over time. Our position therefore requires some qualification. Internal markets can enhance the adaptability of organisations, but *only under certain conditions* (Lutz, 1993). This is where public sector employing organisations traditionally feel the pinch. Their internal labour markets have silted up. External and internal rigidities pile up and have a cumulative effect.

The trade unions' collective pressure for maintenance of all the existing statutory rules consolidates the existing rigidities. An alternative option is to defend the employment security (external rigidity) vigorously while at the same time accepting a relaxation of the mechanisms of the internal labour market (internal flexibility). Under certain conditions, high internal flexibility in combination with external rigidity, can serve as a functional equivalent for external flexibility combined with internal rigidity (Streeck, 1992).

## 6. Conclusion

The efforts at restructuring which are taking place in the public sector have far-reaching effects on industrial relations and personnel policy. This is most clearly evident in the sector of the state-owned companies. Collective bargaining procedures have been adapted (decentralisation). The same holds for career structures, recruitment procedures, pay performance linkages and staff appraisal systems. For the time being, the statutory legal position is surviving this (r)evolution. The expected assimilation of labour exchange techniques from the private sector and the public sector has not as yet been achieved. This does not detract from the fact that increasingly fewer employees are being protected by

statutory employment. In the state-owned companies sector, the contractualisation is rather being accelerated under the influence of subsidiarisation processes.

In the conclusion of this contribution, we have discussed in detail the controversy concerning what the proper technique is for regulating the employment relationship: contract or statute. The differences between the two are in fact becoming increasingly blurred. The problem is rather that contractualisation in the public sector turns out to be synonymous with a substantial increase of temporary employment. Hence there is a greater need for a debate concerning the functions of stable employment relations and the types of activities which do or do not benefit from an increase in numerical flexibility. We have emphasised that the proper operation of many public services is benefited precisely by a certain external rigidity, in any case when accompanied by an increase in the internal flexibility.

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