

**REPRESENTATIVENESS OF
PUBLIC SECTOR TRADE UNIONS IN EUROPE**

**STATE ADMINISTRATION
AND LOCAL GOVERNMENT SECTORS**

edited by
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European Federation of Public Service Unions
European Trade Union Institute
Brussels, 2004

Brussels, 2004
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Print: ETUI Printshop, Brussels
D/2004/3163/12
ISBN: 2-930352-53-1

The ETUI is financially supported by the European Commission.

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Introduction

On the 26 September 2001, the EPSU Steering Committee considered a proposal to undertake a study on representativeness in the sectoral dialogue in co-operation with the European Trade Union Institute (ETUI). The Steering Committee agreed that ‘EPSU will undertake further work to assess the representative nature of non-affiliated organisations or competing organisations. It is also necessary to further define qualitative and quantitative criteria to establish the representativeness of European social partners.’ A project group including 1 representative per constituency and a representative of the Standing Committee on National and European Administrations’ presidency was established. The project group met with ETUI representatives on 21 February 2002 and agreed that the study should:

- underpin EPSU as the leading European public service trade union organisation, and that EPSU’s overall representativeness should be highlighted;
- reflect on the concept of the European social dialogue and the development of its potential to establish European framework agreements;
- explore the essential elements for assessing the representative nature of a trade union, emphasis thereby being laid on a union’s negotiating and enforcement capacity.

The ‘learning-about-ourselves’ aspect of the study was underlined. There was recognition that the public service is undergoing a great many changes in most countries and that this makes the comparability of data difficult. Whilst there was overall agreement on the desirability of surveying all sectors and all countries covered by EPSU, the following research approach was agreed: the study would focus on the national administration and local government sectors; the countries selected should represent a typology in terms of public service and collective bargaining culture as well as trade union scenarios – and Austria, Belgium, Estonia, France, Germany, Hungary and Italy, were chosen on this basis.

Basic sectoral definitions

In terms of international sectoral definitions, the EU, ILO, OECD, UN, IMF and World Bank all agreed in 1993 to adopt the same statistical definition system for the public sector (System of National Accounts, 1993). This considered the public sector as a whole to be: ‘all market or non-market activities which at each institutional level are controlled and mainly financed by public authority. It is composed of a general government sector and a public corporation sector’ (Hammouya 1999). It is the institutional levels of this general government sector that we are concerned with and more particularly the ‘local government’ and ‘state administration’ sub-sectors.

It is possible to define both sectors in broad terms; for example, in the ‘local government’ sector we could include local health and education systems and utilities, and this would be in line with the System of National Accounts’ definitions, which cover control and finance at the central and local level. However, we shall focus more on the ‘control’ dimension and, therefore, central and local administration. In recognition of the diversity in Europe, we consider the definitions of local and central public administration used in national collective agreements to be appropriate. It is recognised that abstract sectoral definitions may become problematic when confronted with reality, as has been recognised by Betz *et al.* (1999: 7): ‘Distinguishing core administration from a wider concept of the ‘public sector’ can be problematic when it comes to certain institutions (as the administrative part of universities, museums, health care...), and in different Member States public administration differs regarding [its] extent and character... The difficulties of a quantitative comparison become obvious when considering the UK, where many public services, including their administration are privatised and outsourced’. Moreover, as Hegewisch and Martin (1998) noted, this national diversity in terms of the size and scope of European, national, regional and local administrative mandates is further complicated

by the fact that most systems are not static, but the responsibilities and thus, sizes of different levels of administration are evolving. According to their research on national administrations in Europe, '[a] salient feature of the times is that the role of national administration is, to varying degrees, passing in both directions – both to the European and local levels' (Hegewisch and Martin 1998: 11). This difference in definitions and parameters has been a major concern throughout the project.

The present report is organised as follows: the first section considers the possibilities for developing sectoral social dialogue in the public sector in general and the two sub-sectors in particular. The second section compares and analyses the different national definitions of representativeness operating in the public sector in 13 EU and candidate countries. The data used stems from a questionnaire circulated to EPSU affiliates (see Annex), and data is thus only included for those countries which responded. The third section presents the national case studies (Austria, Belgium, Estonia, France, Germany, Hungary and Italy). The final section reviews EPSU's position as the voice for national administration and local government employees in Europe.

Brussels, November 2003

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Sectoral social dialogue and public administration employees at state, regional and local levels

Carola Fischbach-Pyttel and Judith Kirton-Darling

The process of European integration, and particularly economic and monetary union (EMU), affects all areas of national economies and public administration, a fact which has created a major incentive for national social partners to cooperate at the European level. Moreover, as the European Commission has stressed, it is the sectoral level that 'is the proper level for discussion on many issues linked to employment, working conditions, vocational training...the knowledge society, demographic patterns, enlargement and globalisation' (European Commission 2002: 17). In view of these considerations, European sectoral social dialogue is deemed to be a key instrument for enabling national negotiators to meet and learn about each other and to build a fully functioning industrial relations system that can cope with the complex process of European integration. However, while some scholars are optimistic about the ability of the sectoral social dialogue to counter the potential disruption associated with the process of integration and EMU (Nunin 2001), others are more pessimistic about future developments (Keller 2001b).

The development of social dialogue is one of the two main political priorities for EPSU. This was underlined through the adoption of the resolution *Public service trade unions and collective bargaining in a European environment* at the 6th General Assembly in 2000, in which EPSU affiliates committed themselves to the pursuit of sectoral social dialogue in all the sectors represented. Since the adoption of that resolution several qualitative advances towards sectoral social dialogue have been made in a number of sectors, whereas in others the obstacles have yet to be overcome. EPSU has representative negotiating partners in a number of sectors, such as electricity, gas, and local government, while potential partners have been identified in the national administration and hospital sectors. The first formal sectoral social dialogue committee was formed in the electricity sector in 2000, and recent developments have raised hopes that official committees will be set up in several other sectors, a development which will ultimately mean influence over strategic sectoral issues. The present section of this report will review and analyse the developments to date, devoting particular attention to the state administration and local government sectors.

Development of European social dialogue

For many years, social dialogue has taken place at both the interprofessional and the sectoral level and has led to a wide variety of non-binding results. A new era of far reaching social dialogue was supposed to be launched when the 'Agreement on Social Policy' was annexed to the Maastricht Treaty in the early 1990s and later integrated into the Amsterdam Treaty; it was hoped that the new framework would lead to more binding results. Furthermore, one could argue convincingly that, in contrast to recent developments in the course of the 1990s, the sectoral dimension is more important for the establishment of a European system of employment relations than the interprofessional dimension, since national collective bargaining is conducted at the sectoral level in the majority of EU member states.

The focus of this paper, the concept of representativeness, is of crucial importance for the more recent varieties of social dialogue, since it not only establishes procedural structuring but also provides legitimacy for the whole arrangement of 'post'-Maastricht social dialogue. It is important to recognise that the term 'social dialogue' has had quite different meanings as the process has evolved over time; it has encompassed non-binding as well as binding results, transpositions and applications of framework agreements taking place through legislation or collective bargaining (Article 139 of the Treaty), reached at different levels (supranational, national, sectoral, regional, enterprise), of a bipartite nature (between

the social partners) or tripartite in nature (including public authorities, most probably the Commission). Recently the Commission (as well as the ILO (2001), *inter alia*) has frequently used the term as an equivalent for employment relations ('any type of activity involving the social partners') if not social policy in general.

This very broad, indefinite definition has created additional problems for the application of the concept of representativeness in individual cases. In 2001, the recognised European interprofessional social partners (ETUC, UNICE and CEEP) wrote a joint contribution directed at the heads of state meeting in the Laeken European Council. In that contribution the social partners stated clearly that social dialogue as a concept and process needed to be clarified and that distinctions should be drawn between tripartite concertation, consultation and 'social dialogue' (bilateral negotiations on the basis of Articles 137-138). The Commission took up this proposal in the latest Communication on the process (European Commission 2002).

Sectoral social dialogues in the narrower sense require on 'both sides of industry' the existence of European associations and their national members that are able and willing, first of all, to transfer part of their resources to negotiations at the European level and, subsequently, to implement European framework agreements. This necessary precondition for any success in social dialogue can by no means be taken for granted. An endemic problem of the sectoral social dialogue which affects many different economic sectors has been the lack of appropriate employer structures and organisations for European sectoral federations to interact with. Those employer associations which do exist are often unwilling to be considered 'social partners' with a social mandate to negotiate and conclude agreements on behalf of their affiliates. Moreover, many scholars have broadly questioned the level of commitment on the part of the national affiliates of European sectoral trade union federations (Freysinnet *et al.* 1998, Sörries 1999). Such internal and structural weaknesses in the process are a matter of real concern.

For many years, sectoral social dialogue took place in two major institutional settings under another name: joint committees and informal working parties. These committees were only capable of producing non-binding declarations of common intent, and were largely concentrated in those sectors affected by the Single European Market. In its third Communication on the issue of social dialogue, 'Adapting and Promoting the Social Dialogue at Community Level' (COM (98) 322 final), the Commission turned its attention to the sectoral level, arguing that the old sectoral structures '[had] become over-institutionalised or [had] retained operational methods which [had] outlived their usefulness', an argument which tallied with certain participants' criticisms. As a result of this Communication, the diverse sectoral structures developed since the 1950s were overhauled by a Community decision at the end of 1998 and replaced by unitary 'sectoral social dialogue committees' as 'the key forum for consultation, joint action and negotiations'. The new sectoral social dialogue committees were given clear terms of reference: to '...be consulted on all developments at Community level having social policy implications, and [to] develop and promote the social dialogue at sectoral level'. It is this statutory right to consultation and participation, and potentially the privileged access thereto, that attracts potential trade union and employer actors.

There are currently twenty-seven sectoral social dialogue committees, which is quite impressive at first glance. However, on closer inspection it is clear that the dynamics within the committees and their quantity and quality of output differ considerably. While the development of a new process may have given new energy to the old structures, only a few new sectors have been involved and significantly, the vast majority of public sector workers remain excluded to date. A rather unequal distribution of the social dialogue across the economic sectors therefore prevails. Moreover, the hope that the new process would generate binding European sectoral agreements has not yet been fulfilled— with the exception of the transport sector (Keller and Bansbach 2002). In terms of content, substantive topics discussed within the sectoral dialogue are often difficult to identify and define, each sector taking a slightly different view; potential topics include various problems associated with cross-border mobility, the introduction and implementation of information and communication technologies, equal opportunities,

training and further training. It is difficult to foresee whether legally binding results could be obtained in the public sector in the near future, but it is important to recognise that the achievements of sectoral social dialogue in other sectors have included codes of conduct (e.g. in the footwear, commerce, clothing and sugar sectors, on fundamental rights at work, amongst other issues), joint positions and opinions on European legislative proposals, common studies on specific issues and voluntary framework agreements (e.g. vocational training in agriculture, teleworking in telecommunications or commerce).

If sectoral social dialogue committees are launched, their first results are more likely to be of an informative and consultative, rather than binding, nature. However, as EPSU has made clear in repeated memoranda to the Commission, this is an evolving process and a learning phase is necessary before real consensus, and therefore concrete results, become visible.

Moreover, the development of autonomous social dialogue at the European level, in which, as opposed to the procedure laid out in Articles 137-138, the social partners rather than the Commission have the right to set their own agenda through a jointly agreed work programme, will offer opportunities for the social partners to identify issues of common concern and potential agreement independently. The interprofessional joint work-programme 2003-2005 has already provided a framework for sectoral social dialogue committees to structure their future work on issues such as life-long learning and vocational training, economic restructuring, stress at work, gender equality, mobility and enlargement (ETUC, UNICE and CEEP 2002). EPSU, in a joint statement issued with the Greek ADEDY in the light of the EU Greek Presidency, regards these interprofessional debates and negotiations as a basis for developing consensus at sectoral level.

Finally, although it is beyond the scope of our analysis, it should be mentioned that the enlargement of the present EU constitutes a major challenge for the interprofessional and sectoral social dialogue. In general, national collective bargaining at the sectoral level is rarely identifiable in the countries of Central and Eastern Europe. Overall trade union membership has declined dramatically and the average density figure remains at 21.9% compared to 30.4% in the EU, but this figure is deceptive since it includes Malta and Cyprus, both of which correspond to EU-15 averages with fully functioning employment relations systems (Carley 2002; Lado and Vaughan-Whitehead 2003). Moreover, while the majority of EU member states are subject to *erga omnes* procedures (or extension agreements), which extend the coverage of collective agreements to all of the workers/employers concerned, this practice is virtually inexistent in the accession countries (with the exception of Slovenia).

In private industry, unions and employer organisations are either too weak to enforce collective bargaining or do not exist at all. Within the public sector the *de jure* as well as the *de facto* situation is more complicated but perhaps even worse (see the case study on Estonia within this project). In several future member states collective bargaining rights are violated on a regular basis.

Sectoral social dialogues and the public sector

As previous EPSU research focusing on national administration has confirmed (Hegewisch and Martin 1998), European integration has brought a number of new challenges for public administrations and their employees. Some of these are direct, arising from directives and regulations concerned with labour rights, public procurement and other matters. Others are indirect, such as the requirements of economic convergence associated with the Maastricht criteria for monetary union. Whether direct or indirect, they are the product of increasing economic integration in Europe and the structuring of the trend towards a single market. With the process of European integration there is innate tension between integration and subsidiarity. It is as a result of the growing influence of European integration on the employment relations and work of public administration workers that interest in the sectoral social dialogue has arisen.

As has been stated, there is currently only one officially established public sector social dialogue committee: it operates in the electricity sector for dialogue between EPSU and EMCEF representing employees and Eurelectric representing employers; it was formally established in 2000 although informal discussions began in 1995. The social partners adopted an extensive joint work programme and have held discussions on a range of topics including sectoral restructuring, life-long learning, equality, sectoral skills needs and occupational health and safety. However, informal dialogues of varying depth or, at least, some joint activities take place in a number of other sectors: local government, gas supply, hospitals and national administration. The various activities carried out will not be analysed in this paper, but details are available on the EPSU website (www.epsu.org).

It is the issue of representativeness that has stalled the movement from informal contacts to the establishment of formal sectoral social dialogue committees in a number of public sectors, most recently in those of local government and state administration. Although the issue affects both sides of the negotiating table, it is the trade union side which is perceived as the most problematic. However, one wonders if this perception is really justified considering the findings of this study and other sectoral analyses, which clearly demonstrate that EPSU is the leading representative for public sector employees in an enlarged Europe. At the European level there are two other organisations which claim the right to be involved in the sectoral social dialogue.

Eurofedop was established in 1966 as the European regional organisation of the International Federation of Public Service Employees (Infedop), itself affiliated to the World Confederation of Labour (WCL), which mainly brings together Christian trade unions (and factions in the rather special case of Austria) from 22 European countries (Eurofedop 2002; IST 2001). Eurofedop is structured around 9 trade councils: defence, finance, health service, justice, local and regional authorities, ministries, police, post and telecom and women. As the Commission-sponsored research on the local public sector asserts, there a number of dual affiliations to EPSU and Eurofedop (e.g. in the case of Dutch and Portuguese members), and there are also a number of unions indirectly represented through their cross-sectoral confederations in the ETUC which have remained outside EPSU (IST 2001). These factors complicate the picture of representativeness *vis à vis* the relative competence of EPSU and Eurofedop to represent public sector workers in the sectoral social dialogue. However, the overlaps are largely confined to Belgium, Luxembourg, the Netherlands, Portugal and Spain, with Austria representing a unique case (unfortunately, little information is currently available on the countries of Central and Eastern Europe). In general, the relationship between EPSU and Eurofedop has not always been easy and is prone to turbulence.

Affiliates of the public service section of the European Confederation of Independent Trade Unions (USSP/CESI), on the other hand, are completely separate from the ETUC family of trade unions. Established in 1990 in an attempt to generate trade union pluralism at the European level, the European Confederation of Independent Trade Unions (CESI) has consistently attempted to enter the social dialogue. The fulfilment of this politically motivated demand is of utmost importance for all non-recognised interest organisations. It would mean, first of all, access to the information and consultation procedures of the European institutions and, secondly, financial support. Official recognition as a social partner by the Commission would generate considerable savings of transaction costs and change the relatively insecure status of the organisation from that of a pure lobby group. However, research across a variety of sectors, public and private, as well as at the interprofessional level has concluded that CESI is not representative enough at the European level to participate as a recognised social partner. In 1993, the European Commission concluded that ‘... its total membership, which is to be predominantly in the public and semi-public sectors, is believed to be at most approximately a tenth of that of the ETUC... The role of its member organisations in both collective bargaining and in formal consultations at national level is not significant’ (European Commission 1993, Annex 3: 5). If CESI does not succeed in the long run, its attractiveness for current as well as potential members will gradually diminish, as can be seen from recent disaffiliations. The organisation will ultimately face the risk of losing members, who might decide either to go independent or even to join competing, but

recognised organisations (Ludwig 1995). The argument that various privatisation measures have broadened CESI's remit to 'privatised service sectors' (DBB 2002) is not overly convincing. As a result, it can be said that national data substantially questions the claimed European credentials of USSP/CESI.

State administration sectoral social dialogue

With regard to the specific case of the state administration sector, the non-existence of representative organisations on the employers' side long prevented the establishment of any kind of (either bilateral or trilateral) sectoral dialogue. This situation continues to thwart the development of social dialogue in the state administration sector, where contacts between employers and trade unions at the European level have been more sporadic.

While the potential employer side of the dialogue may seem fairly clear-cut, the national Directors-General for Public Administration have chosen not to form a common organisation representing all the national administrations which could interlock with the employee representatives, or have been unable to do so. Moreover, the question of which are the most appropriate trade union participants has been highly contentious.

Attempts to open a sectoral social dialogue were first initiated in 1994 by EPSU and the Directors-General for Public Administration, and regular meetings were held with various officials and ministers; these attempts were renewed in 1998 after the Commission's Communication and the Decision to establish sectoral social dialogue committees. In 1999, at the biannual meetings of the Directors-General for Public Administration of the *troika* countries (previous, current and future Presidencies of the EU) with the representatives of European civil servants and the Commission, it was decided that an informal dialogue should be launched. Three round tables were organised between 1997 and 2000 discussing issues of mobility, modernisation and flexibility in the sector; however, a proposal for joint working groups failed, since the Belgian Presidency tried to extend the dialogue to other trade union participants – CESI and Eurofedop. The conflict between the three trade union organisations was irreconcilable, and since 2001 the representativeness of the trade union participants has been the central issue of debate at the European level. While the Belgian and Danish Directors-General clearly stated (in Declarations made to the meetings) that participation within an informal dialogue does not inevitably mean presence in a future formal committee, the concern is that the longer informal participation exists the more likely it will become established fact and practice, regardless of the representativeness of participants. It is currently unclear how this issue will be resolved or whether formal dialogue will develop within the state administration sector in the foreseeable future, since much depends on the preferences of the national government holding the EU Presidency, and EPSU has decided not to participate in meetings with Eurofedop and CESI participants until the Commission-sponsored study on representativeness is published in early 2004.

Sectoral social dialogue at the regional and local government level

At the regional and local level, the Council of European Municipalities and Regions (CEMR) emerged fairly recently as a negotiating partner and counterpart of EPSU. EPSU and CEMR have been holding informal discussions on sectoral matters since 1994, and in 1995 CEMR established its 'Employers' Platform' to allow it to perform as a sectoral social partner. Since it is recognised as representative by the Commission (IST 2001), as is CEEP, to avoid any sector-based conflicts of interest the two organisations have agreed that CEMR should be responsible for the local and regional government sectors. Despite calls in 2000 for a sectoral social dialogue committee in the local government sector, it was not until late 2003 that any significant moves towards the development of formal dialogue were taken. The key reason for this lack of movement was the issue of trade union representativeness. CEMR only recognises EPSU as a negotiating partner, excluding EUROFEDOP and CESI, the two other trade union organisations who were vying for participation. Analysis of the communication between EPSU and the Commission reveals that it was due to fears about potential legal or political challenges that the Commission was unwilling to state definitively which organisations are

representative enough to represent the sector. This limbo placed undue pressure on the CEMR-EPSU informal dialogue.

In conclusion, many trade unionists and researchers see European sectoral social dialogue as a means of strengthening and supporting trade unions and national employment relations systems throughout Europe, as well as a means of generating European-wide agreement on sectoral development and other relevant issues. The development of sectoral social dialogue in the state administration and local government sectors is likely to be quite difficult in comparison with other public sub-sectors, and this section has outlined developments to date and some of the potential obstacles. In view of the importance of representativeness for the development of these processes, the following chapter gives an overview of the national definitions of trade union representativeness.

Representativeness and European public sector trade unions

Judith Kirton-Darling

Knowing whom exactly the participants of the European social dialogue are representing is essential to the legitimacy of collective agreements concluded at the European level and, consequently, to the future of the social dialogue, whether interprofessional or sectoral. However, any Europe-wide study of representativeness is complicated by the number of different definitions and criteria used in the construction of national collective bargaining systems and for identifying the relevant protagonists. This is further complicated in the areas of public administration at state and local level by the existence of often deep-seated differences in rights and procedures between persons with civil servant status and salaried workers (e.g. the right to strike is denied to civil servants in some countries, notably Germany). In reality, this distinction affects only half of the member states of the EU (Austria, Belgium, France, Germany, Greece, Luxembourg, Portugal and Spain); elsewhere, either the distinction does not exist, or it makes little difference from the point of view of collective bargaining (IST 2001).

The founding premise of this study is that representativeness at the European level should be determined according to an aggregation of national representativeness. Since different systems have emerged in Europe for assessing representativeness as a result of social, political and historical circumstances, this aggregation should be made according to the definitions already operating at the national level rather than a common supranational definition. In a sense, this is the basis of the Commission's attempts to define representativeness – in that participation in the European social dialogue is only officially open to those organisations whose members are recognised national social partners. It is therefore important to dissect the national definitions of representativeness operating in countries with EPSU affiliates and, subsequently, review the development of official thinking on the issue at EU level.

It is important to make an early distinction between recognised and representative trade unions. Recognition is a procedure existing in many countries in a number of forms; in Belgium recognition of a trade union is achieved through the sending of a copy of the formal statutes and a list of the responsible trade union officers by which a union makes itself known to legal authorities. Equally, mutual recognition by the different social partners themselves is an important facet of all collective bargaining systems. In some countries, particularly in the Nordic region, mutual recognition is the central tool used to determine participation. In the UK, the Central Arbitration Committee oversees mutual recognition. Recognition does not necessarily determine the legitimacy of a trade union organisation to *represent* a certain group of workers or economic sector; however, it is an additional indicator of the importance of certain organisations. Meanwhile, in some countries trade unions are not *recognised* organisations as such. In Italy, as a result of non-implementation of constitutional clauses, trade unions are considered to be 'non-recognised *de facto* associations' without legal personality.

In many states in which trade union pluralism is a strong feature of the organisational landscape, most notably several continental and southern countries, representativeness is a legal requirement for participation in the negotiation and consultation committees. According to this logic, only representative trade unions can have seats in negotiation committees, while non-representative organisations may be offered different official routes to participation (e.g. consultation procedures). In comparison, the Nordic model of trade union organisation and employment relations has a unique feature in that official definitions of representativeness are not used *per se* and access to negotiation is based on self-assessment, practice and tradition, and on organisational criteria.

In this study, we shall look at representativeness in various European countries, using two different points of departure to analyse the differences in conceptual terms and the implications for common

definitions at the European level. In order to assess the different national definitions the countries will be considered in terms of the loose typology developed by Ebbinghaus and Visser (2000), which takes into account the social, political, economic and historical similarities between countries: the southern countries (Italy, Portugal and Spain), continental countries (Germany, Austria, Belgium, France and Hungary), Nordic countries (Denmark, Sweden, Finland and Estonia) and Anglo-Saxon countries (UK). It is clear that, as with any typology, some examples fit better than others; however, it is a means of organising the research findings. On review of the evidence, we have considered the EU accession countries in terms of these clusters, since the development of public sector employment relations structures in the transition period in Estonia and Hungary bear similarities with the classic clusters, although it is recognised that the experience of the transition and organic institutional development are important factors. Evidence from the European Commission confirms this argument and provides an overview of the criteria for representativeness in the accession and candidate states (see Table below).

Legal regulations for trade union and employer organisations		
	<i>For the establishment of social partners' organisations</i>	<i>For representativeness criteria</i>
Bulgaria	Constitution (1991) – Art.49 Labour Code (2001) – Art.4, 5	Yes (Labour Code Art. 34, 35)
Cyprus	Constitution (1960) Law on trade unions	None
Czech Republic	Charter of Fundamental Rights and Freedoms (in Constitution) – Art. 27(1), 27(2) Act no. 83/1990 Labour code for trade unions' and employers' rights	No
Estonia	Constitution par. 48 and Art. 29 for employees and employers Law on trade unions (14 June 2000) No specific further law for employers	None
Hungary	Constitution (1949 – modified fundamentally in 1989) Art. 4, 63, 70c. Law II of 1989 on the Right of Association Labour Code (Law XXII of 1992), Art. 15	No general law on representativity, but: at firm level for 1) trade unions, representativity determined according to works' councils elections (at least 10 % of votes or 2/3 of workers of the same occupational group within the enterprise; Labour Code, Art. 29-2; see also Art. 33-4); 2) no specific legislation for employers; at 'higher than enterprise' level, Art. 34-2 and 3; at national level: trade unions and employer org. are registered according to the Act on Association; are active in at least three sectors and ten sub-sectors; and have regional structures in at least 5 out of 20 counties; and 1) employer orgs. have at least 1,000 companies as members, or their affiliated companies employ at least 1,000 workers; 2) trade unions have local sections in at least 100 companies
Latvia	Constitution Art. 102 New Labour Code (2001) Law on trade unions (December 1990) Law on employers' organisations (April 1999)	Law on trade unions (1990): not less than 50 members or 1/2 of workforce Law on employers' associations: association uniting most employers

Lithuania	Constitution Art.50 Law on trade unions (1991) For employers: Law on associations (1996)	No specific regulation (except for Art. 7 of Law on collective agreements)
Malta	Constitution (Chapters II (7,12-16), IV (32,35,42), XI (120). Conditions of Employment (Regulation) Act 1952 (under review) Industrial Relations Act 1976 (under review) The Malta Council for Economic and Social Development Act (2001)	Yes: Industrial Relations Act (1976) The Malta Council for Economic and Social Development Act (2001)
Poland	Constitution (1997) Law on trade unions (1991) Law on employers' organisations (1991) Amendments of Labour Law in 2000 concerning collective agreements	No representativity criteria Representativity criteria only for trade unions for purpose of collective agreements in supra-enterprise level collective agreements (Labour Code, art 241-17) and for enterprise level collective agreements (Art.241-25a)
Romania	For trade unions: Constitution, Art. 37-1 and Art. 27-2, Law on Trade Unions No. 54/1991 For employers: Law No. 21/1924, Gov. ordinance 26/2000 on associations; Law 130/1996 on collective labour contracts; Employers' organisation Law No 356/2001 For the public sector, Govern. Decision No. 1086/2001 on joint committees	Yes
Slovakia	Constitution, Art. 37-1	None
Slovenia	Constitution, Art. 75 on the right of the workers to participate in the administration of organisations and economic enterprises; and Art. 76 on trade union freedom; and Art. 74 on economic initiative	Law on trade union representativity No Law for employers' organisations (but the idea is under discussion)
Turkey	Constitution Law No. 2821 on Trade unions and Law No.2822 on collective bargaining, strikes and lockouts, with amendments made to both laws in 2001 Law on Public Employees' Unions of June 2001	Trade unions have the right to sign collective agreements at enterprise level under two conditions: 1) that they obtain more than 50 % of members in the enterprise; and 2) at least 10% of workers in the sector concerned.

Source: European Commission 2002: 97

Representativeness in the Southern systems

The countries of the 'Latin Rim' are characterised by a high level of constitutionalisation. In general, detailed legal codes exist for determining trade union representativeness; the most common indicators used tend to be membership rates (expressed in terms of union density levels) and the results of workplace elections.

The southern European countries' trade union movements have a strong tradition of political fragmentation, and this has resulted in the development of systems composed of multiple actors (Ebbinghaus and Visser 2000). This is in striking contrast to the manner in which the trade union movements from Nordic and Anglo-Saxon Europe have developed, where inter-union conflict is common but based largely on unclear divisions of competence. As a result of the existence of multiple trade union actors representing varying proportions of the employee population and the potential conflict over questions of representativeness, an independent and transparent system for determining representativeness has emerged which is controlled by state actors.

The **Italian** and **Spanish** systems of assessing the legitimacy of potential participants in the public employment relations system both rely largely on numerical criteria; even so, this common approach has produced quite different results.

In **Italy**, the right to negotiate is possessed only by those unions which qualify as 'representative' under the law (Art.43 lgsl. Decree no.165/2001). According to the law, in order to participate at the *national level* unions must have a minimum threshold of representativeness of no less than 5% on average between membership¹ and votes in elections² in the sectors or area concerned. Membership figures are calculated according to the number of contributing union members in relation to the total of number of membership contributions in the area concerned. The public agency responsible (ARAN) performs a special control function, acting on behalf of the State as a counterpart of unions in bargaining rounds and verifying that agreements are signed only by those unions which collectively represent 51% of the votes in elections and members belonging to a union (or 60%, if only members are considered) in the area or sector concerned. In contrast, contractual legitimacy in the private sector does not stem from any specific legal qualification.

According to the law (Art. 42 l.d.n.165/2001), each representative trade union has the right to set up workers' bodies at enterprise level (RSA or *rappresentanza sindacale aziendale*). It is important to stress that the law makes it compulsory also to establish a *unitary* body 'in each administrative unit or structure' which has no less than 15 employees. The provision of this 'unitary representative' entity (RSU or *rappresentanza sindacale unitaria*) is to temper the excessive fragmentation among small unions. According to the legislation, RSUs have the statutory right to information and consultation. In terms of collective bargaining and the conclusion of agreements, they are bargaining agents at the enterprise level and, depending on their composition, may be integrated into the vertical union structures (where these exist), in which case their actions are subject to national parameters.

Moreover, the special national Framework Agreement (Art. 5 c.3 7.8.1998) for public sector employment relations makes provision for a parallel process for determining the legitimate actors at each bargaining level, both for RSUs and representatives of unions which have signed collective agreements within the public sector. As regards the articulation of bargaining strategies, the same agreement also states that RSUs and unions which have signed national collective agreements are obliged to follow the criteria and principles therein.

¹ Taking into account the relationship between membership of each union and total membership existing in the area to be covered by the agreement

² Taking into account the percentage of the votes given to each unions compared to the total number of votes expressed to elect workers representatives at workplace level in the same area

In **Spain**, trade union representativeness in the Public Administration sector stems from an aggregation of workplace election results for members of work councils. Electoral processes are initiated every four years, and the global figures from these provide representativeness indices. To be present at the negotiating table, a union must achieve at least 10% or more of the representatives in the respective area.

In these processes a distinction is made between personnel with civil service status on the one hand and those with labour contracts on the other. The specific persons/bodies for representing civil servants are the Staff Delegates and the Staff Councils, and those representing personnel on labour contracts are the Staff Delegates and the Works Councils. The sum of the two forms of representation (of civil servants and of salaried workers) indicates which trade unions are the most representative at the sectoral level. However, in addition to this general legislation, the collective bargaining system for each grouping has its own statutory system.

Civil servants have a bargaining system governed by Law 9/1987 (LOR), which operates via territorial and sectoral *Negotiating Tables*, and which produces agreements and pacts determining working conditions in this sector. The Worker's Statute focuses on collective agreements governing territorial and sectoral areas, whereas the structure for salaried workers is governed by individual companies, entities and bodies. This system applies equally to all levels of public administration (central, regional or local). There is a General Negotiating Table at state level, which is authorised to negotiate common concerns on behalf of both salaried workers and civil servants. For example, employment and pay policies for all public employees are established around this table every year.

Beyond the general public administration sector, there are other sectors such as health, education, justice or postal services which have their own separate negotiating tables. In such sectors and sub-sectors, those trade unions deemed the most representative at the general level are joined by the more representative specific sectoral or professional trade unions (e.g. representing medical or teaching staff).

Interestingly, in contrast to the other southern countries, the **Portuguese** do not have a specific legal framework for assessing representativeness, although there is an equivalent level of constitutionalisation. The law on representativeness merely mentions that in the event of conflict between collective agreements it is the union representing the majority of workers that is deemed representative. However, membership in the national Economic and Social Council is considered to be an indicator of importance; this is a feature more common in the continental corporatist systems.

Representativeness in Continental systems

In the continental countries there are specific legal codes on trade union representativeness, but these codes combine quantitative and qualitative criteria. For instance, trade union organisation in **France** has long represented an anomaly in Europe. On an aggregated level, union density is just 9%, although, as in other countries, this is higher in the public sector. The French system is also influenced by its geography exhibiting features of the Latin political fragmentation evident in Italy, Spain and Portugal alongside features of continental corporatism. According to the Labour Code, representativeness requires independence from employers and depends on the number of members and fees paid (the figures for which have never been entirely clear), the experience of the organisation in question, and its attitude during the 2nd World War (although this is nowadays irrelevant). Civil servants belong mainly to the 'working class' confederations, which in reality organise all categories of workers. Since the Law of 1966, five organisations have been considered to be nationally representative: *Confédération Générale du Travail* (CGT), *CGT-Force Ouvrière* (FO), *Confédération Française Démocratique du Travail* (CFDT), *Confédération Française des Travailleurs Chrétiens* (CFTC) and *Confédération Française de l'Encadrement-Confédération Générale des Cadres* (CFE-CGC). In order for an agreement to be applied in the private sector, it must be signed by all five organisations regardless of their representativeness in the sector concerned; however, this is currently under debate as the CGT are pushing for representativeness to be considered in a more appropriate manner based on workplace elections.

Meanwhile, in **Belgium**, there is no system of workplace elections within the public service for determining the number of seats to be awarded to each of the trade unions in the committees. However, only those unions deemed representative can take up the seats. Belgian trade union statutes provide precise rules for determining trade union representativeness in the public service. The neo-corporatist base of public service labour relations is most clearly expressed by the requirement that representative public service unions be affiliated to a trade union confederation that is represented in the National Labour Council. It is in this Council that nation-wide interprofessional collective agreements are concluded between employers and trade unions under private law. Within the public service, the A-committee fulfils the same functions as the National Labour Council in the private sector. Therefore, in order to be representative at national level, public service trade unions must organise their activities at that level and must represent the interests of all categories of public service staff. Sectoral representativeness is traditionally determined according to trade union membership figures; a union must represent 10% or more of the total staff of the sector concerned in order to be representative. An independent control committee of magistrates verifies this representativeness, which is reviewed every 6 years. A recent modification of the trade union statute means that currently all unions that are representative at the national level are automatically represented in each sectoral committee and special committee, regardless of their membership figures. Moreover, representative trade unions are free to appoint their own delegates in the different committees. A trade union representative in a consultation committee therefore need not be employed by the organisation of which the consultation committee forms a part.

With regard to the issue of trade union representativeness in **Germany**, the situation is more interesting. Although there is no constitutional definition of what a 'trade union' actually is, the Constitutional Court's case law and the Collective Bargaining Act provide that certain prerequisites are necessary in order to protect the collective bargaining system. The Constitutional Court has thus identified three levels of association: *Vereinigung* (association), *Koalition* (coalition) and *Gewerkschaft* (trade union). The Constitution refers to the right to form *Vereinigungen* to promote occupational interests. This is described in the text as *Koalitionsfreiheit* (right of association) but it is stated that not all *Vereinigungen* can be described as *Koalitionen*. In order to be regarded as a coalition, the interests of members in their specific capacity as workers or employers must be promoted by statute. Moreover, associations which wish to be considered a coalition must be based on voluntary membership, have formal statutes or a constitution and statutory bodies, be independent of employers, the state, political parties and churches, be organised at a higher level than the workplace/company, and be subject to the latest binding collective agreements. The third point, crucial for this study is the difference between coalitions and trade unions. To qualify as a trade union, a coalition must fulfil two additional prerequisites: a) it must be formed on a permanent basis – an ad hoc coalition or one-off gathering cannot be regarded as a trade union –, and b) it must be able and willing to call a strike (Adamy and Steffen 1985). Distinguishing between trade unions is commonly approached by use of indicators of union density and membership at various administrative and sectoral levels.

In the **Austrian** public sector, there is no formal legal requirement for negotiation but, rather, practices based on social partnership. The Federation of Austrian Trade Unions (ÖGB) is the only recognised collective bargaining partner. In order to legally conclude binding collective agreements a trade union must therefore be a member of the ÖGB. As regards the public sector, the *Gewerkschaft Öffentlicher Dienst* (GÖD) appears in a number of passages in the law, for example, as a 'professional association of public servants with the capacity to enter into collective agreements' or as a 'collective agreement partner of the federal government in relation to establishing a pension fund for the federation's employees specified by law. The most striking feature of the Austrian system, which has implications at the European level, is the notion of 'factions'. As a result of the strict corporatist framework different political and ideological interests are organised within the unitary structures. Thus, within the two public sector unions representing public administration at the national and regional (GÖD) and

local/municipal (GdG) levels, members are organised according to confessional and political dichotomies.

With regard to **Hungarian** industrial relations, it can be argued that the system developed by the reform Communists in the late 1980s and by subsequent governments has marked similarities with the systems of continental Europe - for example, the structures of dual representation at workplace level and the distinction between salaried employees and civil servants. As regards trade unions' representativeness, the national Labour Code (29 §) judges representativeness on a numerical basis – 10% of public service council elections and/or □ of all employees in a sector. However, qualitative indicators such as participation in national tripartite structures are also a consideration. Collective bargaining is reserved exclusively to those unions deemed representative.

Representativeness in the Nordic systems

The Nordic countries do not tend to have specific legal requirements on trade union representativeness, largely due to the fact that the collective bargaining system is based on principles of voluntarism. Workers and employers are free to organise as they choose and, consequently, mutual recognition by the social partners themselves is a central principle rather than a notion of representativeness as defined by a state actor. There is little difference in organisation between the industrial and public sectors; one single union usually represents the workers within a specific sector. However, the voluntarism of the Nordic system is combined with a tradition of social democratic corporatism, and representativeness is thus measured in terms of membership in national peak organisations, in a similar manner as in Austria.

In **Denmark, Finland and Sweden**, the collective bargaining system is underpinned by basic framework agreements concluded by the social partners in the different sectors, which stipulate mutual recognition and oblige the social partners to resolve cases of conflicting interests by concluding collective agreements. This means that the trade unions recognise the employers' management prerogative, while respecting collective agreements currently in force and maintaining a spirit of cooperation, and that the employers respect the right of employees to organise and to establish collective representation. In terms of union organisation, the traditional characteristic of the Nordic countries has been strong sectoral demarcations and a well-developed system of coordination between the different bargaining levels. While there is no recorded definition of representativeness in Sweden, in Denmark under certain circumstances a concept is used where a minimum of 5000 members is required for a union to be representative (EU data). In Finland, meanwhile, all officially registered unions are considered to be representative social partners and thus have negotiating powers.

Representativeness in Anglo-Saxon systems

In the **United Kingdom**, trade union representativeness is decided by mutual agreement between employers and trade union(s), subject to Central Arbitration Committee determination (CAC: established in 1999 under the terms of the Employment Relations Act). There is no legal right to collective bargaining other than under a CAC determination; to enter a claim for recognition a trade union must have a membership of at least 10% and be likely to attract majority support in a ballot. Moreover, the CAC refuses to determine representativeness in the case of competing trade unions. The trade union must show, either through a ballot or through levels of membership, that it has the support of a majority of workers in the bargaining unit. Where the CAC makes a declaration that a trade union should be recognised for collective bargaining purposes, the parties must then agree on a bargaining procedure. If they cannot agree on a procedure, the CAC will impose one (ACAS, 2003). In 1998 41% of employees were covered by collective agreements. This figure had fallen from 64% in 1984 and 47% in 1990. However, probably as a result of the establishment of the new CAC in 1999, 159 new recognition deals were reached between November 1999 and November 2000. If disputes occur over issues of trade union representativeness there are a number of procedures and mechanisms available including the national Advisory, Conciliation and Arbitration Service (ACAS), and arbitration by agreement between the parties and through the CAC. Labour 'courts' are not involved directly in these disputes, other than the CAC (UK questionnaire data to ILO legal network, 2002).

Meanwhile in **Ireland**, which also follows the voluntaristic industrial relations model, the issue of trade union recognition (the basis of the Anglo-Saxon model of representativeness) has been a moot point in recent years as a result of union-busting tactics used in several US multinationals and domestic companies. A process was started with the signing of the first national social pact in 1997 (*Partnership 2000*), which culminated in the publication of a High-Level Group report on 'union recognition and the right to bargain' in 1999. Following the recommendations of this tripartite working group, the Irish system of union recognition remains voluntaristic in nature; the net result of the report was the establishment of a stronger arbitration and mediation service rather than an empowered organisation with binding effect similar to the British CAC (Dobbins *et al.* 1999). Thus, while representativeness is determined on the basis of mutual recognition, there is no obligation on the employer to recognise a trade union.

Developing a European notion of representativeness

As outlined above, there are some significant differences between the methods used nationally to determine representativeness – particularly between those based on constitutional means and organisational factors. The issue has been contentious since the early days of social partner dialogue at the European level, as it inevitably means exclusivity. However, it is apparent from the Commission's strategy that it does not wish to undermine national systems of trade union recognition by using different criteria which could give organisations more influence than they have naturally attained at the national level. The process also aims to be as open as possible, and herein lies an inherent conflict.

Due to the informal manner in which organisations were included in the social dialogue, the issue of representativeness has been pivotal and controversial since the start of Commission-organised negotiations and discussions between the social partners and the European institutions, and neither of the social partners has been unaffected (Jacobs and Ojeda Avilés 1999; IST 1999; and Bailacq 2000). As European integration has come to affect more and more areas of national socio-economic concern, informal structures have become formalised and the power of the social partners *vis à vis* legislative functions has been consolidated; the issue has consequently gained importance and questions about the legitimacy and capacity of participating actors to represent the labour market have been raised.

In an early attempt to clarify the conditions of participation, the Commission published a Communication in 1993 on the representativeness of the social partners at the European level. This laid down for the first time the criteria which labour market actors would have to comply with if they wished to participate in negotiations within the interprofessional social dialogue.

The structures and actors involved in the European social dialogue were evaluated by the Commission in 1996, at which point a wide range of parties concerned were consulted on the running and effectiveness of the European social dialogue. The consultation concluded with the publication of a Communication on the European social dialogue (European Commission 1996). Subsequent communications have further addressed the issue of representativeness, particularly in relation to the sectoral social dialogue (European Commission 1998a; 2002); the major change that has occurred in the requirements has been a weakening of the geographical dimension. Thus, a 'European social partner' must currently have members who are nationally recognised social partners in *several* rather than *all* member states (European Commission 1998b). This vague and weak terminology has opened the door to many different interpretations. In an appendix to the latest Communication (European Commission 2002), the Commission attached a list of those sectoral organisations deemed representative at the European level under Article 138 of the Treaty. EPSU is the only public sector representative included in that list, although it is recognised that the situation is not static and other organisations could be included in the future.

To conclude, this key concept is less complete than one would most probably assume at first glance: 'Representativeness as a criterion is not necessarily the most straightforward method of identifying labour and management entitled under the Agreement. Rather than facing the difficult option of explicitly renouncing the criterion of representativeness, the Commission put forward criteria which

refer only to representativeness of Member States, and then only as far as possible. The Commission has effectively opted for administrative decision as the short-term solution to the problem of selecting which organisations fall within the scope of labour and management in the Agreement' (Bercusson and Van Dijk 1995: 14-15). Thus, despite the attempts to create transparent and objective criteria, power ultimately rests in the political and administrative decisions of the Commission, a situation which is to the detriment of social dialogue as a European legislative and policy tool.

National case studies

Austria

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Employment in the public administration sector

In Austria, public administration employees are subject to contracts at the federal, regional and local levels. There are 489,100 public administration employees of relevance to this study excluding teachers and university lecturers; however it is necessary to breakdown each sector to view the full picture.

The state level

According to voter registers compiled for the 1999/2000 staff representation and works council elections, the number of employees in the 'state service' was 234,400 or 7.55% of the total number of directly employed persons in Austria (3,106,100) (*Statistik Austria* 1999). This group is composed of the following sub-categories:

- territorial administration and security administration
- economic administration
- educational administration
- justice administration, judges and state prosecutors
- financial administration and customs administration
- armed forces administration and armed forces
- labour market administration
- health and social administration, plus
- agriculture and forestry administration
- employees in the ministries and departments.

They also include the employees of the federal institutions and enterprises such as:

- the labour market service
- the *Bundesrechenzentrum* Ges.m.b.H (federal computer centre [limited company]) and
- the Federal Water Management Agency, etc.

These institutions account for another 199,100 employees. Added to these are 35,300 executive civil servants, i.e. police, gendarmerie, criminal investigation police, court officers, and customs officers. In Austria, the state service and area of representation of the Gewerkschaft Öffentlicher Dienst (GÖD) also include 'state teachers', i.e. teachers at higher secondary level (e.g. '*Gymnasium*') plus universities and colleges. The number of these employees (53,500) is significant for the proportion of the state sector in terms of the overall economy and the overall membership of the GÖD, and, consequently, the representativeness of EPSU. Postal, telecommunication and railway employees are not included in the state service (or the domain of representation of the GÖD).

The regional level

The number of ‘regional public service’ employees (103,700) is composed of:

- employees of federal state administrations. There are 8 federal states, excluding Vienna, which in legal terms is simultaneously a federal state and municipality, with its (local authority) staff represented by the *Gewerkschaft der Gemeindebediensteten* (GdG);
- employees of federal state institutions and enterprises (e.g. regional hospitals); and
- persons employed in construction services (e.g. road works services).

As for the state sector, it should be acknowledged that there is a group of ‘regional teachers’ representing 79,000 employees, i.e. teachers in compulsory education institutions, vocational schools and agricultural colleges.

The local or municipal level

The number of ‘local public service’ employees (151,000) covers the employees of municipal administrations, including local authority institutions (e.g. fire service, municipal garbage disposal service, local authority hospitals, etc.) and municipal enterprises.

Trade union organisation and the representation of public administration employees

The Confederation of Austrian Trade Unions (ÖGB) is the only recognised negotiating partner on the workers’ side according to the Austrian corporatist system, although, in reality, it authorises its respective specialist trade unions to exercise that right. Therefore, on the one hand only the ÖGB trade unions are accepted as negotiating partners, and there are no other social partner negotiations in Austria. On the other hand, anyone can form any sort of organisation (see State Basic Law), and any body can call itself a trade union and attempt to operate as a trade union. The catch is that nobody will invite such an organisation to participate in negotiations!

In the private sector, the capacity of the negotiating parties to enter collective bargaining agreements in the individual sectors is established and regulated by the Ministry of Social Affairs. In the public sector, something approaching this situation exists only where agreements are concluded under private law (e.g. collective bargaining agreements in enterprises). As sectoral trade unions belonging to the ÖGB, the GdG exercises the negotiating mandate for the local sector, while the GÖD performs the equivalent role at the national and regional level. The combined membership level of the two trade unions in 2000 was 403,900 for the whole public sector, including retired persons (70,300) and teachers (70,100). Therefore, in terms of public administration employees as defined by the EPSU-ETUI study, there are 263,500 active union members.

Table 1: Trade union membership and density

	National level	Regional level	Local/Municipal level
Total membership	73,800	49,700	140,000
Union density	31.5%	48%	93%

In Austria, however, ‘relating to EPSU’ does not necessarily mean the same thing as ‘EPSU’. Both all-party trade unions also contain ‘factions’. The Social Democratic Trade Union Faction (FSG) is a member of EPSU, while the group of Christian Trade Unionists (FCG) is a member of EUROFEDOP. However, the factions themselves do not have any ‘members’ *per se*. Rather, in Austria, people become trade union ‘members’ in the unified Confederation of Austrian Trade Unions (ÖGB), since it has the exclusive right to conclude collective agreements and the factions organise within the general structure.

The strength of the factions is measured on the basis of the results of staff representation, works council and trade union elections. The last election results show - for the GÖD - that the FCG received 61.49% and the FSG 38.51% of the votes deemed to relate to EPSU (i.e. excluding teachers). When these percentages are distributed among the 123,500 members the figures are 47,600 for the GÖD/FSG and 75,900 for the GÖD/FCG. The proportions in the GdG are obtained using the same method and indicate that the GdG/FSG represents 123,000 (87.8%) and GdG/FCG the remaining 17,000 (12.2%). Thus, while all members are officially members of the ETUC, through the GÖD, EPSU represents 170,600 members and EUROFEDOP accounts for 92,900 members. It is perhaps interesting to note that the GÖD is the only member of the ÖGB with a Christian Democratic majority.

Collective bargaining in the Austrian public sector

In the public sector, i.e. where labour-law conditions are stipulated by statute, there is no formal legal basis for corresponding collective negotiation but, rather, practices and traditions based on social partnership (or so-called 'small social partnership'). The right of public servants to take trade union action derives from Art. 12 of the 'State Basic Law' (section relating to freedom of association and assembly) and Art. 7 of the Federal Constitution: 'Austrian citizens have the right to assemble and form associations....' and 'public servants, including the members of the armed forces, are guaranteed the undiminished exercise of their political rights.' These two provisions, in conjunction with Art. 11 of the Convention on Human Rights, have sufficed (up to now) also to legitimise autonomous trade union action in the public sector, including trade union measures (i.e. including strikes).

The GÖD appears in a number of passages in the law as, for example, a 'professional association of public servants with the capacity to enter into collective agreements' or as a 'collective agreement partner of the federal government with a view to establishing a pension fund for the federation's employees' in accordance with the terms specified by law. A definitive 'right to enter into collective bargaining agreements' cannot be inferred for the public sector, in particular, by virtue of the fact alone that wages and salaries in that sector are determined by way of statute rather than collective agreement. The ambiguity of the Austrian situation is highlighted by the following examples of how the two relevant sectoral unions interlock with state negotiators through informal rather than formal bargaining.

Example 1: GÖD and GdG pay negotiations with the federal government involving the presence of representatives of the associations of municipalities and local authorities

The GÖD and GdG regularly write to the federal government (e.g. in July) calling for the commencement of pay negotiations for the relevant year, including a general demand for pay increases to include compensation for the rate of inflation forecast for the year and a share of the economic growth achieved during the previous year; more specific details of the demands are made known during the negotiation procedure.

The trade unions usually receive a letter from the Vice-Chancellor and the Federal Ministry of Public Services and Sport (BmöLS) to the effect that they and the Permanent Secretary of the Ministry of Finance invite the trade unions to joint negotiations with representatives of the federal states and municipalities.

Over several rounds of negotiations, agreement is reached, for example, on a general 2.5% increase in rates of pay as specified in the law governing salaries and the statute concerning public servants as from 1 January of the relevant year. Such an increase will also include estimates of allowances and supplementary charges calculated in euros. The term of this agreement is one year. No moratorium is provided for in that year, which means that further negotiations can also be held with the trade unions during the year to deal with the specific demands of individual occupational groups. The representatives of the individual federal states declare that they will 'give a positive account' of the form and content of such agreement to the regional governments and recommend that it be adopted for the public servants of the respective federal states. The associations of municipalities and local authorities

agree the same thing with the GdG, special negotiations also being agreed upon for solving specific problems (e.g. dealing with the catalogue of supplementary charges drawn up by the municipality of Vienna).

Subsequently, the two members of the government report back to the federal government on the outcome of the negotiations. The trade unions hold a meeting of their central executives. If there is a majority in favour of 'acceptance' in all the bodies, the negotiations between the social partners are officially concluded.

The officials of the BmöLS and the Wages and Salaries Department of the GÖD prepare a table of pay rates based on the agreement, which is incorporated into a legal text to be presented to the parliament as a government bill. Currently, since the federal government also has a majority in the Austrian parliament, the bill would be adopted and would become law on the 1st of January of the year for which it was negotiated.

Corresponding draft legislation has to be prepared for the individual federal states and presented to the respective regional parliaments. The GÖD regional executives observe this development, ensuring that the federal agreement corresponds to the 'minimum standard' for the relevant resolutions.

Example 2: Pay negotiations between the GÖD and the *Österreichische Bundesforste AG*

The *Bundesforste AG* works council approaches the GÖD executive to discuss the basis for a new pay agreement, within the context of which information is exchanged relating to the company's economic situation, preliminary talks held so far with company management and possible strategies. The GÖD writes to the company management, requesting the opening of pay negotiations for the relevant year. The letter also contains a proposal to carry out a unified pay round for blue and white-collar employees from that point in time, with the involvement of both works councils as experts.

If the ÖBFAG management agrees, it issues an invitation to joint negotiations, sending the documents it plans to use as the basis for deciding on the pay round at the same time. These documents contain general economic data, specific economic data concerning timber prices and the timber industry, as well as internal company data regarding the earnings and business situation.

Following relatively long discussions in a round of negotiations, agreement is reached on the figures available, for example on a general 1.6% increase of the actual pay rates, on a 2.2% rise in the collective agreement pay rates, plus a bonus payout depending on operational developments as per 1 July of the relevant year. Furthermore the duration of the agreement is limited to one year, with the prospect of negotiations for improving internal company pension provisions.

The works councils will report to meetings at the grass-roots level on the outcome of the negotiations, while the GÖD representatives report to the negotiating committee and executive, the company management being responsible for reporting to the supervisory board. If the result meets with general approval, the agreements are presented to the ÖGB and the Ministry of Social Affairs and the annual pay negotiations are deemed concluded and implemented within the company.

Ultimately all negotiations conclude with an amendment to statutory law rather than a collective agreement in the formal sense, so the issue in terms of trade union representativeness is slightly different in Austria from those countries where collective agreements exist. It is the strength of the unions in terms of numbers and institutional power which determines whether trade union demands influence governmental decision-makers.

Trade union participation in tripartite structures

While a formal national tripartite socio-economic pact has not been concluded as in some of the other European countries, tripartite committees do, of course, exist in social insurance bodies and other such bodies. In Austria, however, the social insurance institutions are autonomous bodies, administered and monitored by representatives of the social partners. In this context, it is significant for the public

services that they have corresponding influence in their health insurance funds for specific occupational groups, for instance. Another example is the cooperation in the federal pension fund, where, although the Republic of Austria is the proprietor, the GÖD has equal representation on the Supervisory Board. If one regards the executive board of the pension fund (paid directors), the proprietor's representatives (civil servants from the Federal Ministry of Finance) and the representatives of parties with expectant rights or entitlements to benefit (officials of the GÖD) as a 'tripartite structure', such structures do then exist with regard to the trade unions. However, as far as matters such as the law governing service remuneration or pensions (similar to Italy) are concerned, there are no tripartite structures. All these negotiations are concluded exclusively between two social partners (government(s) and trade union(s). However, it is pointed out that, once again, only the GÖD and GdG could be considered to be participating trade union organisations.

Conclusion

It is clear that as a result of the nature of the Austrian system, GÖD and GdG are the only representatives of public administration workers participating in collective bargaining (whether formal or informal) and tripartite structures. However, as far as the representativeness of EPSU affiliates is concerned the case of Austria represents a unique case as a result of the existence of internal union factions rather than formally separate trade unions. If we consider the results of staff representation, works council and trade union elections, EPSU could be considered to represent 87.8% of local and regional public administration employees and 38.5% of public administration employees at the federal level.

Belgium

By Koen Nomden – University of Antwerp

Belgium is a federal trilingual country with two dominant languages: Dutch and French. Less than 60 % of the Belgian population is Dutch-speaking, 39 % French-speaking and 1 % German-speaking. The Dutch-speaking population is concentrated in the north of the country (the Flemish region), whereas the French-speaking population lives mainly in the south of the country (the Walloon region). Brussels is a bilingual area where Dutch and French enjoy the same legal status, but where the large majority of the population speaks French. The small German-speaking population lives in the East of Belgium close to the German border and is geographically part of the Walloon region.

Belgium has been transformed in successive state reforms (1970, 1980, 1988/9, 1993, 2001) from a decentralised unitary into a federal state. One of the consequences of the transformation of Belgium into a federal state has been the creation of three communities (the Flemish community, the French community and the German-speaking community) and three regions (the Flemish region, the Walloon region and the Brussels Capital region). Each of these regions and communities has legislative powers, its own government, its own parliament and its own bureaucracy. The Flemish government is competent for both the powers of the Flemish community and the powers of the Flemish region. The communities have gained full power over educational and cultural matters, whereas regional powers mainly concern economic policy, energy, employment, public works, transport, town and country planning and administrative policy vis-à-vis local authorities. Along with the State reforms staff members have been transferred to the communities and the regions.

The Belgian civil service is a typical example of a career civil service where access is only possible at entry level based on the successful passing of a competitive examination by the federal selection and recruitment office (Selor), where tenure is guaranteed and remuneration is based on seniority. For determining the years of seniority, as a principle only working experience in the public sector is taken into account. Moreover civil servants enjoy a special independent pension scheme that is completely separate from the private sector pension scheme, and the social security provisions that are applicable to them are also distinct from those applied in the private sector (Bossaert *et al.* 2001).

In Belgium civil service law basically takes the form of royal decrees and government acts. There is no general civil service act. The federal civil service is basically ruled by the Camu statute, a royal decree from 1937, which has been slightly modified on several occasions since then, but whose basic principles have never been called in question. It contains detailed provisions on recruitment, selection, staff evaluation and promotion. A royal decree on pay provides for the salary scales that are applied in the civil service. The Camu statute presented the Weberian model of a neutral, apolitical and merit-based civil service (Brans and Hondeghem, 1999). However, the (informal) reality was often different from the (formal) rules and within the system political criteria have played a preponderant role in promotions of university graduate civil servants (Hondeghem 1990). Belgian civil service law contains a preference for statutory employment, but in reality government employs many staff on a contract basis especially at the local level.

The reform of the Belgian state has had important consequences for the organisation of the Belgian public service. From the outset, the reforms have led to the transfer of personnel from the central/federal government level to the administrations of the communities and regions. Of the just over 60,000 remaining federal government staff, the Ministry of Finance employs more than half. The state reform of 1988/9 granted the possibility for community and regional government to adopt their own terms and conditions. All communities and regions have made use of this opportunity. There is, however, still a certain amount of coordination in the form of general principles for these personnel statutes that are derived from the rules of the Camu statute. These principles were adopted by the 1994 Royal Decree on General Principles, which was replaced by the more flexible royal decree of 22 December 2000. With regard to local government, the federalisation of the Belgian state has resulted in the differentiation of the terms and conditions of local officials according to the three regions, Flanders, Wallonia and Brussels, which have become responsible for monitoring the administrative policy of local government.

Table 1: Overview of staff numbers in the Belgian public service: 1970-2000:³

	1970	1975	1980	1985	1990	1996	2000
Federal Ministries	108.074	77.137	88.062	81.772	57.871	59.266	61.252
Regional and Community Ministries				6.536	19.676	26.850	27.144
Total Ministries				88.308	77.547	86.116	88.396
Federal Public Institutions	115.969	187.679	198.402	184.841	168.357	24.342	23.773
Regional and Community Public Institutions				6.031	25.700	49.352	52.167
Total Public Institutions				190.872	194.057	73.694	75.940
Autonomous Public Enterprises						127.973	105.478
Special Corps	71.565	77.544	88.666	87.564	83.912	78.701	80.724
Education	202.088	261.725	304.902	268.114	276.453	273.465	277.069
Local Government	120.299	147.660	184.643	181.058	198.782	244.729	274.505
Total	617.995	751.745	864.675	815.916	830.751	884.678	902.112

Source: *Ministère fédéral de la Fonction publique (2001): Aperçu des effectifs du secteur public*

The institutionalised system of public service industrial relations

From an international perspective, Belgium is quite unique in that it has a fairly detailed trade union statute which applies nation-wide and lays down procedures for public service labour relations (Nomden 2002). The statute consists of a 1974 framework law, which ‘organises relations between public authorities and the unions of officials’ and several royal decrees for the implementation of the framework law. Furthermore, successive ministers in charge of the public service have issued circulars that have clarified the interpretation of the ‘trade union statute’ (Janvier and Humblet 1998: 19). The statute is applicable to ministries and public institutions at federal, regional and local government level. It is not applicable to the police, the military, the autonomous public enterprises or the French-speaking broadcasting agency.

The trade union statute covers both tenured and contract staff. Although contract staff are employed on the basis of ordinary labour law, the Collective Agreements Act does not apply to them since they work for government. Both tenured civil servants and contract staff members can represent the trade unions in the relevant committees. An important problem, however, is the lack of legal protection against dismissal of contract staff members in this matter, a fact that can make the position of contract staff trade union representatives rather delicate.

Distinction between negotiation and concertation

The trade union statute provides for the working of a multitude of negotiation and concertation committees. The negotiation committees are subdivided into general committees, sectoral committees and special committees. The organisation of concertation committees is closely linked to the organisation of the negotiation committees. Within each sectoral committee and special committee there is a higher concertation committee. In addition to these, there are also intermediate concertation committees and basic concertation committees.

³ The reduction of the number of staff of federal ministries between 1970 and 1975 was caused by the transfer of the staff of the Belgian postal organisation to the public institutions category. The community and regional administrations have developed significantly from 1980 onwards, and the effects of this are visible in the statistics from 1985 onwards. The current autonomous public enterprises were only established in the 1990s, having previously been part of the public institutions. The figure for autonomous public enterprises for 1996 includes public banking corporations, which were recently privatised. The special corps are mainly composed of military staff, the gendarmerie, the judiciary and staff of the federal parliament.

The distinction between negotiation and concertation committees corresponds to the distinction between matters that must be negotiated and matters that are subject to concertation. Negotiation is obligatory with regard to the administrative statute (including regulations with regard to paid holidays), pay, pensions, relations with trade unions and the organisation of social services, in short, the main provisions concerning public servants' terms of employment. The results of the negotiations are laid down in a protocol pursuant to the trade union statute. If the parties do not reach agreement a protocol of non-agreement is drawn up.

Topics that are subject to concertation with the representative trade unions are the determination of the number of workers, the specific working hours in an organisation and work organisation itself. The concertation committees provide a reasoned opinion on the proposals on which they have been consulted.

Both negotiations and concertation with the unions are a formal obligation before the government can act. Failure to fulfil the negotiation and concertation obligations can lead to the annulment of legal acts and decisions.

General, sectoral and special committees

With regard to negotiation, the general committees are:

- the committee for all public services (Committee A),
- the committee for federal, community and regional public services (Committee B),
- the committee for provincial and local public services (Committee C).

Committee A discusses matters of common interest to all public services; it is chaired by the Prime Minister, who is generally represented by the Minister for the Civil Service. It performs the same tasks in the public service for matters which, in the case of the private sector, are dealt with in the bipartite National Labour Council and the Higher Council for Prevention and Protection at Work. Negotiations on interprofessional social planning take place in Committee A every two years. In the 2001 round of these negotiations, the government and the trade unions agreed on the topics that will be the exclusive competence of Committee A. Among these are social security matters, the trade union statute, federal labour legislation that also applies to civil servants, matters that are negotiated for the private sector in the National Labour Council and the Higher Council for the Prevention and Protection at the Workplace, federal assistance concerning career breaks and certain 'minimum rights' such as pensions, wage indexation, child benefits, minimum holidays, minimum pay and minimum maternity leave. Any matters that are dealt with by Committee A can no longer be dealt with in the other committees.

In contrast to other countries, Belgium has a system of automatic wage indexation. An automatic 2 % increase in public service salaries is triggered by each 2 % rise in the cost of living. The public service trade union federations consider this system of automatic indexation to be a fundamental *acquis* (source: interviews). When discussing general across-the-board salary increases trade unions and the governments therefore discuss 'real' general wage increases.

In Committee A both the federal and all of the community and regional governments represent the government employer. This means that all six Belgian governments need to achieve agreement amongst themselves in Committee A negotiations. Since the financial situations of these governments are fairly unequal, obtaining agreement within the employer delegation can be difficult (source: interviews).

As a consequence of the successive state reforms, Committee B has developed into a committee where only matters of common interest to the federal administration are negotiated. It has become a sort of 'sectoral committee for the federal administration' (source: interviews). It is chaired by the Minister for the Civil Service, with the Minister for the Budget as deputy chairperson.

The Minister of the Interior chairs Committee C. Within this committee there is a section dealing with ordinary staff members and a section dealing with staff of the official education institutions. Within the first section there are five subsections: Flemish community and region, Walloon region, Brussels

Capital region, French community and German-speaking community. Within the second section there are three subsections: Flemish community, French community and German-speaking community. One of the consequences of the current committee structure is that the terms and conditions of local government officials are subject to separate bargaining in the Flemish region, in Wallonia and in Brussels between the regional government, responsible for administrative supervision of local authorities, and local government trade unions.

There are 11 sectoral committees at the level of the federal government, mostly covering a specific policy area that includes a ministry and the public institutions (semi-state organisations) supervised by that ministry. Furthermore, there are 7 sectoral committees at the regional level. Of these committees 5 concern each of the regional authorities and 2 concern the education sectors of the French community and the Flemish community respectively. The sectoral committees are also referred to as D committees (Janvier and Humblet 1998: 75).

The sectoral committees deal with matters that are the special interest of the respective sectors. They have become particularly significant in the course of the federalisation process, especially since the sub-national governments have adopted their own staff regulations. The sectoral committees in the federal government sphere are chaired by the relevant ministers, who are often represented by the head of their private staff (the ministerial cabinet) (source: interviews). Besides cabinet members who will be included in the negotiation committees, civil servants may also participate in meetings and perform a role of 'technician'. A sectoral committee chairperson also chairs the corresponding higher consultation committee. In the consultation committees however, the government is represented to a large extent by civil service managers. Within the federal government the chairpersons of the basic consultation committees and of the intermediate consultation committees are designated by the competent minister.

The special committees relate to provincial and local government administrations.

Public service trade unions and trade union representativeness

The neo-corporatism of public service labour relations in Belgium is reflected in the fact that at all levels the representation of staff is the monopoly of the representative unions. The structure of Belgian unionism reflects the major dividing lines of Belgian society, which are language, religion and class (Vilrocx and Van Leemput 1998: 319). It also reflects the underlying pillar structure of Belgian society, where political parties, trade unions and public health insurance organisations, for instance, belong to ideological groups. The three main pillars in Belgian society, the catholic pillar, the socialist pillar and the liberal pillar, each have their own trade union confederation. Religion and class divisions are reflected in particular in the organisation of the trade union landscape. Language plays a lesser dividing role in Belgian trade unionism than in certain other areas of society. In contrast to political parties, all of which split up into a Flemish and a French-speaking party, trade unions have kept their national structures.

Belgian public service federations

The three main Belgian public service unions are:

- the Federation of Christian (catholic) Public Sector Unions (CCOD/CCSP), which coordinates the work of public sector unions that are all affiliated to the General Christian Trade Union Confederation ACV/CSC;
- the General (socialist) Public Service Union (ACOD/CGSP), which is affiliated to the General Belgian Trade Union Confederation ABVV/FGTB
- the Free (liberal) Civil Service Union (VSOA/SLFP), which is affiliated to the General Confederation of Liberal Trade Unions ACLVB/CGSLB

The CCOD/CCSP, ACOD/CGSP and VSOA/SLFP are federations of public service trade unions. The ACOD/CGSP unites all public sector personnel within the ABVV/FGTB; there are ten sectors within its structure: railways, tramways, bus and underground, postal services, telecom-aviation,

education, culture, public utilities, local and regional government, semi-state organisations and ministries. ACOD/CGSP members normally belong to one of these sectors. According to ACOD/CGSP data, the organisation represents approximately 250,000 members.⁴

The CCOD/CCSP consists of four sectors (transport, semi-state organisations/public banking institutions, local and regional government, ministries), which together account for more than 120,000 members.⁵ Unlike the ACOD/CGSP, the CCOD/CCSP does not cover all public sector staff within the ACV/CSC; the ACV/CSC trade union federations dealing with education and public enterprises are organised separately. These federations and the CCOD/CCSP together represent the largest group of public sector workers in Belgium.

The VSOA/SFLP is organised according to occupation. Although it is by far the smallest trade union federation within the public sector, it nevertheless carries some weight in certain areas such as the ministry of finance (one of the ten occupational groups) and the police.

Despite the fact that, unlike political parties, the Belgian trade union confederations have kept their unitary character, they have not remained unaffected by the federalisation process. As a consequence of past state reforms the ACOD/CGSP and the CCOD/CCSP have adapted their internal structures. In addition to the 19 regional departments within the ACOD/CGSP, there are also interregional entities for Flanders, Wallonia and Brussels, which are composed of the occupational sectors and the 19 regions. Since 1991 the CCOD/CCSP has consisted of two wings, a Flemish wing and a French-speaking wing, each of which is responsible for trade union matters specific to its own language community. Both wings are responsible for their own internal organisation and enjoy considerable financial independence. The CCOD/CCSP is the dominant public service trade union federation in Flanders, whereas the ACOD/CGSP is the dominant public service federation in the French-speaking part of Belgium.

It is important to note that there is a difference between the regulatory framework for employment relations in the public services and the internal organisation of the trade union confederations. Some of the unions affiliated to the FCSOD/FSCSP, the ACOD/CGSP and the VSOA/SLFP organise workers who either belong to sectors for which a special regulatory employment relations framework exists (such as the railways, or the police) or to sectors that fall under the private law regulatory framework (such as local and regional public transport organisations apart from railways).

Representativeness of public service federations

There is a difference between recognised and representative trade unions. Recognition is in particular a matter of form and is obtained sending a copy of the statutes and a list of the names of the responsible trade union leaders by means of which a union makes itself known to government authorities (Janvier and Humblet 1998: 135-136).

Representativeness is a requirement for participation in the negotiation and consultation committees, on which only representative trade unions can hold seats. There is no system of staff elections within the Belgian public service for determining the number of seats to be awarded to each of the trade unions in the committees. The trade unions that are representative are free to appoint their own delegates to the various committees. A trade union representative in a consultation committee therefore need not be employed by the organisation of which the consultation committee forms part.

The Belgian trade union statute lays down precise rules for determining trade union representativeness in the public service. The neo-corporatism in the Belgian public service labour relations is most clearly expressed by the requirement that representative public service unions must be affiliated at the national level to a trade union confederation that is represented in the bipartite National Labour Council. It is in this Council that nation-wide interprofessional collective agreements are concluded between employers

⁴ http://www.acod.be/code/nl/page.cfm?id_page=8.

⁵ <http://www.ccod.be//info/dit.html>.

and trade unions under private law. Within the public service, Committee A fulfils the same functions as the National Labour Council in the private sector. Further criteria for determining the national representativeness of public service trade unions are that they must organise their activities at the national level and must represent the interests of all categories of public service staff. On the basis of these criteria the ACOD/CGSP, CCOD/CCSP and VSOA/SLFP are representative at the national level.

In order to be representative in a sectoral committee a trade union must organise 10 % of the total staff of that sector. This representativeness is verified by an independent control committee of magistrates, which examines whether the trade unions still satisfy the representativeness criteria every six years (Janvier and Humblet 1998: 145-146). The ACOD/CGSP and CCOD/CCSP have been representative in all sectors for many years, but the VSOA/SLFP has only been representative in two sectors, namely finance and the national lottery. In addition to the national public service trade union federations one other trade union, the National Union of Public Services (NUOD), is representative in the sectoral committee for finance.

Due to a recent modification of the trade union statute, all unions that are representative at the national level will automatically be represented in each of the sectoral committees and in each special committee. As smallest trade union federation, the VSOA/SFLP has benefited from this measure and will consequently be entitled to send delegates to every negotiation and every consultation committee, even in sectors and organisations where it has scarcely any members.

The system for calculating membership levels has thus become less important as far as the three national confederations are concerned. However, it remains important with regard to other unions that want to prove their representativeness in any of the sectors. The objective of the calculation is to verify whether a union represents 10 % of the total staff in a given sector. Since the calculation stops as soon as this threshold is reached, the exact membership levels of unions are not known. Moreover, the trade union federations themselves do not provide precise membership data. However, in view of the legal situation with regard to public service employment relations, knowing the exact quantitative representativeness is not very relevant, since, once they have been declared representative, union federations are legally placed on an equal footing.

Public service trade union federations and the European social dialogue

In 2001 the *Institut des Sciences du Travail* of the *Université catholique de Louvain* wrote that together with Luxembourg, Belgium is the only European country where the majority of unionised public service workers are not members of a trade union federation affiliated to the European Public Service Union (Institut des Sciences du Travail 2001).

This situation will change to some extent in the future. Until now only the ACOD/CGSP has been affiliated to EPSU. The change will come from the liberal public service trade union federation, which is still a member of the Union of Civil Service Trade Unions (USSP), which is affiliated to the European Confederation of Independent Trade Unions (CESI). The liberal cross-sectoral trade union ACLVB/CGSLB left CESI and joined the ETUC in November 2002. As a logical consequence of this development, the liberal public service union VSOA/SLFP have applied for EPSU membership.

The CCOD/CCSP is still not affiliated to EPSU, despite the fact that the Belgian Christian Trade Union Confederation ACV/CSC is a member organisation of the ETUC. Instead, the CCOD/CCSP is affiliated to Eurofedop, the European federation of public service staff, which unites mainly Christian public sector unions. However, in November 2003 the CCOD/CCSP officially applied for membership of EPSU. At present, the CCOD/CCSP will also remain as a member of Eurofedop.

These recent changes mean that EPSU membership in Belgium will account for 244.214 members (69.000 of which are affiliated to ABVV/FGTB affiliates and 138.514 to the ACV/CSC, and 36.700 from the VSOA/SLFP).

Estonia

By Kadri Kallas – University of Tartu

On April 7, 2002 the Estonian trade unions celebrated the 10th anniversary of the first tripartite collective agreement concluded after the Republic of Estonia had gained independence. In 1988, initial steps were taken by the unions of the Estonian Soviet Socialist Republic to do away with the dictates of the higher authorities concerning appointments to the union boards. The need to reorganise and reform the trade unions was recognised, the ultimate goal being for Estonian trade unions to achieve independence (Vare 2000: 5).

At their 20th Congress in December 1989, the Estonian trade unions declared themselves free and independent organisations. In April 1990, the follow-up Congress of the 20th Congress developed and adopted the statute of the Confederation of Estonian Trade Unions (EAKL) (ibid).

The main challenge facing the on-going process of reorganisation has been how to abandon the distribution functions of the former unions (concerning shortage goods and holiday packages) and develop democratic organisations in accordance with trade union goals. Substantial social dialogue was unknown to Soviet trade unions. During the Soviet era, collective agreements could only be concluded in industrial enterprises; there was no provision for such agreements in the public service or at the sectoral or national level (Vare 2000: 24).

This research explores the role of trade unions in Estonian public administration, i.e. government, state and local government agencies that exercise public authority. The role of unions in the agencies and institutions administered or financed by the government and local government agencies will not be the object of this research and will be discussed only briefly. Section 2 gives an overview of the Estonian civil service system and the main legislative tools in public employment relations and introduces the national trade unions. Section 3 explores the meaning of social dialogue as understood in legislation and by the EAKL. Section 4 discusses the number and density of trade unions in the public service and their ability to enforce agreements. Problems associated with the implementation of labour laws will also be discussed.

General environment of public service industrial relations in Estonia

The public service system in Estonia

Estonian law defines the public service institutionally. Pursuant to the Public Service Act (PSA),⁶ ‘public service’ means employment in a state or local government administrative agency, which is financed by either the state or a local government budget respectively and exercises public authority. Accordingly, public service is divided into the state public service and local government public service. The PSA applies to the local government servants in conjunction with the Local Government Organisation Act⁷ and relates mainly to their remuneration and terms of recruitment. Public servants are divided into three categories: civil servants, salaried staff, and temporary public servants (PSA § 5)⁸. It is also important to emphasise that public service means only service in those agencies and institutions which exercise public authority. Thus, according to Estonian law, employees of institutions

⁶ Passed by the Parliament on January 25, 1995 (RT I 1995, 16, 228), entered into force on January 1, 1996. For English translation including the amendments as of February 2001, see: <http://www.legaltext.ee/et/andmebaas/ava.asp?m=026>. *Riigi teataja* (RT) is the official gazette of the Republic of Estonia

⁷ Passed on June 2, 1993. For an English translation including the amendments as of December 2001, see: <http://www.legaltext.ee/et/andmebaas/ava.asp?m=026>.

⁸ In fact, there are really only two types of public servants, since temporary public servants perform the tasks of civil servants or the members of support staff but are not employed on open-ended contracts (*Riigikantselei* 2000, 7; see also PSA § 8).

and agencies that are administered and financed by the state or local government agencies but which do not exercise authority are not considered to be public servants of any category. The present research focuses on the trade unions of public servants and in particular civil servants.

Unlike civil servants, the Employment Contracts Act regulates the employment relations of salaried staff rather than the PSA. PSA § 13 specifies which labour laws cover civil servants beyond the PSA or other specific public service laws⁹, although the Employment Contracts Act does not cover civil servants *per se*. The Employment Contracts Act and other labour laws apply to the salaried staff, where the PSA or other specific laws do not provide cover.

The remuneration of public servants within state and local government is regulated in a different manner. According to PSA § 9 section 3, the titles of occupational positions and the respective salary grades of *state* public servants are established through legislation. The government unilaterally determines salary rates and basic rates for the payment of additional remuneration on the basis of additional functions or efficiency criteria. At local government level, PSA § 11 stipulates that the structure, staff and salary rates of local government administrative agencies should be developed and approved by local elected bodies.

Regulation of public employment relations in government, state and local government

The Estonian Constitution establishes the freedom to join both trade unions and employers' federations (§ 29). Trade unions and employers' organisations may protect their rights and lawful interests by any means not prohibited by law. The national parliament has adopted four main instruments regulating collective relations:

1. the Collective Agreements Act (CAA), passed on 14 April, 1993¹⁰
2. the Collective Labour Dispute Resolution Act (CLDRA), passed on 5 May, 1993
3. the Employees' Representatives Act (ERA), passed on 16 June, 1993
4. the Trade Union Act (TUA), passed on 14 June, 2000.

As organisations, trade unions are considered to be non-profit associations, and the Non-profit Associations Act (1996) therefore also relates to them, although the TUA has influenced the nature of the regulations. A register of trade unions has to be kept at the county and city courts. However, the TUA (§ 10 section 3) means that the requirements registration are easier for trade unions than for other organisations. For example, a union's application for registration does not have to be authenticated by a notary public.

As is the case in the private sector, the establishment and membership of trade unions in the public sector is free, the only exception being members of the armed forces in active service (TUA § 4). According to the TUA § 7 section 1, a trade union may be founded by a minimum of five employees. Trade unions are free to form and join federations and confederations and to become affiliated to international employees' organisations (TUA § 4 section 2). A trade union federation may be founded by at least five trade unions and a trade union confederation must comprise at least five national trade unions or federations. Under the ERA either the members of a union or a general assembly of employees not belonging to a union elect a representative to represent them in relations with the employer (§ 1 and 3). According to CLDRA § 21 section 1, strikes are prohibited for all public servants (civil servants and salaried staff alike) in government agencies, other state bodies and local governments.

⁹ Specific laws regulating public service include the Police Service Act, Border Guard Act, Armed Forces Service Act, Courts Act, Prosecution Department Act, and the Foreign Service Act.

¹⁰ For this and English translations of the following acts including amendments, see:
<http://www.legaltext.ee/et/andmebaas/ava.asp?m=026> .

The conclusion of collective agreements is regulated in the CAA. A collective agreement can be concluded between:

1. an employer and a union, federation or authorised representative of employees;
2. an employers' association or federation and an employees' union or federation ;
3. a local government association and a union or federation of employees and civil servants;
4. a central employers' federation and a central employees' federation ;
5. the central federation of employees' unions , a central employers' federation and the government, and between local federations of employees' unions , an employers' federation and local governments (CAA § 3 section 2).

The head of a government agency or a state agency administered by a government agency and the head of a local government or the agency administered by local government is authorised as the employer to conclude a collective agreement in the public service (CAA § 3 sections 4 and 5). Unless otherwise provided, the collective agreement applies to those employees and employers who belong to signatory organisations.

The rights to determine the level of the minimum wage and the procedures to amend it, to agree on new employment guarantees and to determine the procedures for monitoring collective agreements are reserved to those collective agreements concluded between:

1. the central federation of employees' unions , a central employers' federation and the government, or
2. local federations of employees' unions , an employers' federation and local governments (CAA §6 section 2).

The duration of collective agreements tends to be one year and all collective agreements must be registered in a database which is administered by the Ministry of Social Affairs (CAA § 11 section 2 and § 41 section 1). Government agencies and local governments are obliged to resolve collective labour disputes through negotiations, through the mediation of an arbitrator or in court (CLDRA § 21 section 2). The government, with the approval of the Ministry of Social Affairs and the social partners, is responsible for appointing the public arbitrator for a 3-year term of office (CLDRA § 8 section 3).

Trade union confederations in Estonia

There are three trade union confederations in Estonia at the present time:

- the Confederation of Estonian Trade Unions (EAKL) includes 23 trade union federations and trade unions. The organisation dates back to 1905, when the first independent trade unions were created in Estonia. The EAKL is the legal successor of the Central Council of Trade Unions of the Estonian Soviet Socialist Republic, which declared its independence from Soviet state authorities at its 20th congress in 1989. In December 1994, EAKL became affiliated to the ICFTU. In March 1998, the EAKL was accepted as a member of the ETUC with observer status, and in 2003 became a full member of the ETUC. The ROTAL (Federation of Trade Unions of State and Local -government Agencies' Employees) is a member organisation of the EAKL, composed of public servants within the state and local government sectors and the agencies administered by them. The ROTAL and its membership is the main subject of the present research.
- the Estonian Confederation of Employees' Unions' (TALO) was established in September 1992, when its founders broke away from the EAKL. The TALO has been a member of the ETUC with observer status since May 1999. It comprises twelve trade unions from the fields of education, culture, media, agriculture, sports, science, technology and health care. In January 2002, the TALO had approximately 37,000 members (<http://www.talo.ee>).

- The Confederation of Estonian Food Producers and Rural Workers (ETMAKL) was the largest member organisation of the EAKL (approx. 9600 members) until it became an independent confederation in 1997. The ETMAKL has not been accepted as a member of any international trade union organisation to date (Järve *et al.* 2001, 14).

Defining social dialogue in Estonia

The Trade Union Act defines social dialogue as the mutual sharing of information, consultation and collective bargaining between trade unions, employers, local governments and the government in issues regarding the employment and the service-related, professional, economic and social interests and rights of employees (TUA §§ 2 and 3). This conception is similar in terms to that of the EAKL, one of whose central goals is to protect and participate in social dialogue. Negotiations with government agencies, the employers' associations and other institutions, the signing and monitoring of agreements and participation in the elaboration of legislation are seen as key routes for achieving this (EAKL Statutes § 6, sections 3 and 5).

The need to open tripartite negotiations was recognised shortly after the declaration of independence of the Republic of Estonia (September 1991). Tripartite negotiations between trade unions, employers and the government were seen as an important instrument in the transition to a market economy (Vare 2000: 13).

In February 1991, the Prime Minister and the President of the EAKL signed the first collective agreement on social security instruments for that year. Formal tripartite negotiations between the social partners commenced in 1992 once the first employers' association – the Confederation of Estonian Industry – had been founded. In April 1992, the EAKL, the Confederation of Estonian Industry and the government signed the 'General Agreement on Social Security Instruments for 1992.' In this agreement, all parties recognised one another as equal partners. The right of public sector employees to protect their social and economic (wage-related) interests and conclude collective agreements with their employer was also recognised (Vare 2000: 29).

During the last decade, social dialogue in Estonia took place mainly at the state level. Regional and sectoral initiatives were very modest or absent. The main issues discussed were the minimum wage, basic tax exemption, unemployment compensation and social security instruments. Recently, negotiations between the social partners have become more focused and detailed. However, it has to be admitted that trade union confederations have consistently been the main initiators of negotiations and social dialogue. From 1991 to April 2002, 15 tripartite collective agreements were concluded (EAKL 2002: 51).

Social dialogue in the form of information exchange has its foundation in the Trade Union Act, according to which the employer is obliged to inform the trade union representative of:

1. the basic features of the financial year;
2. changes in the basic objectives of the organisation of work, production, technology or activities;
3. merger, division, transformation or dissolution of the organisation or agency;
4. other issues pertaining to employees and their work (§ 22 section 1).

The consultation requirements cover the following issues:

1. termination of employment contracts with employees for economic reasons, in the event of redundancies and redundancy-related decisions;
2. changing or establishment of working time, wage conditions, internal work procedure and other working conditions;
3. in-service training and re-training, qualifications and occupational health and safety of employees;
4. other issues, as agreed upon between the parties to a collective agreement (TUA § 22, section 2).

Alongside negotiations, information and consultation, several tripartite councils are based on the principle of social dialogue:

1. the Estonian Council of the ILO (established in 1992) - a government advisory and consultative body responsible for the duties stemming from ILO membership;
2. the Health Insurance Fund Council – consists of state, employers and employees representatives (five members each). The council determines the strategic plan and budget of the Health Insurance Fund, adopts its structure and appoints the chief and the members of the managing board of the Fund;
3. the Labour Dispute Commissions (15 in all) – formed in 1996 in each county pursuant to the Individual Labour Dispute Arbitration Act. The commissions consist of a chairman and an equal number of a employee and employer representatives;
4. the Work Environment Council – established in 1997 as an advisory body to the Ministry of Social Affairs on workers' safety and welfare issues;
5. the Vocational Councils – created pursuant to the Vocational Education Institutions Act passed on June 17, 1998. The goal of the councils is to develop the vocational training system and the definitions of various qualifications in response to labour market needs;
6. the Employment Councils – established in 1999 following a tripartite agreement which aimed to improve the problem-solving capacity of the National Employment Councils and to give them more leeway for local initiative. Employment Councils are advisory bodies;
7. the Estonian Social and Economic Council – established in 1999. Its proposals regarding the improvement of national socio-economic processes and macro-economic relations are presented to the government (through the Ministry of Social Affairs). The Council is a body for consultation, advice and information exchange.

Despite these legal provisions regulating the environment for social dialogue and the obligations on each party, the social partners declared in autumn 2002 that the social dialogue in Estonia had failed and was experiencing a serious crisis. In addition to the objective causes such as the weakness of the trade unions in the tripartite councils and the lack of a specific legal procedure with regard to information and consultation, the current government was perceived as anti-trade union and unwilling to implement the tripartite or bilateral agreements already concluded.

Representativeness of the Estonian public sector unions: the number and density of public sector unions

An initial general comment is that the attitude to the founding and joining of trade unions in the public sector of Estonia has been relatively passive. In 2001, the Estonian public sector employed 166,000 persons, which is 28.7% of the total workforce (ESA 2002: 79). Of this number, 89,300 persons (or 15.5% of the total workforce) were employed by the state and 76,700 persons by local governments (or 13.3% of the total workforce) (ibid). These numbers include the employees of central and local government agencies as well as the agencies and institutions administered and financed by them, and employees in public enterprises. In the state sector, 20,472 persons are employed directly by government agencies and the state-administered agencies (*Riigikantselei* 2002: 69). In 2001, the number of persons employed in the public administration, defence, and compulsory social security¹¹ both by state and local government was 34,800 (or 6% of the total workforce) (ESA 2002: 64).

¹¹ Code L of the Statistical Classification of Economic Activities in the European Community, Rev. 1 (http://europa.eu.int/comm/eurostat/ramon/cgi/SimWWWFrame.SimBottomFrame?p_nID=NACE_REV1&p_lId=&p_pId=&p_langnom=EN&p_frameType=4&p_asso=&p_emp=&p_language=EN). The sectors of education (code M) and health and social work (code N) employed 51,000 and 30,900 persons respectively (ESA 2002, 64).

Currently, the ROTAL has about 3,200 members in its 70 departments and member organisations. These include central and local government agencies, public inspection bodies, courts, prisons, regional government, nursing and childcare homes, archives, rescue and customs boards and their departments. The majority of the ROTAL departments are composed of court and prison employees, and the employees of nursing and childcare homes. Only the Ministry of Social Affairs (out of eleven ministries) has initiated the process of establishing and registering a trade union. However, employees of several boards and agencies within the ministries have joined the ROTAL (e.g. the Police Officers' Union, the Social Insurance Employees' Unions, local departments of the Labour Market Board and the Labour Inspectorate).

As is the case in the ministries, only a small number of employees in regional or local governments or their agencies have founded and joined trade unions. The ROTAL has six departments formed in the regional governments and four in local governments. A significant number of ROTAL departments are established in nursing or child-care homes administered either by regional or local governments. The number of ROTAL members who are classed as civil servants according to Estonian law is thus rather difficult to define. Drawing on the number of Code L employees in Estonia (34,800, see above) and the ROTAL membership (3200), the participation of civil servants in the trade unions is definitely less than 10 % since a significant proportion of ROTAL members are not civil servants. However, if the TALO membership is added, almost a quarter of employees in the public sector are unionised. As of 2001, the TALO had approximately 37,000 members. However, it is composed of the employees of the institutions and organisations administered by government or local government agencies who are not classed as public servants according to Estonian law.

Several arguments may be used to explain the modest membership rates of civil servants. Firstly, workers have found it difficult to find people willing and able to act as representatives. Secondly, civil servants may be concerned about the negative effects of joining a trade union as a result of the often negative employer attitude towards trade unionists. Thirdly, local government wage regulation is decentralised, and local government civil servants therefore tend to have higher salaries than the central civil servants, which eliminates a key motivation to join a trade union. Fourthly, the Public Service Act provides several bases for additional remuneration for state civil servants (e.g. for length of service, academic degree, and proficiency in foreign languages), which eliminates a certain degree of motivation at this level, too.

Furthermore, as mentioned above, it is prohibited for the members of the armed forces in active service to join trade unions. According to the Border Guard Act (1994), border guards are covered by the same terms as those in the active service of the armed forces (§ 20 section 3); they are thus denied the right to join a union. Border guards have recently started to express their concern about this restriction.

The ROTAL and its member unions have access to and participate in the social dialogue at the European level through in the ROTAL's affiliation to the EAKL (a member of the ETUC and ICFTU). At the European sectoral level, the ROTAL is represented by EPSU.

Implementation of laws regulating public employment relations

Representatives of ROTAL departments in local governments and the Social Affairs Ministry were asked to assess the implementation of legal instruments regulating public employment relations. On the basis of this experience, it can be concluded that the enforcement of certain provisions has proved difficult. The obligation on the employer to inform and consult the workforce which is laid down in the Trade Union Act has not been implemented without difficulty. Information often has to be requested instead of being provided spontaneously by the employer, and the quality of the information largely depends on the persons responsible. Secondly, the right of employees' representatives to perform their tasks within the normal working week has often been restricted. Thirdly, there are cases where the employer avoids entering into bargaining as required by law, attempting instead to present *fait accompli* texts. Fourthly, employers' attempts to 'punish' union members violate ILO Convention No.87

(Freedom of Association and Protection of the Right to Organise, 1948). In some cases, employees have been threatened with changes in the title of their occupational position and have thus been confronted with a lower salary, while others have been denied reinstatement because of union membership.

Furthermore, the Trade Union Act remains ambiguous as to the distinct role of the ministries and the trade union confederations in the social dialogue and thus in the information and consultation obligation and collective bargaining. Neither are listed as partners in the social dialogue, it is the responsibility of those interpreting the TUA and the Collective Agreements Act to determine if the ministries and trade union confederations are considered to be social dialogue partners. For the sake of clarity, the relevant paragraph (3 of TUA) should be reviewed and amended.

In addition, trade union representatives have expressed their concern that the Parliament still has not ratified the ILO Labour Relations (Public Service) Convention, 1978 (No. 151) and the Collective Bargaining Convention, 1981 (No. 154). Convention 151 would provide protection against discrimination on account of participation in trade union activities and would also require the creation of conditions promoting the negotiation of terms and conditions of employment specifically in the public service.

The ability to enforce collective agreements

The ability of public service trade unions to conclude and enforce collective agreements depends on the rate of union membership and the willingness of the government to abide by the agreements. Some trade union representatives have argued that before their organisations enter into bargaining they should try to increase membership figures in order to avoid a situation where a minority decides for the majority.

Recently, the ROTAL has concluded collective agreements with three state agencies and its departments have concluded 18 collective agreements. In 1998, 1999 and 2002 the EAKL (on behalf of ROTAL) and the government concluded general framework wage agreements. The five TALO affiliates¹² have concluded wage agreements with their respective employers (Ministries of Education and Culture), but as a result of the collapse of the social dialogue, no agreement concerning the remuneration of employees of government and state agencies was concluded between the EAKL and the government for 2003. The two latest agreements concluded between the EAKL and the government on behalf of government and state employees concern the Principles of Wage Regulation Reform in the State Agencies Enforcing Public Authority or Administered by government Agencies¹³ (2001) and their wage conditions for 2002.

The first agreement was concluded with a view to a proposed revision of the Public Service Act, which, however, has not yet been passed by the Parliament. One of the main changes proposed is that wage determination should be decentralised. According to the agreement, minimum wage rates for the various salary groups will be determined in an agreement between the unions and the government. It is also stated that the proposed wage commissions in each agency should include a workforce representative. A joint EAKL/government working group was to be established by February 2002, which would determine the scope of issues to be decided by collective agreements at the state level.

The second agreement concluded between the EAKL and the government covered the state agency employees' wage conditions for 2002¹⁴. Alongside increases in the salaries of each grade, it is stated that as from 2003, the goal is to raise the state employees' salaries at least to compensate for increases in the

¹² Federation of Estonian Universities UNIVERSITAS, Estonian Education Personnel Union, Estonian Cultural Personalities' Professional Union, Estonian Professional Union of Scientists and Estonian Theatre Union.

¹³ In original *Kokkulepe avalikku võimu teostavate ning valitsusasutuste hallatavate riigiasutuste palgakorralduse reformi põhimõtete kohta*. <http://www.eakl.ee/doc/index.html>.

¹⁴ *Kokkulepe riigiteenistujate ja valitsusasutuste hallatavate riigiasutuste 2002.a. palgatingimuste kohta*. <http://www.eakl.ee/doc/index.html>.

consumer price index. It was further agreed that a full-time position requiring a university degree should be remunerated with a salary equal at least to the national average wage. However, the central government failed to fulfil its commitments and these provisions remain a dead letter.

Prime Minister Kallas stated that the potential of previous social dialogue practices had been exhausted and that a new system must thus be devised in which the legal status of tripartite collective agreements concluded between the EAKL, the employers' associations and the government is clarified. According to the Prime Minister, bilateral agreements concluded between the confederations and the government as the employer ultimately depend on and are subordinate to the Parliament as the controller of allocated budgets.

As mentioned above, public administration employees are denied the right to strike, and this has compounded the lack of movement towards a solution of the conflict over the social dialogue. Trade union strategies are largely centred on the forthcoming elections in March 2003, after which they hope that a new government will be sworn in which is more sympathetic to union demands¹⁵.

Conclusion

Trade union membership in the Estonian public service is rather low, amounting to less than 10% of public servants. As far as representativeness is concerned, all registered trade unions are entitled to participate in collective bargaining, but it can be argued that the small number of trade unions and the low membership are the clear symptoms of their overall weakness in society and in decision-making. One reason can be found in the personal unwillingness of civil servants and salaried employees to join unions, not least because of fears about the potential negative consequences. Trade union members are clear that there are benefits to be had from membership and it seems that interest in the establishment of new trade unions in the various state agencies is growing. The future adoption of a revision of the Public Service Act may give a significant impetus to the establishment of unions and the number of persons joining them.

The operational problems encountered by trade unions are due mainly to the poor implementation of laws that regulate public employment relations. Several provisions such as the employers' obligation to provide information or to allow workers' representatives to carry out their tasks within normal working hours have not been complied with. The employers' attitude toward trade unions is ambivalent, if not negative. The position of public sector trade unions could be strengthened through the ratification and implementation of ILO Conventions No. 151 and No. 154 concerning the right to organise in the public service and the promotion of collective bargaining. More attention should be paid to the implementation of existing provisions and, if necessary, changes and additions should be made to the laws. The right of salaried staff and temporary staff to strike should be revised, as should the right for border guards to found trade unions.

¹⁵ Editor's update: The Estonian elections resulted in a new coalition of the centre-right *Res Publica*, right-wing Reform party, and centre-leaning People's Party, which indicates that the elections have brought a continuation of previous right-wing policies.

France

By Jeanne Siwek-Pouydesseau – CERSA-Paris II

The French public sector includes:

- public industrial and market-based enterprises, the extent of which is dwindling, as a result of privatisation, and for which no figures will be supplied here
- the civil service in the broad sense, including public administrative bodies and non-market-based industrial and trading operations.

In France the civil service is divided into three distinct branches, namely, State, local government, and hospitals. It is governed by statutory regulations that are to some extent common and to some extent specific to each branch. The statistics given below relate only to the civil servants employed by the national and local government administrations, according to the definition drawn up by the European Trade Union Institute. Thus, under national government bodies, in the strict sense, only 'control' operations are included, while health services are not included under local government. As will be clear, these distinctions are in keeping with the structure of EPSU.

According to the 'Directorate-General for administration and the civil service' (*La Fonction publique de l'Etat* 2001: 39), the national and local authorities and their public bodies employ around 4.8 million civil servants, equivalent to one in every five employees in France.

Some 2.3 million are employed in State civil and military operations and 254,000 in national public bodies. We will take into account neither the 300,000 military personnel who lack trade union membership entitlement, nor the 800,000 teachers which this research does not set out to cover; but we will include the 200,000 civil servants employed by the national education service in a non-teaching capacity. This leaves 1.4 million State civil servants. There are also 1.4 million workers employed by local authorities and other local public services (no distinction being made for those employed by the regional authorities). Finally, the 840,000 hospital employees and 300,000 Post Office employees will not be taken into account.

Central government civil servants thus account for 29% of all public servants. As it happens, local authority employees also account for 29%.

Not all those employed in central government and local authority bodies and offices are civil servants subject to the general statute. Non-tenured employees comprise around 10% of those working in the civilian ministries and for local authorities. Periodically a decision is taken to offer some of these workers tenure by undertaking not to recruit any more until the guideline of almost a third of employees is once more reached. The non-tenured workers are employed under a public law contract, belong to a range of categories and include a high percentage of women and part-timers. They are represented by the same trade unions as tenured civil servants but do not vote in the joint administrative committees which serve to measure the representativeness of the trade unions.

The trade unions and their representativeness

In 1946 civil servants were granted the right of trade union membership. Representation of the professional interests of civil servants was linked, to some extent, to that of the major labour confederations. Since adoption of legislation in 1966, five organisations are presumed representative: the *Confédération Générale du Travail* (CGT), the *CGT-Force Ouvrière* (FO), the *Confédération Française Démocratique du Travail* (CFDT), the *Confédération Française des Travailleurs Chrétiens* (CFTC) and the *Confédération Française de l'Encadrement-Confédération Générale des Cadres* (CFE-CGC).

According to the Labour Code, the criteria for representativeness are independence from the employer, number of members and subscriptions paid (of which no reliable figures have ever been available), the experience of the organisation and its attitude during the Second World War (a criterion now meaningless). Civil servants belong in the main to these labour confederations, which affiliate the workforce as a whole in accordance with criteria of a historical and political nature.

When, however, in 1948, the *CGT-Force Ouvrière*, characterised at the time by social-democratic leanings, separated from the CGT, which had been taken over by the communists, the teachers, who belonged to the former CGT with a reformist majority, remained independent within the *Fédération de l'Education Nationale* (FEN). This organisation was recognised as highly representative in teaching and within the national public service sector in general. It was even recognised as representative at the national level for purposes of being granted a seat on the Economic and Social Council, and this recognition continued to be granted to the UNSA.

When the FEN split in 1993 between a reformist branch of the FEN which became known as the *Union Nationale des Syndicats Autonomes* (UNSA) – after absorbing a small *Fédération générale autonome des Fonctionnaires* – and a more radical *Fédération Syndicale Unitaire de l'enseignement* (FSU), the latter was recognised by the government as representative at the level of the national public service sector.

By contrast, a *Groupe des Dix Solidaires*, composed of various trade unions that were autonomous or had split from the CFDT, and representative in certain civil service departments such as finance, was not recognised for the national public service sector as a whole. And yet this group today wins more votes in occupational elections than ‘historic’ trade unions like the CFTC or the CGC, which account for less than 5% of votes (see Table I). There is thus some talk of revising the rules on representativeness, both in the public and civil services and in the rest of the world of labour.

Since the law of 16 December 1996 (Art. 94), attempts have been made to curb the process of trade union fragmentation among public servants. Organisations are assumed to be representative for the purpose of putting up candidates during the first round of occupational elections if they already have seats in the three higher councils of the three civil service sectors or if they gain at least 10% of the total votes in the elections to the joint administrative committees of the three sectors and at least 2% in each of them. Organisations affiliated to the same federation may not present competing lists. In the second round of the election all organisations may stand. Any objections to the lists registered are brought before the administrative tribunal. It is to be noted that the law has refused recognition of trade union status to offshoots of the National Front, the extreme right-wing populist party led by Jean-Marie Le Pen.

Results of elections to the joint administrative committees (CAP): State civil service (2001)

Trade Union	Percentage of vote
FSU	19.7%
UNSA	16.4%
CGT	15.7%
FO	14.1%
CFDT	14.1%
CGC	3%
CFTC	2.2%
Others	14.8%

N.B. These figures cover the whole of the state civil service, which includes teachers.

Disregarding votes won among teachers, at France Télécom and the Post Office, according to the criteria defined above, the figures are:

Trade Union	No. of votes	Percentage of vote
UNSA	133,274	20.6%
CGT	122,082	18.8%
FO	119,968	18.5%
CFDT	95,837	14.8%
FSU	41,051	6.3%
CGC	35,706	5.5%
CFTC	14,270	2.2%
Others	83,807	13%

Results of elections to joint administrative committees: local government service (2001)

Trade Union	No. of votes	Percentage of vote
CGT	185,671	31.6%
CFDT	154,386	26.3%
FO	124,874	21.2%
UNSA	56,402	9.6%
CFTC	35,690	6.1%
CGC	6,960	1.2%
Others	23,819	4%

For the purpose, among other things, of granting seats on the higher councils of the State civil service and the local authorities, representativeness is measured by the elections to the joint administrative committees, which are held every three years in the case of the former and every six years in the case of the latter. Participation in these elections has been declining in recent decades but is still quite high: 74% for the State civil service and 66% for the local authorities. Since the civil servants are quite free to choose whether to vote or not, and derive no particular advantage from so doing, it may be considered that these elections are particularly representative.

There is an extreme paucity of trade union membership figures in France. Only weak estimates can be made on the basis of a detailed analysis of each sector (see Siwek-Pouydesseau 2001). The figures supplied by the trade unions are frequently unreliable and the principles governing calculation and membership base are not uniform from one trade union to another. The only acceptable measure of representativeness is thus provided by the occupational elections.

Recourse may be had to opinion polls. The figures supplied in international comparisons are generally unsuitable for use because they fail to take account of the complex nature of the situations being investigated. Finally, some trade unions supply certain international organisations with membership figures that are utterly at odds with the reality.

Among the 4.5 million public servants in France in 2000 some 875,000 are trade union members, i.e. 19%. Among the 1.4 million state civil servants, some 250,000 are unionised, i.e. 17%, while among local government employees the figure is 140,000 (10%).

National and international representation

In the state civil service, seven representative organisations of civil servants have as their interlocutors, at the highest level, the representatives of the State *qua* employer, namely, the Minister of the Civil Service and State Reform (on behalf of the Prime Minister) and the Director General of Administration and the Civil Service, also delegated to reform of the State. These seven organisations are the following:

- *Fédération Syndicale Unitaire (FSU).*
- *Union Nationale des Syndicats Autonomes: UNSA-Fonctionnaires.*
- *Confédération Générale du Travail: Union générale des Fédérations de Fonctionnaires-CGT; Fédération des Postes et Télécommunications.*
- *CGT-Force Ouvrière: Fédération générale des Fonctionnaires FO; Fédération de la Communication, Postes et Télécommunications.*
- *Confédération Française Démocratique du Travail: Union des Fédérations des Fonctions publiques et Assimilés CFDT.*
- *Confédération générale des Cadres: Fédération des Fonctions publiques CFE-CGC.*
- *Confédération Française des Travailleurs Chrétiens: Fédération générale des Fonctionnaires de l'Etat CFTC.*

It will be noted that the civil servants' organisations are not all structured in exactly the same way: some have a single general federation or union for all state employees, except post and telecommunications which, historically, had separate federations (the case of CGT and FO). The UGFF-CGT and the FGF-FO belong to EPSU. Others have a body coordinating all state employees, such as the UFFA-CFDT which groups together all federations of state employees, local authorities and public hospitals. These federations are also open to members who do not have civil servant status, for example the *Fédération CFDT Santé-Sociaux* also recruits in the private sector but is affiliated to UFFA only on behalf of its public sector members. It should be stressed, furthermore, that the CFDT federations include civil servants affiliating directly to the FSESDP, without going through UFFA.

The *UNSA-Fonctionnaires*, which has a lot of members among the administrative staff of the national education system, in the Ministry of the Interior (policy) and the Ministry of Justice, belongs to the ETUC through UNSA which has a group in common with the CFDT but is not, for the time being, represented in the EPSU.

The CFTC belongs to Eurofédop and the Federal union of civil servants-CGC in the European Confederation of Independent Trade Unions, while the CFE-CGC belongs to the European Confederation of Managerial Staff.

For the local government service, including employees at the regional and local levels, six organisations are representative:

- *Confédération générale du Travail: Fédération des Services publics CGT;*
- *Confédération Française Démocratique du Travail: Fédération Interco CFDT;*
- *Confédération générale du Travail-Force Ouvrière: Fédération des Services publics FO;*
- *Union Nationale des Syndicats Autonomes: Fédération des Personnels Territoriaux;*

- *Confédération Française des Travailleurs Chrétiens: Fédération nationale des agents des collectivités territoriales CFTC;*
- *Confédération Générale des Cadres: Union nationale de l'encadrement des collectivités territoriales CFE-CGC.*

The CGT and FO public service federations belong to the EPSU, as does the CFDT's *Fédération Interco*, but not the *Fédération des Personnels territoriaux de l'UNSA*.

The conditions of collective bargaining

The preamble of the 1946 Constitution stated that 'every worker shall take part, though his/her delegates, in the collective determination of working conditions and management of firms'. This applies to civil servants, but they stand in a specific statutory and regulatory situation in relation to the government and cannot thus negotiate contracts on an equal footing with the public authorities, which remain in charge of the final decision (see Fournier 2002).

This is why the Civil Servants General Statute of 1946 introduced a system of compulsory consultation in joint bodies, with an equal number of representatives of staff and government employer, before any decision-making takes place. In this way the staff representatives are involved in the management of individual careers within the framework of the joint administrative committees (CAP); they also give their opinion on work organisation matters in joint technical committees (CTP); finally, in the higher councils in each of the three civil service branches (state, local government and hospitals) they are informed and consulted on the operation of services and the drawing up of statutory rules, but their votes have only the force of wishes.

Furthermore, since the new 1983 statute for the three civil service branches, trade unions are now allowed to conduct negotiations with the government at national level in the run-up to pay adjustments and also for discussion of matters pertaining to working conditions and organisation. These negotiations existed already but they cannot always lead to a proper contract even though there are records of conclusions, protocols or agreements signed by the organisations. Under French law such agreements do not count as contracts, though it might be argued that, from a political and social standpoint, they are indeed collective agreements. Agreement is never sought 'in favour of' the members of an organisation but for the benefit of all those employed in the sector concerned. Implementation is always up to the government *qua* employer.

Alongside the traditional relations in the joint civil service bodies, there has thus been a development of several types of labour relations in the framework of the so-called bargaining policy which efforts were made to adapt from the private to the public sector after 1968. The bargaining policy, apart from the annual or multiannual pay bargaining which has taken place since 1970, revived to some extent with the Rocard government in 1989. Indeed, since pay increases were becoming increasingly problematic for budgetary reasons, efforts were made to reach agreement on associated matters, for example, continuing training, the new classifications under the Durafour reform, health and safety, unstable employment or end-of-career leave (1996). These framework agreements, signed by a certain number of organisations generally considered reformist, without any real status in law, are of limited duration like collective agreements and can thus be subject to renewed discussion at decentralised level at the level of ministries or departments. Monitoring committees, consisting of the signatories alone, meet periodically to assess implementation of the agreements. The practice of framework agreements has been used extensively in the reform of the post and telecommunications services. In this way convergence can be observed between certain practices in the private and the public sector.

For a long time pay demands remained the focal point of trade union activity at the national level, linked to the general political and economic context. After 1968 pay agreements were generally signed by the organisations regarded as reformist, i.e. FO and FEN, while being refused by the CGT and CFDT. After 1981 the trade union constellations were reconfigured: *Force Ouvrière* became increasingly militant alongside the CGT, while CFDT and FEN, supported by FGAF, CFTC and CGC, constituted

the reformist camp. The balance between reformist and more radical elements in the civil service was disrupted by the success of the FSU in the elections to the teachers' joint administrative committees. The more radical '*contestataires*', who already have a majority of votes, will sooner or later gain a majority of seats on the *Conseil supérieur de la Fonction publique*, which in this respect takes on symbolic status. It will therefore become increasingly difficult to get agreements signed. Since 1999 the CGT, CFDT and UNSA have each had 4 seats, FO and FSU 3 seats, the CFTC and CGC one each.

The Fournier report, presented to the last Government, advocated an important revival of the social dialogue with the annual obligation of pay bargaining in the spring and the approval of agreements concluded whether dealing with pay or with other questions of a more general nature. For the drawing up of these agreements rules had to be found concerning the majority required since, at the present time, the organisations with a tendency to put forward more radical demands have a majority in terms of votes. A relative majority was thus proposed in the first instance: the representativeness of the signatory organisation or organisations would have to be greater than that of the organisations expressly opposing it. Be this as it may, the competent authority retained its freedom to approve the negotiated agreement, by law or regulatory procedure, or to decline to do so.

The report took up ideas formulated a long time back by the CFDT. But this organisation rejects the unilateral decision-making power of the government *qua* employer in the absence of agreement and is in favour of agreements that reflect a genuine majority. The relative majority was an idea favoured by UNSA, whose positions are, in actual fact, rather close to those of the CFDT.

The CGT meanwhile rejects any relative majority and considers that approval should be compulsory. In relation to the CTP, it disapproves of an end to the joint approach and insists on representation of users. Above all, it calls for new trade union rights and greater resources to implement a policy of dialogue. Overall the FSU's positions converge with those of the CGT, although it is highly critical of the election procedure foreseen for the CTPs, which would upset the rationale of bodies, and it dislikes the principle of approval.

Force Ouvrière reiterates that it is not demanding co-management with the State. It defends the statutory and regulatory situation of civil servants, which it considers to have been called into question. It refuses the election of members of the CTP and the end of the joint approach (*paritarisme*).

The strike, which is not dealt with in the Fournier report, has always been a way of materialising a balance of power in order to force a negotiation, to cause the dropping of a plan deemed unacceptable or even to manifest in a more general manner opposition to the policy conducted. For a long time a concerted work stoppage was regarded as incompatible with continuity of service to the public. The right to strike was included in the preamble to the 1946 Constitution for civil servants as for other waged or salaried workers. But the laws which were to regulate it never materialised, which accounts for the way it is regularly called into question. Certain restrictions exist, however, as for civil servants in positions of authority or on grounds of safety, and a five-day period of notice has been obligatory since 1963. Across-the-board industrial action by public servants is generally intended to press demands related to pay and purchasing power. This generally takes the form of one-day strikes that tend to be symbolic in their impact. Participation in such work stoppages varies depending on the number of organisations which sign the call to strike: if there are four rather than two signatory organisations, participation is much more than doubled, and if there is unanimity among all seven, this will mobilise a majority of union members and the non-unionised. Such broad inter-occupational forms of industrial action, involving all branches of the civil or public service, are relatively rare. By contrast, certain periods have been characterised by repeated action limited to one occupation or department but involving all relevant trade unions. Generally speaking, such movements are organised in sensitive areas of the public service where they are bound to command great media attention, such as post office workers, teachers, nurses, tax inspectors, etc. There is no doubt that sectoral strikes are generally the most effective.

Germany

By Prof. Dr. Berndt Keller – University of Konstanz

In the German context, the participation in the process of wage setting and collective bargaining forms a fundamental means of distinguishing between different organisations involved in public employment relations.

Employment relations in the public sector have always been characterised by two different legal systems (Keller 1983, 1993). This important internal division (*'Dualismus der Beschäftigungsverhältnisse'* / 'dualism of employment status') differentiates between wage earners (*Arbeiter*) and salaried employees (*Angestellte*) on the one hand, and civil servants (*Beamte*), on the other. It can be traced back at least to the Weimar Republic if not to the Bismarckian Reich. After World War II it was re-institutionalised through the Basic Law (*Grundgesetz*). The so-called 'customary principles of officialdom' (*hergebrachte Grundsätze des Berufsbeamtentums*) were restored (Article 33) and, despite harsh and repeated criticism since the late 1960s/early 1970s, have been of major importance ever since. For the purpose of our present study the appropriateness of this fundamental division cannot be discussed in any detail but must rather be taken for granted.

According to the Collective Agreement Act (*Tarifvertragsgesetz*) collective bargaining, including the right to take industrial action, takes place for all *Arbeiter* and *Angestellte*. In this regard there is no difference at all between the public sector and private industry; bargaining autonomy is guaranteed by law in both. *Beamte*, however, are not granted the same collective rights: they are allowed to voluntarily join trade unions and/or interest organisations (freedom of coalition/*Koalitionsfreiheit* according to Article 9 of the Basic Law) but, according to the vast majority of legal opinions, are denied the rights to collective bargaining and collective action. In contrast to other comparable countries this rule refers to the whole group or the collective status of civil servants and not simply to specific tasks or essential services (such as police, judges or armed forces). Furthermore it applies to the whole country and does not differentiate between different administrative levels (federal, regional and local). The salaries and all other working conditions of civil servants (such as working time) are not established through collective bargaining but are laid down by decisions of the Federal Parliament.

From a strictly legal point of view, there is an internal division *within* the public sector instead of a clear distinction *between* private industry and the public sector. In empirical terms, however, it is important to note that these important decisions can be influenced by trade unions and interest organisations because they have legally guaranteed rights to participate in political decision-making (Keller 1983, 1993).

Last but not least, it is important to note that the overall number of public employees decreased from 6.7 million in the early 1990s, shortly after unification, to 4.9 million at the beginning of the 21st century (these figures count employees regardless of whether they are full-time or part-time employees. The appropriate figures in full-time equivalents are 5.3 million and 4.2 million). Underlying reasons include, among others, the privatisation of 'natural monopolies', first of all the former federal railroad system (*Deutsche Bundesbahn*) and the postal service (*Deutsche Bundespost*). Furthermore, cuts and restructuring measures at different levels have had an effect mainly, but not only, in the new federal states, where a politically independent public service had to be constructed from scratch after the collapse of the Berlin Wall and re-unification (Keller 1999a).

Moreover, the above-mentioned employee groups are of unequal size. There are less than 1.7 million civil servants, more than 2.3 million salaried employees and less than 0.7 million wage earners in the German public administration (Statistisches Bundesamt 2001). The overall relative size of the public sector in Germany is, in contrast to frequent public statements and widely shared popular beliefs, around the EU or OECD average: accounting for less than 15% of total employment, but constituting a labour market that is specific because of the legal differences as well as 'customs and practices'.

Moreover, so-called ‘non-standard forms of employment’ (*atypische Beschäftigungsverhältnisse*) are nowadays more important than they used to be. The long-term increase of part-time employment constitutes the most important example, but we also find fixed-term contracts, inter alia.

Organisations: unions and interest associations

There are two peak organisations, the German Trade Union Federation (*Deutscher Gewerkschaftsbund – DGB*) and the German Civil Service Federation (*Deutscher Beamtenbund – DBB*) encompassing different affiliates that organise within the public sector. In contrast to the DGB whose eight affiliated unions organise in private industry as well as the public sector the DBB’s organisational domain is limited to the public sector in particular, but not exclusively, to civil servants. According to most legal analyses, the DGB constitutes a ‘trade union’ organisation under the Constitutional Court’s case law, while, more ambiguously, the DBB is widely regarded as a ‘coalition’ organisation (see discussion on pages 14-15).

Until 2001 the Union for Public Services, Transport and Communication (*Gewerkschaft Öffentliche Dienste, Transport und Verkehr – ÖTV*), the second largest DGB affiliate, was the most important corporate actor on the employee side. The ÖTV bargained together with the independent German Union of Salaried Employees (*Deutsche Angestelltenengewerkschaft – DAG*) in a kind of joint or coordinated bargaining system, previously the DAG had bargained in cooperation with the DBB but this arrangement was replaced, ultimately the DAG and ÖTV merged in the late 1990s. The ÖTV had to cover a large and heterogeneous organisational domain, the vast majority of its members being employed in the public sector. In 2001, a major merger integrated not only the DAG into the DGB but included also some smaller unions (German Postal Union/*Deutsche Postgewerkschaft – DPG*, among others). It created the Unified Service Sector Union (*Vereinte Dienstleistungsgewerkschaft – ver.di*), currently the biggest German union, which could be considered to be more or less a ‘general’ or ‘multi-industry’ union rather than the more traditional sectoral unions (Keller 2001a). Interestingly enough, its organisational domain encompasses different parts of private industry (media, transport, retail, telecommunications, inter alia) as well as the broadly defined public sector. Due to the reorganisation of ver.di branch structures, there are no exact figures on membership to date; Table 1 presents the membership of the pre-merger unions.

Table 1: Membership of ver.di member unions 1990 – 2000

	DAG	DPG	HBV	IG Medien	ÖTV
1990	573,398	478,913	404,695	184,720	1,252,599
1991	584,775	611,969	737,075	244,774	2,138,316
1992	578,352	611,244	629,727	236,306	2,114,522
1993	527,888	578,179	583,782	223,600	1,996,371
1994	520,709	546,906	545,270	215,155	1,877,651
1995	507,478	529,233	520,166	206,786	1,770,789
1996	501,009	513,322	505,405	197,306	1,712,149
1997	489,266	487,814	488,271	191,610	1,643,692
1998	480,225	474,094	471,333	184,656	1,582,776
1999	462,164	457,475	457,720	179,072	1,526,891
2000	458,000	445,968	440,638	175,044	1,476,708

Source: Keller 2001a

The ver.di has been in charge of public sector collective bargaining since 2001. Demands and strategies are supposed to be coordinated between the ver.di and other, smaller DGB affiliates which are still independent (in particular the *Gewerkschaft Erziehung und Wissenschaft – GEW*/Union for Education and Science as well as the *Gewerkschaft der Polizei – GdP*/Police Union). All in all, it is much too early to

indicate general trends resulting from the consequences of this ‘mega merger’. The first round of collective bargaining for the public sector did not start until late 2002.

Patterns of organisation at the national level do not, however, match those at the supranational level – not because both are changing simultaneously, but because they are going in different directions. Due to the ‘multi-industry’ character of ver.di, the need to coordinate heterogeneous interests has grown considerably. These institutional challenges concerning information and exchange, coordination and development of strategies and perspectives on substantive issues refer to horizontal as well as vertical forms of co-ordination (internal forms relating to different sections of ver.di versus external ones relating to different sectoral dialogues).

It must be stressed furthermore that less than 10% of all ver.di members are civil servants. This unequal distribution indicates that ver.di’s membership is primarily composed of salaried employees and wage earners. Exact figures on the distribution of members with different employment status across the 13 sections of the ver.di are not available. Such figures are, of course, more important for purposes of internal division of labour than for the question of representativeness.

Table 2: ver.di membership according to employment status

Salaried employees	1,500,000
Wage earners	859,000
Civil servants	324,000
Freelancers/self-employed	28,699
Others	81,346

Source: ver.di

On the other hand, the DBB has more than 50 member organisations and considers that it represents ‘the interests of the public service and privatised services sector vis-à-vis Parliament, government and the public’ (DBB 2002: 2). The DBB has not claimed the right to enact collective action or negotiate on behalf of its affiliates and it therefore is not a trade union in the traditional or usual sense of the term.

Table 3: DBB membership

	1997	1998	1999	2000	2001
Civil servants	798,603	850,582	867,534	870,294	878,182
Salaried employees	298,733	309,232	302,172	302,649	299,897
Wage earners	19,378	24,244	32,185	32,299	33,014
Overall	1,116,714	1,184,149	1,201,891	1,205,242	1,211,093
Men	786,300	832,521	844,220	845,182	847,164
Women	330,414	351,628	357,671	360,060	363,929

Source: DBB

Trade union density amongst public administration employees

In the vast majority of OECD member states the density ratio of public employees is much higher than that of their private sector counterparts (Dell’Arima *et al.* 2001). In that regard Germany is no exception. Throughout the 1990s the overall ratio definitely fell below 30%, whereas realistic estimates for the public sector indicate about 70% density. As a rule of thumb it is correct to argue that the vast majority of organised *Arbeiter* and *Angestellte* are members of DGB unions, whereas the majority of organised *Beamte* are members of DBB affiliated interest associations.

This proportion is quite remarkable because it was exactly the opposite for several decades. Until the early 1990s the number of *Beamte* organised in DGB unions was higher than in DBB affiliates. Since the late 1980s and even throughout the 1990s the DBB has been the only peak association that has managed to increase the absolute number of its members, whereas the overall number of public employees has decreased and other federations have lost a considerable number of members (Pege 2000).

Table 4: Civil servants in DGB and DBB affiliates

Year	Civil servants as members in the German trade union confederations ¹						
	Absolute numbers				Percentage of total (estimate)		
	DGB	DBB	CGB	Total ²	CGB	DBB	DGB
1980	847,952	746,329	91,976	1,686,257	5.45	44.26	50.29
1981	843,485	742,638	93,214	1,679,337	5.55	44.22	50.23
1982	827,916	730,502	94,026	1,652,444	5.69	44.21	50.10
1983	822,946	718,032	95,218	1,636,196	5.82	43.88	50.30
1984	820,141	707,975	95,121	1,623,237	5.86	43.61	50.53
1985	817,927	710,571	95,253	1,623,751	5.87	43.76	50.37
1986	818,306	699,996	95,236	1,613,538	5.90	43.38	50.72
1987	805,322	699,036	95,253	1,599,611	5.95	43.70	50.35
1988	805,755	699,531	95,021	1,600,307	5.94	43.71	50.35
1989	807,409	701,211	95,134	1,603,754	5.93	43.72	50.35
1990	797,947	704,435	94,160	1,596,542	5.90	44.12	49.98
1991	814,300	712,628	92,210	1,619,138	5.70	44.01	50.29
1992	803,327	747,440	40,249	1,591,016	2.53	46.98	50.49
1993	773,362	758,829	39,779	1,571,970	2.53	48.27	49.20
1994	762,595	769,784	39,162	1,571,541	2.49	48.98	48.53
1995	748,151	777,407	39,051	1,564,609	2.49	49.69	47.82
1996	662,901	781,615	38,498	1,483,014	2.60	52.70	44.70
1997	642,595	798,603	43,866	1,485,064	2.95	53.78	43.27
1998	621,259	850,582	43,897	1,515,738	2.89	56.12	40.99
1999	573,861	867,534	56,170	1,497,565	3.75	57.93	38.32

Original data: CGB; DBB; DGB; own calculations and compilations

1 CGB = Christlicher Gewerkschaftsbund Deutschlands

DBB = DBB - Beamtenbund und Tarifunion (since 1999: Deutscher Beamtenbund)

DGB = Deutscher Gewerkschaftsbund

2 Other civil servants are organised by the Deutsche Angestellten-Gewerkschaft (DAG: approx. 10 000), elsewhere in special associations such as the Bund Deutscher Kriminalbeamter (BDK: approx. 13 000) or the Marburger Bund (MB: approx. 3.000) – organisation of white-collar workers and doctors, which is also a member of EPSU

The DBB has been successful, at least to some extent, in extending the membership of its ‘collective bargaining unit’ (*DBB-Tarifunion*/Association of Public Service Trade Unions) for wage earners and salaried employees. The attempt to strengthen this formerly unimportant part of the peak association has been a necessary reaction of organisational survival that has been caused by the overall trend of decreasing numbers of civil servants (and the high density ratio of this group, which would have been difficult to increase). One could possibly argue that comparatively low fees have contributed to the overall organisational success but, at all events, membership has increased in a period in which it has been rather difficult to achieve any kind of organisational success.

Forms of employee interest representation

As in private industry (Jacobi *et al.* 1998, Keller 1999b), there exists a so-called ‘dual’ system of interest representation in the public sector. At the lower or ‘company’ level, there are works councils in private industry; their functional equivalents in the public sector are ‘staff councils’. These fora represent the workplace-related interests of all employees and in legal terms are strictly separate from the sectoral level of public/private sector employment relations (see Keller 1999a for details). Workplace elections are conducted to determine who represents the workforce within each council; however, unlike the situation in other countries, the resulting votes for different union and non-union candidates do not form part of the formal criteria used to ascertain representativeness.

For the specific purpose of our analysis on representativeness, it is the sectoral part that is of major relevance. In striking contrast to the public sector in other EU member states (Bach *et al.* 1999), collective bargaining in the German public sector is always conducted at the sectoral level and includes not only a large number of quite different groups of public employees but also *all* three administrative levels:

1. local (*Gemeinden und Gemeindeverbände*),
2. federal state (*Bundesländer*)
3. and federal (*Bund*).

The existence of an important ‘intermediate’ political layer with certain constitutionally guaranteed autonomous rights and competencies (in education, science and cultural affairs, and the police, *inter alia*) reflects the federalist structure of the Federal Republic of Germany (FRG) and constitutes a major difference in comparison with smaller and/or more centralised countries. Independent negotiations covering other groups, such as teachers who are not civil servants, are beyond the scope of our present analysis of representativeness. At the European level, these groups of employees are not represented by the European Federation of Public Service Unions – EPSU but by other European industry federations within the ETUC.

This relatively centralised bargaining structure, which is somewhat unexpected due to the above-mentioned federalist political structure of the FRG, has been fairly stable for several decades; more recently, however, there have been several signs of gradual erosion (in public transport, *inter alia*, outsourcing activities, introduction of exemption clauses/*Öffnungsklauseln*). Coverage rates reaching occasionally 100% are also considerably higher than in the various private industrial sectors.

However, from the legal point of view, there is little difference between private industry and this part of the public sector, or, to be more precise, its wage earners and salaried employees. Collective bargaining always constitutes a bilateral, not a trilateral arrangement and is underpinned by the principle of bargaining autonomy (*Tarifautonomie*); it also includes the right to strike. Empirically, strikes have always been very rare events especially in the public sector (Keller 1989), but when they have occurred they have been due to collective action on the part of ver.di member organisations, since DBB members do not have the right to strike.

In the 1990s collective bargaining took place between the bargaining committee of employers’ organisations and a renewed bargaining coalition (*Verhandlungsgemeinschaft*) on the employee side. The bargaining committee represents and negotiates on behalf of all employers at the federal, federal state and local/municipal level. There are independent employers’ associations at the federal state level (Bargaining Association of German States/*Tarifgemeinschaft deutscher Länder – TdL*) and at the local level (Federation of Local Government Employers Association/*Vereinigung der kommunalen Arbeitgeberverbände – Vka*). At the federal level the Minister of the Interior (*Bundesinnenminister*) is in charge of these duties. Within a system of multi-employer bargaining, phenomena such as ‘single employer representation’ or ‘separate representation’ rarely emerge.

Finally, it must be mentioned that a form of collective bargaining takes place between the above-mentioned bargaining committee of all public employers’ organisations and the *DBB-Tarifunion*. These

negotiations are, however, of minor importance for the overall results, since the existing strict commitment to ‘pattern-setting’ and ‘pattern-following’ in the German economy as a whole will not be reversed, since differences in results (such as wage and salary increases) for certain sections would not be tolerated. On the other hand, the interests of civil servants are simultaneously represented by both peak organisations. The DGB and DBB have traditionally managed to reach agreements in the majority of day-to-day problems (such as increases of wages and salaries or income distribution, improvements of working conditions). However, there are several long-standing ideological differences - such as the more or less permanent dispute about the future of the general status of civil servants, for instance. The DBB wants to preserve the status quo, whereas the DGB is calling for its abolition and the introduction of a unified employment status. Both peak organisations are officially considered to be of equal importance, although DBB members now outnumber the civil servants represented by DGB affiliates.

There are official, legally enshrined rights concerning active employee participation in the preparation of all rules and regulations concerning the group of civil servants (*‘Beteiligungsrechte’* according to the Federal Civil Servants Act). These guarantees are broadened and secured by various rules in the common standing orders of the federal ministries. These rights have guaranteed both peak federations their special, privileged status far beyond that of the vast majority of other interest associations. Their specific rights, which were improved and broadened in the early and mid 1990s, have been regarded as functional equivalents to the collective bargaining rights of wage earners and salaried employees. It seems justified to argue that means and instruments of interest representation for all three groups of employees were different in legal terms but of comparable efficiency, at least until the 1990s. Existing legal differences, collective bargaining vs. unilateral regulation, therefore should not be overestimated empirically (Keller 1983).

Conclusion

Answers to the crucial question of representativeness depend to a large extent on the specific intent and focus of analysis. It is clear that both peak organisations follow quite different lines of argument. First of all, the DBB has been officially recognised as one of the two peak associations and has special status including privileged access to processes of political decision-making. Furthermore, as already mentioned above, since the early-to-mid 1990s, DBB affiliates have even organised more civil servants than DGB unions. However, as regards social dialogue it should be remembered that the DBB does not constitute a trade union under national criteria lacking as it does the power to negotiate or conclude collective agreements and carry out collective action.

If one refers the question of representativeness to the entire state administration and local government sectors, including wage earners and salaried employees, taking into account those organisations able to enter into formal collective bargaining in the strict sense, there is no doubt that ver.di is the most important corporate actor on the employee side. At the local level, ver.di represents 85% of unionised employees. Any formal impact which the DBB-Tarifunion may have is negligible, in both quantitative and qualitative terms. It is clear that decisive collective bargaining takes place between ver.di and the public employers’ coalition. As a result of the ‘pattern-setting’ practices in German collective bargaining, other organisations may only copy these results and are unable to change them significantly. Moreover, the continuing decline in the number of civil servants means that ver.di’s proportional importance is set to increase, since it has a much stronger position with regard to salaried employees and wage earners.

Hungary

By Béla Galgóczi - ETUI

The public sector in Hungary is rather limited on the whole due to extensive privatisation. It must be noted that within the competitive sphere of the economy there is no distinction between state-owned and private enterprises, as far as industrial relations are concerned. The same trade unions cover the employees of both state-owned and private enterprises in a given economic sector, and social dialogue also takes place within the same institutional framework.

Our focus here will be the public service sector, which comprises public administration services in the central and local administration and public services (health care, education, etc).

A total of around 800,000 persons are employed in the public service sector (the total number of employed in Hungary is 3,8 million). Of these 800,000 employees, 550,000 are public servants, working in the area of public services (health care, education, other public institutions), and roughly 250,000 persons work as civil servants in the public administration at the central and local level.

Brief overview of industrial relations in Hungary with a focus on public services

The framework of social dialogue

The key institution of tripartism at the national level used to be the Interest Reconciliation Council (IRC), which was established in 1988 by the reform communist government at the time and was subsequently revived and consolidated by the conservative government in 1990 (Héthy 1995). This was the key institution of tripartism in the 1988-1999 period, since it had the strongest and most lasting impact on public policy formulation and legislation, but also on the entire process of political and economic transformation. The second conservative government – replaced it with the following institutions in 1999 – with vehement protest from the social partners:

1. The Economic Council was a multipartite consultative body, where strategic economic issues were discussed. The participants were those organisations that were strong enough to influence the economy, such as trade unions, employers' organisations, the Hungarian National Bank, the representative of the Bank Association, economic chambers, multinational investors, and the Stock Exchange Council.
2. The National Labour Council (NLC) was the successor of the former IRC. This was a tripartite council for consultation and negotiation on labour issues, which dealt with labour law, labour relations, employment policy, social policy, vocational training, wages in the competitive sector, labour safety, labour inspection, etc. It inherited the power to fix the national minimum wage, and to agree on the recommended wage increases (Ladó 1997).

After the elections in 2002, the social-liberal coalition re-established the IRC – a trade union demand.

Public service unions also take part in the work of the IRC or NLC. This body was and is the forum where in addition to the formulation of the national wage recommendation, the decision is taken on the minimum wage for the economy as a whole and discussions on macro-economic policy and labour legislation also take place.

In addition to this body, there is a separate interest representation forum for the public services; formerly known as the Interest Reconciliation Council for Public Employees (IRCPE), it was replaced by the National Labour Council for Public Employees (NLCPE) in 2001. Whereas members of the IRCPE were the representative unions of the public sphere, members of the NLCPE were all confederations that had at least one public service member union. The NLCPE has been operating unchanged since the new elections, although there are plans to restore the former institution. The major function of the NLCPE is to hold negotiations on the wage increases in the public sphere and

to determine the specific wage and salary scales for that sphere on the basis of job categories. There is a salary scale for civil servants (administration, government offices) and another for public servants, (employees in public service).

There is also a special sectoral forum for civil servants (employees in the public administration), the Interest Reconciliation Forum for Civil Servants, which covers employment issues and working conditions in the entire civil servant sphere.. In addition to this body, there are individual interest representation councils within most ministries.

Trade unions

In the 1990s the Hungarian trade union system was characterised by strong and conflictual pluralism. At present, the six national central trade union organisations are slowly moving closer together. They sign reciprocal cooperation agreements and act in concert increasingly often, both in companies and at national level.

The actual influence of Hungarian trade unions is weak and is steadily declining. In 2001, trade union density in the competitive sector was around 25%, whereas it was markedly higher (35-40%) in the public services and in budgetary institutions (education, health), although membership rates are also falling in this sector.

Most Hungarian trade unions in the competitive sector are experiencing a steady decrease in membership and a corresponding decline in their presence in companies. Amongst other factors, this is mainly due to the structural changes in the economy, with an absence of union activity in many of the new sectors. On the other hand, the influence of unions in the public service sector is increasing at a fair rate.

The trade union weakness of the 1990s can be attributed to several factors. The unions were fighting for legitimacy, often also to the detriment of cooperation. They were wise enough not to block reforms at critical periods of the transformation bearing long-term prospects in mind, but at the same time they failed to see the opportunities offered by the improving economy. The major unions are rather politicised, and this limits their bargaining power (either because they are too close to the ruling party, or because they are in strong political opposition to it) (Vaughan-Whitehead 1998).

Since 1992 there has been a dual system for worker representation at the workplace in Hungary with trade unions and works councils. The latter are obligatory in enterprises employing more than 50 persons. The same system works in the public sphere, with what are known as public service councils exercising participation rights at workplaces. The codetermination rights of works councils and public service councils are essentially limited to welfare issues. In the budgetary institutions and businesses employing between 15 and 49 persons, the workers elect a delegate who has the same formal status (rights, functions) as the public service council.

Trade union structure in the public sphere

Labour representation in the public sphere is rather concentrated in Hungary. The dominant confederation is the Trade Union Cooperation Forum (SZEF), which itself covers the whole public service sector and has 270,000 members with an organisation rate of 35%. The SZEF is thus the second largest confederation in Hungary after the MSZOSZ (around 500,000 members), which concentrates on the competitive sector.

Member union federations of the SZEF include:

- the Teachers' Union (with 90% of organised employees in education),
- the Democratic Health Care Employees' Union (90,000 members),
- the Public Collection and Museum Employees' Union,

- the Hungarian Civil Servants' and Public Service Employees' Union,
- the Tax Office and Financial Control Employees' Union,
- the Medical Emergency Employees' Union,
- The Artists' Trade Union Federation.

There are several members of the SZEFE with dual affiliation, including the unions representing civil servants in various ministries of the central government.

The SZEFE has signed a cooperation agreement with the Trade Unions of Professionals (ÉSZT), which integrates professional intellectual workers, such as researchers (SZEFE 2000).

There are two other confederations that have member unions in the public service sector, although the profile of these confederations concentrates on the competition sphere. The MSZOSZ, the largest confederation in Hungary, has a minor union for teachers in professional training and the LIGA Confederation has one member union called the Democratic Teachers' Union.

It is the peculiarity of the Hungarian interest representation system that local government employees do not have a distinctive institution for such representation. There is one member of the SZEFE, the Hungarian Civil Servants' and Public Service Employees' Union, which concentrates primarily on civil servants in the local government sphere and has an organisation rate of around 33%. This union is regarded as the most representative in the sphere of local administration.

On the other hand, employees of institutions in the public education and public health sectors owned by local governments are also represented by the respective national branch unions (teachers or health care employees). In this way, interest representation in the public sector is rather concentrated, due mainly to the fact that essential decisions influencing the remuneration and working conditions of public service employees are taken at the national level. Pay increases and wage and salary scales are determined at the central level and, unlike practice in the competition sector, these are not just recommendations but legally binding. The local governments receive the financial resources to cover wages of public service employees directly from the central government and have thus rather limited room for manoeuvre in decision-making.

Collective bargaining

In the area of collective agreements, Hungary confirms the general tendency that characterises CEE countries, i.e. such agreements tend to be concluded at company level and the practice of sectoral collective bargaining is particularly weak.

By 2001, 1352 collective agreements had been concluded in industrial or commercial companies and there were 57 agreements covering several companies. As regards state and budgetary institutions, 2082 collective agreements had been concluded in the same period, 2071 of which concerned one single institution (school, hospital, etc) and only 11 had been signed at the multi-employer level. In 2001 collective agreements whose scope was limited to one company or institution covered 46.7% of the active population in Hungary, whereas sectoral agreements or agreements applicable to several companies or institutions covered scarcely 10% (Ladó 2002).

The only question in this regard is why sectoral bargaining practice in Hungary is so weak. It is generally considered that the legislative rules on labour relations in Hungary are so detailed that they leave little room for free negotiations. This is especially true for the public service sector, where national agreements are binding for the whole sector.

Lastly, there is a dilemma, if not a contradiction, between the trade unions' claim that they want to negotiate pay increases within the framework of the national labour council (tripartism) and also promote sectoral bargaining practice. When one considers the rules contained in the labour code plus

the possibility of tripartite concertation on pay, there is little left for negotiation between the social partners acting at the sectoral level.

The weakness of collective bargaining is due in part to the attitude of the social partners. Trade unions have a weak presence in private companies, which now constitute the central pillar of the Hungarian economy. Secondly, Hungarian trade union pluralism has in several cases proved to be a serious obstacle to the conclusion of collective agreements, at both the company and the sectoral level. The trade unions do not often manage to arrive at common positions in negotiations, which makes it impossible to conclude agreements for formal reasons, irrespective of the willingness of employers in this regard (ETUC, CEEP, UEAPME and UNICE 2001).

Representativeness of trade unions in the public sphere

In Hungary, the representativeness of trade unions is dealt with partially in labour legislation (in the context of the definition of the legal capacity to conclude collective agreements) and partially through legislative instruments instituting tripartite consultations. The higher the level of industrial relations, the greater the influence of representativeness will be on the rights of trade unions. It is also true that participation rights in higher-level forums of social dialogue depend primarily on the internal regulations of the organisation or forum concerned. These conditions generally correspond to acknowledged representativeness criteria, although not in every case (Casale 1999). Trade union representativeness has other dimensions, however, which go well beyond any specific legal definition.

There is, *inter alia*, the principle that trade unions represent the interests of workers in general, not only the interests of their members. As far as the sectoral and the national level are concerned, representativeness is often seen as an eminently political issue depending on recognition by employers or by the government independent of any formal criterion. Representativeness at the national level is generally measured against the criteria for admission to tripartite interest reconciliation structures.

As regards the legal criteria of representativeness, the major aim has been to ensure that trade union rights are exercised by organisations that enjoy the support of a substantial group of employees, and the opinions of marginal groups cannot be regarded as employee interests.

The second section of § 29 of the Labour Code deals with the representativeness of trade unions at the workplace. With regard to the public service sector, the major rule is that trade unions which acquired at least 10% of the votes at the public service council elections can be regarded as representative. The Code also stipulates that trade unions can also be considered representative if at least 2/3 of the employees of a certain profession are members.

Representative trade unions are guaranteed the right to conclude collective agreements. Accordingly, non-representative unions do not have a veto right in connection with collective agreements. At the same time, employers are not obliged to react to initiatives of non-representative unions for collective negotiations. In other respects, the rights of trade unions are not subject to representativeness at the local level.

The conditions defining the representativeness of trade unions at the branch and sub-branch level are dealt with in sections 2 and 3 of § 34 of the Labour Code, pursuant to which a trade union, which has the greatest support among a given group of employees in terms of membership and economic importance is deemed representative.

The above representativeness criteria are examples, since the legislator did not exclude the use of other criteria, which are not mentioned in the law.

The question of the representativeness of interest representation organisations at the national level has been raised in the context of the criteria for participation in tripartite talks at the national level. The results of trade union confederations in the national elections for the social security fund

governance bodies were decisive, although these bodies were dissolved by the conservative government in 1998. Even so, the National Election Committee declared which interest representation organisations are deemed to be nationally representative (and thus entitled to take part in national tripartite talks). These organisations correspond to those which qualified for the previous elections for the social security fund governance body.

Representativeness can also be examined in the sociological sense, which includes the number of members, trade union density with respect to a certain group of employees or the number of economic sectors covered. Legitimacy, popularity and mobilisation strength are also taken into account.

The evaluation of representativeness of trade unions in the public service sector

We saw earlier that the major unions of the public service sector meet all of the representativeness criteria set out above. The SZEF confederation, which covers the entire public service sector, has 270,000 members with a density rate of over 35%. This is a respectable figure in the Hungarian context, since the average density rate in the country is not more than 25%. The other union in the public service sector which concentrates professional intellectual workers (ÉSZT) has a 30% density rate in its professional group. Both confederations take part in the work of the National Interest Reconciliation Council and also in the National Labour Council for Public Employees.

In the course of the last elections for the public service councils in 1999 the SZEF obtained 52% of votes, while independent candidates obtained 30%. We also saw that several SZEF member unions (teachers and health care employees) concentrate over 90% of the organised employees of their professional group. The SZEF affiliate which mainly covers employees of local government administrations has an organisation rate of 33% and is considered to be representative (SZEF 2001).

When we take other representativeness criteria into account, we can conclude that public service unions in Hungary have a higher sociological representativeness than unions in the competitive sphere. The legitimacy, popularity and economic influence of public service unions is also greater than that of their counterparts in the business sector (Vadász 2001).

This strength is merely relative, however, since the actual strength of unions is also weak in the public service sector, particularly as regards their pressure potential in wage negotiations and their mobilisation force, as is clearly demonstrated by their role in the national tripartite talks and in the course of national wage negotiations.

In March 2001, the government concluded a 3-year agreement with the largest trade union confederation in the public sector. The regular wage increase of public service employees was set at 8.75% for 2001 on the proposal of the government according to the wage formula: inflation + half of the GDP growth realised. Public service unions were unable to push through their demands for a 12.5% wage increase and a modification of the wage and salary scale to tackle disproportionalities arising as the result of the substantial increase in the minimum wage. At the same time, local governments, which are the employer for most teachers and health care employees, could not finance the wage increases from January, since their budgets are passed in February. This meant that a large number of public service employees received their pay rise only from March, when they also received the difference for the first two months in line with the wage increase.

The public sector unions were thus unsuccessful in their efforts to achieve higher wages than those set by the government and they considered organising strikes or demonstrations, although the previous assessment of the situation indicated that public service employees are not ready for mobilisation because of major existential fears.

It was a bitter experience for the public service unions when the initiative was again taken by the government, which suddenly declared that it was going to raise public service wages and salaries in the summer of 2001 by an average of 28%. The wage and salary scale of public service employees was upgraded at the same time.

The same situation occurred again in 2002, when the agreement reached in the wage negotiations resulted in a moderate 7.75% pay rise in the public sector. The new government then declared a 50%(!) wage increase for public servants (teachers, health care employees) affecting almost 600,000 employees from September 2002, although the national agreement in effect still contains the 7.75% increase. This showed workers yet again that their wage and salary increases were not the result of trade union pressure but were due to the paternalistic generosity of the government.

As a result of the above, wage increases in the budgetary sector have been substantially higher than those originally outlined in the agreements for 2001 and 2002 and have substantially outpaced those in the competitive sector.

Italy

By Bruno Veneziani – University of Bari

The Italian public sector accounts for almost three million employees (including public managerial staff). Italian law defines each sub-sector or *comparto*, in agreement with the trade union movement, as follows: national ministries, public enterprises, non-economic bodies, research institutions, universities, schools, local administrations, and health and care (see Table 1).

Table 1: Union membership – synthesis table

Sub-sector	No. bodies	Employees	Union members	Trade union density
Public enterprises	4	40,236	26,552	65.99
Non-economic public bodies	330	58,258	39,633	68.03
Ministries	23	266,795	116,158	43.54
Research bodies	114	15,788	8,166	51.72
Universities	75	56,300	23,638	41.99
Schools	1	981,919	387,540	39.47
Regional and local government	7,976	594,079	293,740	49.44
Health	352	525,105	268,836	51.20
Total	8,875	2,538,480	1,164,263	45.86

Source: ARAN (special public agency)

The general legal framework – trade union representativeness

Article 39 of the Italian Constitution marks a turning point in the evolution of collective labour law in both private and public employment sectors. It states the principle of freedom of trade union organisation:

‘The organisation of trade unions shall be unrestricted. No obligation shall be imposed upon trade unions other than of registration at local or central office in accordance with the provisions of the law. It shall be a condition of registration that the rules of a union provide for a democratic internal structure. Registered unions shall have legal personality. Each union being represented in proportion to its membership, they shall have the power to conclude collective agreements with binding force on all persons belonging to the categories to which the agreements relate’.

However, this constitutional provision remains a dead letter, since the legislation required to implement it has never been passed. The central rule concerning trade union freedom therefore remains the proclamation of the freedom of organisation for trade unions (Art.39-1). The first consequence of this situation is that the constitutional guarantee has been implemented in a manner that favours trade union pluralism in activities, collective bargaining structures and procedures. The second consequence

of the lack of a constitutional implementation in this field is that Italian trade unions are regulated purely by the Italian civil code (Art.36, 37, 38) and are unable to attain recognition and legal personality, even if they request it. Therefore, unions are considered ‘non-recognised *de facto* associations’, lacking legal personality.

Collective agreements, the backbone of the industrial relations system, form a part of private law. Their prescriptive function (normative part) deals with terms and conditions of employment for individual labour contracts. From the legal point of view a collective agreement is only legally binding on the employers and workers who are members of the organisations which are parties to the contract – trade unions, employers’ associations or individual employer; however, differences are to be observed in the public employment sector on this point.

The Italian civil code does not offer an exhaustive position on the legal status of trade unions. Special legal norms define the status of ‘representative’ and ‘most representative’ organisations, which is relevant for acquiring certain privileges under the law, particularly in public employment collective labour relations.

The second central rule concerning (individual and collective) public employment relations is Art.97 of the Italian Constitution which states the following:

‘The public departments shall be organised in accordance with the provisions of law in order to ensure the proper conduct and impartiality of public administration. The rule governing the departments shall specify the fields of competence, rights and duties and responsibilities of public servants’.

In fact, the whole system of collective bargaining and union representativeness in the public sector has been reshaped and substantially regulated by a series of laws (law no.421 of 23.10.1992; legislative decrees no.29 of 3.2.1993. and no.469 of 4.11.1997), recently all included in legislative decree no.165 of 30.3.2001.

This wide-ranging and complex reform was intended to bring labour legislation governing public employment relations into line as far as possible with the law applying to the private sector. This was a minor ‘revolution’ in the distinction between the private and public sectors, the intention of the legislator being to ‘privatise’ public employees’ sources of legal regulation. The decree not only recognised collective bargaining as a regulatory source of labour relations in the public sector but also extended the rules laid down in the civil code to regulate private industrial relations, albeit adapting them to the specifications of the sector in which the employer is a public entity.

The reform made important advances in the shaping of labour relations as regards links between the law, collective autonomy and trade union freedoms in general. Law 165/2001 thus constitutes much stronger state intervention to support unions and the collective bargaining system. It also signifies a higher level of intervention than was previously the case, especially with regard to the structure (levels) of collective bargaining, the quality of the contracting bodies, and the issues, topics and legal nature of agreements and their scope.

The legislative reform states that the public authorities can admit only ‘representative’ unions to the collective bargaining table. In other words, negotiation legitimacy is possessed only by those unions which are considered to be ‘representative’ by the law (Art.43 legislative decree n.165/2001). According to the law, admission to the negotiation round at the national level is only available to those unions which have a minimum threshold of representativeness of no less than 5% on average between membership¹⁶ and votes in workplace elections¹⁷ in the sector or area concerned (e.g. homogeneous professional groups, such as managers or doctors). Membership figures are calculated according to the

¹⁶ the ratio of membership of each union to the total potential membership in the area to be covered by the agreement

¹⁷ the ratio of the number of the votes registered for each union to the total number of votes registered in the same area

number of paying members compared to the potential total number of fee-paying members in the area concerned; contributions are made by means of a deduction from pay. Table 2 gives an overview of the current position of various unions, according to ARAN data.

Table 2: Representative unions in public administration

Sub-sector	Representative unions and rate of representativeness
Non-economic public bodies	CISL FPI (32.83%); CGIL FP (19.28%); CSA di CISAL/FIALP (16.98%); UIL PA (14.45%); RdB parastato (9.25%)
Ministries	CISL FPI (27.48%); CGIL FP (21.95%); UIL Stato (17.64%); Confusal/UNSA (12.21%)
Regional and local government	CGIL FP enti locali (34.77%); FIST CISL (29.18%); UIL enti locali (16.20%); CSA (5.09%); Diccap Confsal (5.05%)

Source: ARAN

The public agency ARAN performs a special control function acting on behalf of the state, as a union counterpart, in bargaining rounds and verifying that agreements are signed by unions which collectively represent 51% on average between votes in elections and members belonging to the union (or 60%, if only members are considered) in the area or sector concerned. In the private sector contractual legitimisation is not based on any specific legal requirement.

According to the law (Art.42 l.d.n.165/2001), each representative trade union has the right to establish works councils at enterprise level (RSA or *rappresentanza sindacale aziendale*). However, it is important to stress that the law also makes it compulsory to establish a unitary body 'in each administrative unit or structure' which has no less than 15 employees. The provision of this 'unitary representative' entity (RSU or *rappresentanza sindacale unitaria*) is to temper the excessive fragmentation of representativeness among smaller unions.

According to Art.42, RSUs have statutory rights to be informed and consulted and to conclude collective agreements, and they are therefore a bargaining agent, which, in view of their composition, must be taken into account by unions responsible for national collective agreements in the sector concerned.

Moreover, a special national Framework Agreement of 7.8.1998 (Art.5-3) on public employment relations provides for parallel bargaining legitimisation both for RSUs and the representatives of unions which have signed collective agreements at the public sector level. As regards the priority of various bargaining strategies, the same agreement states that RSUs and the individual unions which have signed national collective agreements are obliged to adhere to the criteria and principles therein.

Collective bargaining in the public sector

In the private sector, as a result of the statement of trade union freedom in Art.39, it has not been recognised that unions have a general right to negotiate, with a corresponding obligation for employers. This would have required legislative interference in the autonomous decision-making of the collective bargaining actors, a practice traditionally rejected by the union movement. In the new reform of public employment relations the rationale is '... to extend the rules and provisions of the civil code and statutes relating to private employees in the enterprise to the public employment sphere' (Art.2, law 165/2001).

In fact, it is widely assumed that, as regards personnel management decisions, public administrations act 'with the powers and capabilities of private employers' (Art.5, law 165/2001). The terms and conditions of work for public employees' contracts are laid down in 'individual and collective agreements' (Art.2, law 421/1992).

The result is that in the new context collective agreements in the public sector are no longer a step in a complex procedure aiming to produce an administrative measure; rather, they are the expression of the private collective autonomy covered by Art.39 of the Constitution and have general competence for regulating 'all topics related to employment relationship and collective relations' (Art.40, law 165/2001).

According to Italian law, unions do not have an explicit mandate to conclude collective agreements on behalf of their members. However, legal opinions suggest that the mandate is implied in the decision to become a union member. In practice, before presenting their demands unions draft a provisional text and then organise meetings at the workplace to ensure that the employees approve the agreed text. The main general confederations which conclude collective agreements are the CGIL (*Confederazione generale Italiana del lavoro*), the CISL (*Confederazione Italiana sindacati lavoratori*) and the UIL (*Unione Italiana del lavoro*). They act at the national level and their branches operate at the local level.

Unlike the private sector, public sector law now regulates the collective bargaining structure in public employment relations and describes its features: the number of levels, their internal coordination and the actors. It thus specifies that the levels are as follows:

- a) National 'sector' collective agreement: a sector is a homogeneous 'institutional field' (*comparto*) of the State. The sectors have been identified by agreement between representative unions and the special public agency (ARAN), which by law represents all public administrations in a bargaining process and, if required, assists peripheral administrations in integrative bargaining rounds. The actors at this level are the ARAN (*Agenzia per la rappresentanza negoziale*), which represents the public administration, and the unions (confederations) selected according to the statutory criteria. The term of the normative part of this type of contract is 4 years and that of the economic part 2 years.
- b) Framework agreements, applicable over all sectors or to a selected number, if the contracting parties decide that certain topics must be subject to uniform regulations.
- c) Integrative (decentralised) collective agreements, for local and peripheral branches of public administration. This type of agreement is concluded for 4 years. Integrative agreements can contain clauses dealing with control mechanisms for their implementation (Art.5 of National Collective Agreements for Ministerial Employees 1998-2001). As regards content, the decentralised level deals with 'the topics and the limits' established by national collective agreements, which also specify the negotiation protagonists and the bargaining procedure.

These agreements have territorial scope and concern more specifically public administrations at the local level. The law states that public institutions cannot sign 'integrative' collective agreements which conflict with the limits laid down in national agreements or impose an unplanned economic burden on any administration.

The law promotes the national level as the coordinator of the system as a whole: integrative and decentralised collective agreements are considered null and void if they do not comply with their own contractual competence as assigned and imposed by the legislator (the private system does not make provision for the same sanctions).

The legislation also intervenes in the bargaining procedure, establishing differences between national sectors and decentralised levels. On this point public presence is more significant: the Ministry of Finance and the Prime Minister are involved in stipulating the limits for the negotiators according to the public budget. A special branch of the judiciary (*Corte dei Conti*) controls the cost of the agreements in order to ensure that they are compatible with the planned annual budget. The ARAN formally signs the contract, following government guidelines, and recent experience – subsequent to the 1993 reform – indicates that the advice is strictly applied. The ARAN also receives compulsory guidelines from several special 'sectoral committees', set up for all the public areas indicated above.

The implementation of collective agreements

The law has provided for a special mechanism to ensure that collective agreements apply universally (*erga omnes* effect); it is based on the above-mentioned attribution of negotiating power to ARAN by law, and the legal effects of the agreements are binding for all of the parties represented. In fact, according to the Constitutional Court (no.309/1997), only the public administrations are exclusively bound by the agreement, just as they are required by law to conform with what the ARAN has indicated.

National collective agreements regulate a wide range of topics and issues: work flexibility, telework, temporary work, training and work contracts, part-time, working time, fixed-term contracts, temporary suspension of contracts, leave of absence for training, equal opportunities, employee turnover (national collective agreement for of the 'regions and autonomous local bodies' sector of 12.4.1999), but also industrial relations, integrative collective bargaining, information and consultation, leave of absence for trade union tasks, wages, part-time, flexible employment contracts, etc (national collective agreement for the sector of ministerial employees of 16.2.1999).

At the integrative level they mainly cover stipulated wage incentives, hours of work, overtime, the impact of technological innovation and transformation on job quality and employee skills, external mobility and transfer, safety at work, equal opportunities and trade union rights.

The law also states that the following issues are subject to simple information and consultation: organisation of services, measures and staff numbers (Art.6 law 165), redeployment of employees in the event of transfer of activity (Art.31, law 165). Some sectoral national agreements provide for preventive information to be supplied to various representatives: union signatories of sectoral collective agreements at national level are provided with information on certain issues (work organisation for all units, part-time contracts etc). Some other issues are dealt with by above-mentioned signatory unions plus the RSUs (criteria for distributing tasks, organisation of work of an individual unit, new technology, staff training, etc) (national sectoral collective agreement for national departments 1998-2001).

More complex legal procedures are laid down in the case of redundancy or labour surplus. Initially, RSUs and the signatory unions of national sectoral agreements are given information and consultation rights with a view to reaching an agreement to avoid negative social consequences. If the negotiations fail, both parties comply with the decision of the national public administration department. However, unions play a marginal and ancillary role, they cannot interfere with the decision of the public body on the redundancy rate, and they must limit their role to simply negotiating the selection parameters for employees involved in the managerial decisions.

Participation in national bipartite and tripartite structures

The law provides for specific bipartite and tripartite bodies to verify that an agreement is being implemented and interpreted correctly. With a view to monitoring the representativeness of unions, the law provides for a special joint committee, in which the national unions with collective bargaining competence are included, for monitoring data regarding votes and dues (see above). This committee is in charge of settling all disputes regarding the election procedure.

If the agreement is elusive, responsibility moves to the National Economic and Labour Council (CNEL), a public body which, according to the Italian Constitution, is 'composed...of experts and representatives of the various categories involved in production in such proportions as will give due weight to their numerical and qualitative importance' (Art.99).

Furthermore, Art.46, section 4, of law 165/2001 provides for a joint committee for monitoring the implementation of national and integrative collective bargaining. It is composed of members selected by the ARAN, the sectoral committees and the union signatories of national agreements. Several other consultative bipartite committees can be set up in each national department dealing with any problems

concerning work organisation, health and safety at the workplace and social services (national sectoral collective agreements for ministerial employees 1998-2001). The law makes provision for an additional special tripartite arbitration board, composed of representatives of the public administration, employee representatives and a third party with a view to settling disputes concerning disciplinary penalties.

Tripartite committees are provided for in some national sectoral agreements: equal opportunities committees are composed of representatives of the public body involved, a member designated by each signatory union of the national agreement and civil servants designated by the public body. The committee is in charge of implementing the equal opportunity principle as laid down by law (national collective agreement for regions and local public bodies of 14.9.2000).

Where clarification is necessary regarding the efficacy, validity and interpretation of the clauses of the national collective agreement, the ARAN calls on the signatory parties to propose a joint solution. The final decision constitutes an 'authentic interpretation', because it emanates from the same parties as those which stipulated the terms of the agreement. Finally, if the parties fail to reach agreement, the decision is taken by a judge.

Conclusion

Sectoral social dialogue and the representation of public administration employees

Carola Fischbach-Pyttel and Reiner Hoffmann

This study has examined the concept of ‘representativeness’ required from European Social Partner organisations and the obstacles and prospects to develop a sectoral social dialogue in the areas of local government and national administrations. The overall conclusion of this research is that EPSU is the leading representative trade union organisation on average in those EU and accession countries studied as regards the local government and state administration sectors. This is corroborated also by the findings of the Commission study on representativeness in local government (IST 2001). While, the study on representativeness of the social partners in national administrations is currently at work in process and is expected to be available early next year. It can be assumed though that this study will come to very similar conclusions as the one in local government as far as EPSU’s overall representativeness is concerned.

What is a social partner? – What are the criteria? – Why are they problematic?

The first official attempt to define a European social partner was made in 1993 with the first Communication on representativeness and participation in the European interprofessional social dialogue. However, this was eight years after the official start of European social dialogue through the Val Duchesse structures, and largely as a result of the emergence of the CESI (established in 1990) as an alternative European interprofessional trade union participant. Three criteria were selected:

- a) organisations must be cross-industry or related to certain sectors and be organised at the European level;
- b) organisations must be composed of organisations which are an integral and recognised part of national social partner structures with the capacity to negotiate agreements and which represent all the member states (as far as possible); and, finally,
- c) organisations were required to have adequate structures to participate in consultation processes (European Commission 1993).

On the basis of these criteria it was deemed that the 3 peak organisations (ETUC, UNICE and CEEP) were the most representative at the European level, while other organisations considered to have a role to play in consultation but not during negotiations were included in an appendix to the Communication.

Lessons can be learnt from the only legal challenges made to the Commission’s decisions on participation, which occurred on the employer side. Legal problems arose as regards the legal scope of agreements *vis-à-vis* small and medium-sized businesses, given the absence of their representatives (UEAPME, which merged with EUROPMI in 1999) from the negotiations. This issue was initially dealt with in the UEAPME case in the European Court of Justice (Case T-135/96 UEAPME v. Council) in relation to the Parental Leave Directive, in which the Court ruled in a rather ambiguous manner. It led to a subsequent political agreement between UNICE and UEAPME, which outlined the composition of the employers’ representation at the negotiation table with a view to adequately representing small and medium-sized enterprises. However, this was only possible because it was clear

from the Court's judgment that the UEAPME had a legitimate point to make about the representation of SME interests in the social dialogue. Here is thus an example in which an organisation gained access to the process through legitimate means, by proving that it possessed the qualities of a 'European social partner'.

In line with this logic the European Commission decided in 1998 that participants in the sectoral social dialogue must 'consist of organisations which are themselves an integral and recognised part of Member States' social partner structures and have the capacity to negotiate agreements, and which are representative of several Member States' (European Commission 1998b: Article 1b). Simply in terms of levels of organisation, the evidence provided in the annex of this report confirms the findings of previous research stating that EPSU is the most representative organisation at the European level with regard to public administration employees at this time. In the vast majority of the national data included (eight out of twelve), EPSU membership represents the majority, if not all, unionised employees in both the state administration and local government sectors. However the vagueness of the Commission's definition of representativeness has contributed to confusion as to the scope of participation in the sectoral process. Notably, the term 'several' is open to interpretation. Supposedly included to take account of the sectoral dynamics of the European Union geographically, in which some sectors are limited to a number of member states rather than all member states (e.g. mining), the term has little value in relation to public administration employees who are present throughout the EU as well as the latter's own institutions.

What is a trade union?

The distinctive characteristics of a trade union are the capacity to negotiate in compliance with national representativeness criteria and/or be part of a social dialogue system within a civil service system (more like concertation), as well as the ability to take industrial action. Industrial action is not exclusively related to the ability to strike but encompasses other forms of action as well, like 'work to rule'. This is important as in a number of countries certain categories of civil servants are excluded from the right to strike, e.g. fire fighters, police, customs, etc.

Representativeness among public administration employees

As regards the local level, a recent Commission-sponsored study on the representativeness of local public sector unions concluded that: 'EPSU affiliates represent most, and sometimes all, workers in the local public sector in 13 of the 15 Member States. Although a quantitative estimate is difficult, it is not unreasonable to say that it is implanted to the extent of over three-quarters of workers in the sector in the EU. EPSU is present in the 15 Member States of the EU, and in three countries (Austria, Finland and Greece), it has a clear monopoly (i.e. no other European trade unions are present in the sector) while gathering almost 100% of union members. In four other countries (in Denmark, Ireland, Sweden and the United Kingdom), while retaining monopoly representation EPSU gathers about three-quarters of union members. In six countries (France, Germany, the Netherlands, Spain, Portugal and Italy), EPSU implantation is approximately three-quarters of total trade union membership, or above; in France, the Netherlands and Portugal, implantation is actually close to 100%. All EPSU affiliates are usually involved in collective bargaining, and are the main recognised trade union(s) for the local public sector. The EPSU position is weaker in two countries (Belgium and Luxembourg)' (IST 2001). This picture is generally confirmed within the state administration sector, with the exception of Germany.

Meanwhile, the USSP/CESI's main justification is that its founding and arguably strongest member organisation, the German DBB, is estimated to represent between 50-60% of civil servant members, which are members of a trade union or interest association. This is a significant proportion. However, the definition of a European social partner as articulated by the European Commission requires organisations to have significant members who are recognised national social partners and capable of concluding collective agreements in several countries. While it might be argued that many of EPSU's affiliates are unable to formally negotiate agreements as a result of statutory systems, these organisations are nationally recognised trade unions. DBB is not a trade union in the sense of the

German collective bargaining law. They may be more appropriately described as a pressure group for civil servants, a professional organisation for civil servants. The DBB is beyond any doubt a powerful and influential organisation in Germany, but this does not say anything at about the representative nature of USSP/CESI. Moreover, the *Syndicat Libre de la Fonction Publique* (S.L.F.P.) has recently requested affiliation to EPSU. The *Centrale Générale des Syndicats Libéraux de Belgique* (CGSLB) is a member of the ETUC. For local government the Commission has concluded that USSP/CESI is not representative (IST 2001).

On the other hand, with respect to the “Eurofedop problem”, which was not examined in detail in the framework of the study, a special set of problems arises. Most members of Eurofedop are members of the ETUC through their national confederations. Accordingly, it is to be firmly recommended that a rapid solution be sought within the ETUC family. An internal trade union solution of this kind could not fail to have positive effects on the sectoral dialogue. The adoption at the 10th ETUC Congress in 2003 of amendments to Article 5 of the ETUC Constitution, which cover the relationship between ETUC member organisations and the European industry federations (EIFs), may indicate the beginning of the end of this debate. The new Article 5 means that while the EIFs were previously open to all affiliates of ETUC confederal members, now the paragraph has been reinforced to urge that those affiliates concerned ‘*should be part of the relevant European industry federation*’ (ETUC Constitution as amended, 2003: *authors’ italics*).

This situation raises major questions about the transparency and fairness of the Commission’s own criteria on representativeness; while the process may seem objective it is apparent from the case of local government that politically motivated decisions have actually impeded the development of sectoral social dialogue. It is to be welcomed that the Commission has now agreed to establish a sectoral social dialogue committee in local government, on the basis that while EPSU is the only European organisation represented three national unions have been given seats on the worker-side of the table in recognition of their national representativeness (CCSP/CCOD from Belgium, FNAC-CFTC from France, and SLOVES from Slovakia after enlargement). Crucially only trade unions from within the ETUC’s realm have been admitted.

Why is this so important for the future?

Implementation of voluntary agreements

One of the principle concerns for the development of sectoral social dialogue in public administration sectors revolves around the nature of the civil service in those countries with a statutory system, i.e. civil servants do not have the formal right to collectively negotiate their employment terms and conditions. How could EPSU affiliates ensure that the voluntary results of European-level negotiations were implemented? While this is a major issue, close analysis of how statutory systems work in the different countries clearly reveals that trade unions are involved in informal negotiations in advance of legislation on their terms and conditions, and this could be done through the systems of concertation already existing. The social dialogue at the interprofessional level again provides evidence, since a number of member organisations do not hold collective bargaining mandates but are considered representative members (notably the DGB and TUC – the biggest members of the ETUC). Arguably the most influential criterion is that organisations’ affiliates must be ‘an integral and recognised part of Member States’ social partner structures’. Without doubt this is true of all EPSU affiliates which represent all EU member states and the vast majority of accession countries. Moreover, ‘for the social dialogue to be viable the social partners concerned should normally be anchored in all of the Member States and not only in some. As such structures are the result of a longer development, a degree of flexibility is required, especially in the informal phase of the sectoral social dialogue. Still, even in the initial phases of the social dialogue, it is not unreasonable to demand that the European social partners have to prove their representativeness in the majority of countries (more than half of the Member States)’ (EPSU Memorandum to Commissioner Diamantopoulou, February 2002). This is as important an issue for the development of employers’ organisations as trade unions.

In their common submission to the Commission in advance of the 2002 Communication on social dialogue (EIFs 2002), the European industry federations stated clearly that they collectively believe that more care must be taken in the promotion of social dialogue and this responsibility falls to the Commission under the provisions of the Treaty. It is therefore unacceptable for obstacles to be placed in the way of nascent sectoral social dialogues. The Commission should assume its responsibilities towards the sectoral social dialogue more thoroughly, providing adequate resources for resulting common activities and events, while supporting common opinions, declarations and, in particular, agreements with institutional and political resources. It is only through these measures that the sectoral social dialogue can hope to contribute to European policy-making and national industrial relations.

What are the implications of enlargement?

The criteria for representativeness were discussed in the context of 15 member states. The enlargement to 25 and more member states calls for a rethinking of the new – and changed – conditions governing social dialogue and representativeness criteria. The past 15 years have witnessed the strenuous efforts made by governments and socio-economic actors alike to generate the economic, political and social structural changes necessary to move from a centrally planned to a market economy. The process of economic and social transformation in the new member states is far from complete. The various accession countries are currently at different stages in the reform process, but the general economic and budgetary environment (in which the constraints of the Stability and Growth Pact are in conflict with the need for increased investment) means that for many countries there are still painful changes ahead.

In relation to a stable and operational industrial relations system – which is a central element of the European social model – transition has entailed the complete reorganisation of trade union structures and the development of employer organisations. Sectoral social dialogue, and its interprofessional and workplace counterparts, is essential in order to ensure social consensus and participation in the process of change.

In 2001, the EPSU local and regional government sector organised a conference with the ETUCO on the situation of collective bargaining and future trade union strategies in the countries of Central and Eastern Europe (CEECs). Of the six countries studied (Czech Republic, Estonia, Hungary, Poland, Slovakia and Slovenia), all had Associations of Towns and Cities but none of these had sectoral employer organisations as counterparts. A similar seminar was organised by the EPSU national administration sector in 2002 in cooperation with the ETUCO. The development of employer organisations with negotiating mandates must be a priority for public policy-makers.

As demonstrated in Kadri's analysis of Estonia (in this volume), trade union rights have been fairly consistently eroded and although collective bargaining is covered in the law trade unions operate in a more hostile, restricted and confrontational environment. Under these circumstances union membership and consequently, density has dramatically fallen in all the CEECs: in 2001, EPSU members reported that union density in the local and regional government sector stretched from 33% in Hungary to around 5% in Estonia and Poland. The situation in the state administration sector is certainly similar in Estonia, but data are to date unavailable for the other CEECs. Furthermore, the *de jure* presence of *erga omnes* or extension procedures in many of the accession countries (Traxler and Behrens 2002), but the lack of political willpower to use them, poses several important questions about the rate of collective bargaining coverage, and thus, the capability of affiliated organisations to implement European agreements.

Moreover, local collective agreements in all the accession countries have a strong legally binding nature and are dominant, meaning that if voluntary European sectoral agreements, and even national tripartite agreements, are in contradiction with the aims and content of a local agreement they are likely to be ignored and rendered worthless (Interview with Grigor Gradev, July 2003). It seems that more research and reflection is necessary on this issue to strengthen the sectoral social dialogue.

Attempts to develop and strengthen national sectoral bargaining frameworks are embryonic in the majority of countries since until recently the Commission's energies were focused on tripartite structures and workplace negotiations; in some cases, attempts to transfer an EU model to an accession country have proven highly ineffective (Interview with Grigor Gradev, July 2003). To this end, EPSU, along with the ETUC and other EIFs, has stressed the importance of developing national sectoral social dialogue in the accession countries. Alongside the sectoral conferences and seminars already mentioned, it is planned that the latest collective bargaining programme (EPSUCOB@) for 2003 will include specific focus on further developing sectoral structures and strengthening the trade unions. Trade union representatives from the CEECs have already been integrated into the employee delegation in the sectoral social dialogue committee for the electricity sector, in which EPSU and the EMCEF are present. It is considered that EPSU affiliates have a strong advantage and incentive to develop 'twinning programmes'.

The criteria for participation in the sectoral social dialogue were devised in the context of 15 member states; the enlargement of the EU to 25 and potentially more member states necessitates that the requirements reflect the new situation. Surely in this context members of sectoral social dialogue committees must be representative of at least a majority of the member states. The enlargement offers a historical moment to reiterate this position and encourage the development of fully developed and capable structures at the sectoral level throughout the future EU.

