

## Comments of the Commission services on the draft Civil Service Act (CSA) of 27 June 2014

*Note: The following comments are informal and not exhaustive. In order to fully assess the act, the content of the service regulation(s), decrees and methodologies would have to be available as well.*

### 1 Scope of application

- 1.1 Article 1 defines bodies and employees of the public administration to be covered (all state employees of a "state administrative authority" as defined in other legislation and other employees). Article 2 defines employees to be exempted from the application of the Act. The principle should be that all bodies performing state civil service, regardless their legal status, should fall under the Act and the exemptions should be justified. To increase the transparency, a list of bodies and employees to be exempted should be made publicly available.
- 1.2 While we understand that many administrative bodies are not formally state administrative bodies, they are budgetary or contributory (semi-budgetary) organisations (legal persons) of a state body (usually of a ministry). These bodies should be covered. For example, the Centre for Regional Development does not appear to be covered by the present drafts.
- 1.3 The independence of bodies should not be a priori a justification for not applying the Act. In this respect, the present situation when just the Czech Labour Code applies to some of their staff does not appear to be sufficient.
- 1.4 There is a provision (Article 11) that both categories of employees (see comment 1.1) will follow the same service regulation(s) ("služební předpis(y)") to be issued by the General Directorate of the Civil Service (to be still created) - which should ensure a basic compatibility between those two categories as regards organisational issues only. While the content of the service regulation(s) cannot be assessed now, as those are to be adopted it is recommended to apply not only organisational aspects to the second category, but also other important aspects mentioned in Article 1 (civil service relationship ("služební vztah", remuneration, evaluations etc.).
- 1.5 Moreover, even in the state administrative authorities, the "second" category of employees is not defined clearly (see Article 2, letter j). It should be noted that while not being state employees *de iure*, they *de facto* perform state (or regional) civil administration functions.
- 1.6 The Act not only exempts political representatives, but also staff working for them (e.g. also staff working for political deputy ministers). This exempts a considerable part of staff performing public administration tasks. No details about rules covering these people are provided (e.g. recommended structure, minimum/maximum number of deputy ministers or staff working for deputy ministers), so the scope of the exemptions cannot be assessed. In any case, the number of this part of staff should be limited to what is strictly necessary.
- 1.7 Regional Councils are exempted from the Act due to a claimed legislative/constitutional issue, solutions for incompatibilities between the Act on regional civil servants nr. 312/2002 in force *vis à vis* the new CSA are not envisaged.
- 1.8 Article 79 covers the duties of public officials as regards ethics and integrity. It would be useful to include also an explicit reference to the basic principles and values of the civil service like integrity, impartiality, objectivity, respect of the rule of law, efficiency; e.g. the situation when a civil servant receive an order which he/she

considers to be irregular or likely to give rise to serious difficulties should be covered.

- 1.9 It is not clear why only some areas in Article 5 are specifically mentioned (like research, civil protection) while many others are not (employment, education, environment...). Domains under these areas still to be defined by a decree without any envisaged date of entry into force.
- 1.10 The regulation of the protection of whistle-blowers seems to be insufficient. Also the measures to prevent the conflicts of interest should be more developed.

## 2 Implementation road map, transitional period

- 2.1 The planned entry into force of 1 January 2015 is welcomed. However, the Commission services always stressed that speed should not be to the detriment of quality. Given the planned transitional period over 2 years, it is clear that some aspects of the act will only fully enter into force after the Act itself.
- 2.2 Crucial parts of the Act (e.g. remuneration, systemisation, training, civil service exam) are to be developed through subsequent specific implementing acts (e.g. service regulations, decrees or methodologies). A detailed time-schedule for these implementing acts which we understand is available at working level should be clearly communicated.

## 3 Remuneration

- 3.1 We note that it is planned to use the existing remuneration system (in which different kinds of top-ups and bonuses, i.e. the flexible part of the remuneration, still seem to form a large part of salaries), but to abandon the contractual salaries. However, as a completely new and transparent system will be prepared during a two-year transition period, this area cannot be fully assessed at this stage. Moreover, it seems that the change of the remuneration system is envisaged to be made by decree, and not at the level of the Act. Even though this change should be prepared before the end of 2014, we recommend to set out the principle of transparency more clearly in the Act.
- 3.2 The remuneration system should be designed so as to maintain the attractiveness of the public administration for young people. This would require to allow for a certain flexibility as regards the entry salary levels for new recruits. See also below the comments under point 4.

## 4 Entry into/end of service

- 4.1 While recognizing a need for stability and continuity of the civil service, some provisions of the Act seem to restrict the possibilities to enter the civil service from outside as outlined in examples below.
- 4.2 It is not clear why the general director of the civil service and his deputy can be selected only from current civil servants (Articles 51-52), similarly for external experts for higher management posts (Articles 53-56). The new civil servants could be recruited only for posts of heads of unit.
- 4.3 Some other qualification requirements for management posts than the number of years in service should be established. The selection is foreseen to be carried out by a committee nominated and appointed by the government only: an advisory role could be foreseen for other independent bodies as appropriate. Clear criteria for the selection committee should be defined.
- 4.4 The selection of all managers is entirely a prerogative of the general director (who is appointed politically by the government): he/she appoints all state secretaries (Article 53/2) and they subsequently appoint the rest of the management of a state authority (Article 55/2). Thus, the issue of political influence over the public administration is not tackled by the Act, but there appears to be a cascade effect.

- 4.5 The requirements for the dismissal of managers should be clearly defined and cover cases of serious misconduct (Article 61).
- 4.6 The mechanism for recruitment is done in two phases (first the civil servant is recruited and only then the civil service exam is to be passed within a defined period of time). It is not clear why these two procedures cannot be merged to have one recruitment procedure composed of written and oral part to assess properly the competences (analytical/logical) of the candidate. The fact that the written test is not mandatory (Article 27) could under certain circumstances breach the principle of equal treatment. Given the fact that no details are known for both parts of the civil service exam, the assessment cannot be completed.
- 4.7 The vacancies are to be announced only on the official board of the authority in question without setting any deadline for applications. To comply with the principles of transparency, the Act should indicate that a publicly available source of the vacancies and setting the minimum deadline for applications should be defined together with concrete selection criteria.
- 4.8 As regards existing employees (see Article 188), they would be transferred to the civil service if they ask for it and comply with basic criteria (e.g. 3 years of service), no further assessment of their qualifications is planned. At least the evaluation of their performance should be taken into account in this process.
- 4.9 Some minimal conditions for employees who can be hired on a temporary contract should be set.

## **5 Systemisation**

- 5.1 Systemisation - similarly to remuneration and other areas, the assessment cannot be done as the details will be set out only in later special legislation. We expect that the relevant decree should set up a model structure for an administrative body (ministry, agency) including a maximum number of political deputy ministers and their staff (which are exempted from the Act) etc., which should be based on a proper audit/analysis of the public administration.