

ENTITIES AND PUBLIC POLICIES

CONTRACT CIVIL SERVANTS IN THE CIVIL SERVICE

Fiscal years 2010-2019

Thematic public report

Summary Report

September 2020



This summary report is intended to facilitate the reading and use of the report from Cour des comptes.

Cour des comptes is only accountable for the report.

Responses from the administrative bodies, organisations and authorities concerned appear after the report.

Summary

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Introduction

The employment of a significant number of contract civil servants is now a major feature of public employment in France. However, their role in central government, local authority and public hospital services is still very poorly defined.

There are more than one million contract civil servants (individuals) in the civil service, i.e. 18.4% of the total, or 20.9% of the total excluding staff with special status¹.

For the most part, these staff are governed by public law. Although many of their rights and obligations are contractually defined, many of the rules in force for permanent civil servants are also applicable to them, and disputes between them and their employer are decided by the administrative courts. However, they do not belong to specific job corps. Contracts are often for a fixed term, although, expressed in full-time equivalents (FTE), there are more permanent than fixed-term contracts. In a few cases, some contract staff in the administrative public services are governed by private law.

At a time when a reform is underway aimed mainly at facilitating the recruitment and management of contract civil servants in the civil service², the Cour des comptes, on the basis of the observations of recent audits, but also by carrying out new investigations, has examined the situation of contract civil servants in the main ministries and public institutions of the central government, in local authorities and in public hospitals.

Military contract civil servants, those with special status, those employed by public bodies subject to commercial law or whose ordinary recruitment status for civil servants is governed by private law have not been included in this study, except for comparative purposes.

¹ Staff with special status mainly refers to teachers in private establishments under contract and central government workers in the central government civil service, nursery and family assistants in the regional civil service, doctors in the hospital civil service and apprentices in the three branches of the civil service.

² Law no. 2019-774 of 24 July 2019 relating to the organisation and transformation of the health system and Law no. 2019-828 of 6 August 2019 on the transformation of the civil service.

Introduction

This report presents the outcomes of this survey. It first seeks to understand the reasons for the growth in the number of contract civil servants and to identify the jobs they occupy. It then examines the recruitment and management practices of contract civil servants by various public employers. Finally, in its last chapter, it considers the scope of the reforms underway. Following these findings, the Cour des comptes makes five audit recommendations that fall within the existing legislative framework, including the general civil service statute.

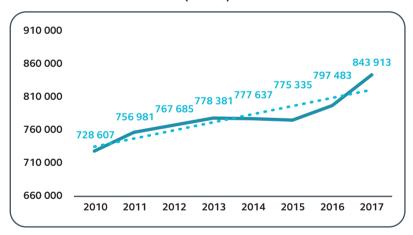


The trend towards the increase in the number of contract civil servants reflects difficulties in adapting the civil service.

The increase in the number of contract civil servants for the three branches³ of the civil service is a striking trend of the recent period. From 2010 to 2017, the number of contract civil servants, expressed in FTEs, grew faster (15.8%) than the

number of all civil servants (5.9 %). Their gross wage bill is the subject of a financial estimate ranging from €25.8 billion (on the basis of DGAFP data) in 2017 to around €40 billion (on the basis of public accounting data, which takes a broader scope)⁴.

Contract civil servants in the civil service between 2010 and 2017 (in FTEs)



Source: Cour des comptes according to DGAFP data - Dotted line shows the trend curve

³ The term «branch» is commonly used, in particular by the Ministry in charge of the Civil Service, to designate each of the «civil services», whose general statute was unified by law no. 83-634 of 13 July 1983 on the rights and duties of civil servants (known as the «Le Pors law»). The general statute contains special provisions for central government civil servants, regional civil servants and hospital civil servants.

⁴ This scope mainly includes staff with special status, such as hospital doctors

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Despite these changes, the weighting of contract civil servants in the French civil service (19%) remains far below that observed in most of the large European countries, such as Germany (60%), the United Kingdom (92%), Italy (85%) or Spain (47%).

In the central government civil service (FPE), contract civil servants are above all staff working in teaching and research positions. Out of a total of 416,000 civil servants (in terms of the number of individuals), 61.4% fall within the scope of the Ministry of National Education, Higher Education and Research and its public institutions. In the regional civil service (FPT), it is most often local civil servants working in the technical branch sector: four of the ten employment sectors (technical, administrative, coordination social) account for 80.3% of the 376,000 contract civil servants. Finally, in the hospital civil service (FPH), 77.8% of contract civil servants (225,000 individuals) belong to the care and technical-labourer sectors. They are particularly numerous in care homes (Ehpad) (where they represent 31.2 % of employees) and in the other types of medico-social establishments

(where they represent 39.5% of employees). Furthermore, the Cour des comptes has found that contract civil servants in managerial positions, which are relatively few in number (around 11%), are mainly present in the regional civil service (FPT).

In analysing the reasons for recruiting contract civil servants, the Cour des comptes found that, in some cases, their recruitment was due to needs which cannot be met by regular civil servants.

Thus, even if it seems desirable to limit the short-term replacement needs of permanent staff by reducing their absenteeism rate and optimising the conditions for their management, the use of contract staff makes it possible to compensate for absences due to leave and to cope with seasonal peaks of activity in certain administrations.

The recruitment of contract civil servants, even for long periods, is also inevitable in cases where there is no corp of civil servants or professional staff (in particular to fill certain technical posts in the FPE, e.g. jobs7 such as doctors, psychologists or linguists, translators and interpreters), or for the new digital professions.

⁵ This rate is that of civil and military contract civil servants, in order to ensure consistency in the scope of comparison with other European countries.

⁶ Who care for people with a disability or socially excluded people, for example.

⁷ We refer to corps of civil servants in the FPE and of employment corps in the FPT and FPH.

The trend towards the increase in the number of contract civil servants reflects difficulties in adapting the civil service.

However, in many cases, the Cour des comptes has found that the employment of contract civil servants stems from the difficulties encountered in the management of permanent civil servants.

This is the case with the recruitment of contract civil servants caused by the inflexible nature of procedures for the assignment and mobility of civil servants, which leaves many permanent staff positions vacant, for example in national education. In addition, in trades where there are job corps, the hiring of contract staff

makes it possible to avoid working conditions and remuneration that are not adapted to the reality of the job market in particular segments. Finally, the recruitment process for permanent civil servants, which is often long and complex, explains the use of contract civil servants to meet needs in the immediate term.

To make entry into public services more flexible, the Cour des comptes recommends encouraging recruitment on the basis of qualifications for all civil servants.



The convergence of practices runs the risk of making the management of contract staff more rigid.

While the recruitment of contract civil servants is generally justified by the need for adjustment and flexibility in public employment, in practice their management is closer to that of permanent staff and is becoming gradually more rigid.

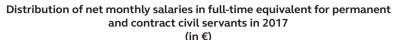
This is first of all the case for the recruitment of contract civil servants, which, normally carried out without competition, is in practice increasingly codified. Indeed, employers in the civil service frequently put procedures in place to ensure equal treatment and non-discrimination in access to civil service jobs. However, these justified precautions lead to longer and more rigid recruitment conditions for contract civil servants. Flexible and innovative

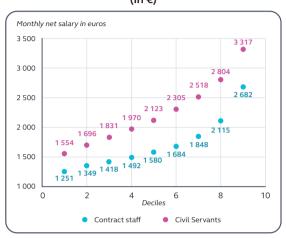
solutions to recruitment methods for permanent civil servants are rarely implemented, although they do exist, for example in some universities. With regard to local authorities, legality checks by prefects and the observations of regional chambers of account show how difficult it is to set up satisfactory recruitment procedures.

Salaries paid to contract civil servants are generally lower than those of permanent civil servants. This is partly a structural effect, linked to the age of employees and the types of jobs held. However, even on a like-for-like basis for jobs and ages, contract civil servants, especially low-skilled ones, are often paid significantly less than permanent civil servants ⁸.

⁸ The differences are based partly on objective differences between contract civil servants and permanent civil servants and partly on the wage policy of public employers, the weighting between these two elements being unknown to the administration and the Cour des compter.

The convergence of practices runs the risk of making the management of contract staff more rigid.





Source: Cour des comptes according to data from the Directorate-General for Administration and Civil Service (DGAFP). The definition of civil servants is the one used in DGAFP's statistical publications and therefore excludes assisted contracts

highly sought-after sectors, corresponding highly to qualified jobs, the opposite situation prevails: the salaries of contract civil servants often turn out to be higher than those of permanent civil servants in comparable jobs, due to competition between public and private employers or even between public employers. In this respect, the Cour des comptes recommends, in order to avoid distortions in hiring conditions and exorbitant salary situations, that remuneration quidelines be established regularly updated, by profession and by region.

Unlike permanent civil servants, contract civil servants do not

legally have access to any career or promotion system. It is nevertheless possible to observe the emergence of mechanisms which defacto involve the organisation of the careers of a very large number of contract civil servants. Some public sector employers strictly adhere to the rule and do not grant salary increases or promotions, while others introduce a «quasi-status» for their employees, particularly those with fixed-term contracts (CDD), largely inspired by the provisions applicable to civil servants. In some cases, public employers also manage their contract staff in a manner similar to that of private sector employees. In this field, however, there are many different approaches.

The convergence of practices runs the risk of making the management of contract staff more rigid.

Tenure, which is neither always possible nor necessarily desired, is a continuation option frequently offered to civil servants at the end of their contract or who can provide evidence a long period of activity, either individually or within the framework of collective tenure. In addition to the usual channels for recruiting permanent staff (external or internal competitive examinations, probationary periods), four tenure schemes have been organised since 1983. The most recent one, provided for by the «Sauvadet» law of 12 March 2012, met with only mixed success since, out of 125.500 eligible civil servants. only 53.940 (43%) were tenured by the end of 2017. It appears that tenure is increasingly being challenged by the transformation of fixed-term contracts (CDD) into permanent contracts (CDI). This type of contract, for certain jobs, is in fact more attractive than tenure because it avoids certain constraints, such as, for example, the obligation of mobility. At the same time, the increase in the number of permanent contracts exposes the public employer to the risk of placing its human resources management under greater constraints.



In addition to current reforms, ensuring the coexistence of permanent and contract staff.

The Government has recently undertaken a reform aimed mainly at expanding employment opportunities for contract civil servants in the civil service.

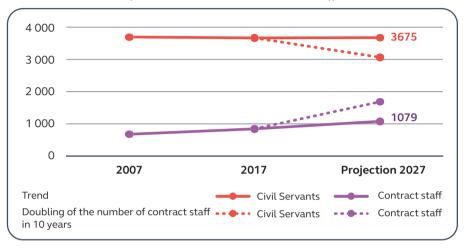
The Civil Service Transformation Law of 6 August 2019 provides for the possibility of filling more management positions with contract civil servants, the creation of a flexibleterm project contract, the right to recruit contractual civil servants for the majority of permanent jobs in central government and its public institutions, the extension of the option of using contractual civil servants in the regional and hospital civil services, the «portability» of permanent contracts between the three branches of the civil service. and the possibility of contractual terminations for permanent contracts. The law of 24 July 2019 relating to the organisation and transformation of the health system simplifies and adapts the conditions and grounds for recruitment by contract for medical staff not covered by the general civil service statute.

The impact of these reforms depends on numerous implementing measures, some of which had not yet been taken on the completion date of the investigation by the Cour des comptes. As a counterpoint to measures to facilitate the use of contract civil servants, the application of the principle of equal access to public employment reiterated by the law, including for contract civil servants, presupposes more restrictive access arrangements than in the past.

According to projections made by the Cour des comptes on the basis of two simple sets of assumptions (continuation of the trends observed over the last ten years, or acceleration substitution of contract civil servants for permanent staff corresponding to a doubling of the number of contract civil servants in ten years), it is likely that permanent civil servants will continue to be in the majority in the three branches of the civil service for some time to come. This estimate is supported by the fact that the majority of public employers, particularly in the FPT, do not currently appear to be in favour of greater use of contract civil servants.

In addition to current reforms, ensuring the coexistence of permanent and contract staff.





Source: DGAFP figures and Cour des comptes projection Trend scenario: extrapolation of the trend of the last ten years.

With a view to an increase in the number of contract staff holding permanent posts who are required to work together, in the same services, with permanent civil servants who remain the majority, there are certain difficulties that must be dealt with.

With regard and to careers remuneration, the first question to be asked is how to preserve the flexibility of the contract staff regime. Otherwise, the approximation of this scheme to the statutory provisions enjoyed by permanent staff will tend to accelerate and make the reform meaningless. On this matter, the Cour des comptes therefore recommends, for occupations which lend themselves to it, collective bargaining for corps specific to contract civil servants, along the lines of private sector collective agreements.

Pension schemes for permanent and contract civil servants are different, resulting in different levels of employer contributions which in many cases make the recruitment of contract civil servants less costly.

Likewise. arrangements for public employers' coverage the of unemployment risk are not always suited to a situation in which the number of contract staff in permanent jobs is high. In light of this assumption, the mechanisms and amounts of unemployment cover should be reviewed. The Cour des comptes proposes studying the possibility of compulsory affiliation of public employers to the national unemployment insurance scheme for contract civil servants.

Summary of the Thematic Public Report of the Cour des comptes

In addition to current reforms, ensuring the coexistence of permanent and contract staff.

Based on available data on absenteeism. the engagement level of contract civil servants, especially fixed-term civil servants, appears to be higher than that of permanent civil servants. Of course, structural effects have to be taken into account, as the population of contract civil servants is younger and therefore healthier than that of permanent civil servants. However, this large gap suggests that substantial efforts are needed to strengthen all forms of work incentives and improve oversight of the management of permanent civil servants. The aim would be to bring levels of absenteeism in the various civil services into line with those that are structurally lowest.

Finally, the Cour des comptes notes that the general civil service statute could better involve contract civil servants in the organisation and operation of public services, in a context where their numbers are growing. Thus, joint consultative commissions, which are the counterpart, for these civil servants, of the joint administrative commissions for permanent civil servants, play an uncertain role. The report proposes reflecting on the possible merger of these bodies with ioint administrative commissions.

Audit recommendations

- **1.** Adapt the recruitment conditions of civil servants, by extending to most sectors the possibility of recruiting on the basis of qualifications, holders of a central government diploma, an approved professional certification or recognition of prior professional experience (General Secretaries and HR managers).
- 2. Following the example of what has been done for the digital professions, set up remuneration guidelines for contract staff, starting with highly sought-after professions in the central government civil service and the hospital civil service, and update them regularly, combining compliance with a reduction in a priori checks on remuneration (DGAFP).
- **3.** In the framework of the possibilities offered by art. 14 of the law of 6 August 2019, for the professions that lend themselves to it, propose collective bargaining for corps that are similar in content to collective agreements for the career and remuneration of current contract civil servants (*DGAFP*).
- **4.** Consider, after an in-depth impact study, the compulsory affiliation of public employers to the unemployment insurance scheme for their contract civil servants (DGCL, DGOS, DGAFP, DGEFP, budget department, Unédic).
- **5.** Improve social dialogue conditions for contract civil servants by considering the merger of the Joint Consultative Commissions and the Joint Administrative Commissions (*DGAFP*).