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“TRANSFER OF STAFF FROM CENTRAL TO LOCAL LEVEL- PRINCIPLES AND EXPERIENCES”

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1. Background

Decentralisation of public sector tasks from the central to the regional or local levels has taken place in numerous countries throughout the world in the last decades. To reach a successful decentralisation, several issues must be considered and designed carefully, i.e. tasks of each tier of government, legislation, timing and sequencing of transfer of tasks, service standards, costing of tasks, financing including grants and equalisation systems, budgeting and accounting, inspection, supervision, audit procedures and human resource development (HRD) including training and capacity building.

Among all these issues, one of the trickier is the transfer of staff from the central level to assure the availability of qualified staff to handle the new devolved tasks.

This paper to be presented at the Conference, Public Administration Reform and Territorial Organisation: Empowering Local Governments Ankara, Turkey 28 February to 1 March 2006 presents some key issues to consider in a decentralisation process concerning the transfer of staff from the central to the regional and local levels. The paper presents how, in the EU-countries, the principle for this follows EU regulations, some issues to consider in a transfer process to avoid resistance from the staff and examples from countries in the EU and other parts of the world are given.

2. Transfer of staff – starting points

At the beginning of the devolution process, the staff is working at the central level in branch ministries or their de-concentrated offices typically located at the regional level. When tasks are devolved, the staff follows and is relocated in local governments (LGs) at the regional or local levels. However, practical experiences from numerous countries show that the staff is reluctant to do this for several reasons, which are elaborated later in the present paper.

The next step and closely related to the first is to establish efficient staff management systems at local level to ensure that staff resources are used efficiently and clear procedures exist for hiring, firing, promoting, sanctions, performance evaluating, salaries, further training etc.

In the process it should also be decided how appropriate financial resources can be provided at local level to finance the new expenditures caused by the higher number of staff either through transfer of funds from the centre or generation of resources locally.

3. EU-regulations

In the countries of the European Union, staff transfer is guided by EU regulations.

The relevant directive from 1977 is called “Safeguarding of Employees’ Right in the Event of Transfer of Undertakings, Business and parts of Business” (directive No. 77/187/EEC), which was amended in 1998 (directive No. 98/50/EC).

The directive covers:

- The public and private sectors
- Legal transfers or mergers
- An economic activity

However, the Directive does not cover functions of public authority.

The directive states that when a task (economic activity) is transferred from one entity to another, the employers maintain any rights and obligation for the staff. This means that the staff will keep all the rights and working conditions they have agreed on with their former employer through an individual or collective agreement or any legal arrangement.

The exact coverage of the directive has been discussed and several EU court decisions exist on various issues. The most important is probably that privatisation and contracting out of public services are covered, which means that contractors or new owners maintain all the rights and obligations for the staff.

The directive has been implemented in national legislation or incorporated in legal practise in all EU countries. In most cases, e.g. the Danish, the directive is transposed into national legislation.

One of the first examples of the directive's application in a EU member state was Spain in the 1980'es (following the new Constitution in 1978), when tasks were devolved to the new autonomous provinces. Following the directive, the staff was transferred from the de-concentrated government institution located in the provinces to the provinces' new administrations.

Likewise, the directive was followed in France in the 1980'es during the decentralisation of the French administration.

A late example is from Denmark, where a structural reform takes place to be fully implemented from 1 January 2007. As part of the reform, tax collection and assessment will be centralised in 25 state tax centres after being handled by the municipalities for several years.

As tax administration is a *function of public authority* the EU directive does not cover this and therefore the employees' labour unions could not use this for arguing for their members' rights to preserve their jobs. However, in designing the specific legislation on the transfer of the task it was decided to mention specifically that the directive would cover this case and thus the new centres are obliged to maintain the rights and obligations for all the staff formally employed in 271 municipalities.

When staff members are transferred to the regional or local level, the staff from the involved institutions will often be reluctant to be transferred and the employees and their organisations will often try to stop the process fearing that the staff's working conditions would become less attractive.

In countries that are not covered by a similar arrangement as the EU countries, the staff will likely be even more reluctant to be transferred, because they fear that they in the worst case will lose their jobs.

Therefore, for a peaceful transition to take place it is of paramount importance that all relevant issues about the transfer are considered carefully, explained and discussed with the staff and labour unions. Further, the issues should be considered when management policies and legislation are designed for the local level.

4. Civil service, public service or other forms of employment

In a number of countries, staff in government institutions at central level is employed within a civil service system. At local level, some of the staff members are hired directly and some staff members – especially at the executive level - are appointed or even delegated by the relevant ministry.

Different civil servant systems exist in different countries; some civil servants cannot be fired (unless they commit a crime) or do not have the right to strike but the mutual feature is the civil servants' right to receive pensions by the end of the service.

The idea behind a civil servant system is to create a loyal corps of professionals that by receiving certain benefits will stay in the service and perform well.

The risk and the experience from some countries on the other hand are that the system is very inflexible e.g. when it is necessary to reduce the number of staff members and the job security does not encourage a high performance level of the staff.

Instead other more flexible forms of employment have been introduced similar to employment forms in the private sector, where the staff in principle can be fired from day to day with a certain compensation depending on the number of years in employment. These employment forms are normally regulated by agreements between trade unions and the employers' organisations.

In Denmark, the public servants have been substituted gradually since the late 1970'es with staff with employment regulated by collective agreements and some individual negotiated supplements and the total number of staff has increased. Some executives, primarily in the LGs, even have personal time-limited contracts with performance indicators and rewards if they perform well.

Other countries are considering to extent the civil (central) service to the total public sector, so the staff can move between central and local governments within the same civil service system.

5. Legislation and collective agreements

As above-mentioned, in the EU countries transfer of staff is in principle simple, because the directive of "Safeguarding of Employees' Right in the Event of Transfer of Undertakings, Business and parts of Business" will secure that the employees maintain their working conditions and other benefits.

However, in practise it can be more complicated, when laws and regulations guiding working regulations are changed and collective or individual agreements come to an end. In the EU, workers' salaries and working conditions are decided by legislation and/or collective agreements between employers' and employees' organisations. Collective agreements are mostly used as the mechanism in the northern part of EU, where employers' and employees' organisations meet regularly and make binding agreements for a 2-5 years period with some space for individual negotiations. The agreements are sometimes facilitated by a third (government part) and within some overall national labour marked legislation.

If staff is transferred, they will maintain their working condition according to the collective agreement. But when the collective agreement ends, the new agreement might be different and the working condition could deteriorate.

Another issue might be informal agreements on benefits that are not stated in any paper or contracts – basically in the EU these should be maintained after a transfer, but it might be difficult to keep these after some time especially if the rest of the staff at the local level does not have the same individual benefits.

6. Transfer of staff – specific issues

In what follows, is presented some of the issues that should be dealt with during transfer of staff. The most important is to analyse the incentive structure for the staff, where the elements to be considered are.

- Salaries and benefits
- Pension
- Career opportunities
- Distances and moving
- Further training and professional development
- Job security

Further, it should be secured that local governments are able to sustain the salaries of the staff from appropriate finances like locally generated resources (taxes and fees), transfers from the central level and equalisation.

6.1. Salaries and benefits

At the central government level salaries and other benefits are regulated by the legislation, negotiated individually or decided by collective agreements between employers' organisations and trade unions.

In a decentralisation process, the experience is that the staff will be reluctant to be transferred because the payment of salaries and benefits at local level is less because other agreements and laws cover the local level or it is not regulated at all.

Further, the ability to sustain payment at the local level is often lower compared to the central level, because local income sources and transfers from the central level are not stable.

It is also more difficult for local government staff to influence central decision makers due to the geographical distance and also the lower prestige when working in a local government compared to working in a ministry.

For the preparation of a transfer of staff the best option is to create unitary system at local and central levels so agreements/legislation are equal and can be maintained in a transfer process.

During decentralisation in the Philippines in the 1990'es the national regulation on salaries had an impact of the outcome. The national regulation, which guides salary policies at central and local levels includes that staff at the local level receive lower salaries than staff at the central level. When staff was transferred from the central levels, they maintained their relatively high salaries, which had the consequence that the staff members hired locally were paid less than the transferred. This created tensions between the staff members, budget problems and further, because of the increased expenditures on wages, the local governments could not fulfil obligation to increase wages, when staff were promoted.

In Denmark, the collective agreements about basic salaries of staff at the central government and at the local levels have during the 1990'es been unified, so the salary structure is no longer an obstacle when

staff members are transferred from one sector to the other although individual negotiations take place about some supplements to the basic salary.

6.2. Pension

Pension schemes are often better at central level and part of a civil servant's benefits. Different civil servant systems exist in different countries, but almost all include the civil servants' right to receive pensions.

At the local level, a civil service system is not established in all countries and local governments are sometimes not able to fulfil their obligation due to an unstable financial situation. Further when pension systems exist at both levels, a move to the system at the local level is often not attractive due to a reduced pension scheme.

During decentralisation in Indonesia in 2000, more than 2.1 mill. staff members were transferred to the provincial and district level. Along with the staff came the obligation of LGs to finance pensions, which created a heavy financial burden on the LGs, although a general grant was introduced to the LGs from the central level.

The formula for the grant had among several criteria the financial gap of the LGs, which aggravated the problem by creating wrong incentives for financial management, and even had the effect that some LGs hired more staff expecting that their share of the grant would increase.

To secure a smoother transfer from one level to the other it is recommended to build a system with a unitary pension system at local and central levels, so the benefit will not be reduced because of a transfer to the local level.

The North European countries and others have created a system, where contributions to the pension is paid monthly, quarterly or yearly to a independent (private) pension fund, which is administers each person's contributions and the release of benefits. In this way, the staff can move independently from sector to sector without losing any right to pensions and the obligation to finance the pension is not an obstacle either.

Payment to a pension fund may be co-funded so that the employer pays some part (e.g. 2/3) and the employee pays some part (e.g. 1/3). In Demark, the total payment for pension often reaches 10-16.5 % of the gross salary.

6.3. Career opportunities

If a civil servant is transferred to a local government the typical fear is that career opportunities diminish because of the distance to the central level where promotions are decided and the distance reduces opportunities for following the development at the central level, e.g. new legislation, its implementations and available jobs at a higher level.

The transfer can also be complicated if the transfer implies a move to a different civil service form or another structure that complicates the staff's retransfer to a position in the centre.

The best option is to create a unified civil service system where staff members can work at both levels within the same civil service.

6.4. Distances and moving

A very practical issue for almost any working person is the distance between the private home and work place. This is another issue to deal with because if staff is transferred to a new location because of a transfer from the central to the local level, the staff needs to move or will have additional transportation cost and time (except in the rare case, where the staff member already lived closer to the new working place). Most likely, the only solution to this problem is an economic reward or support to the transition like e.g. support to find housing, a new job to the spouse and facilities for the children.

In the recent structural reform in Denmark, the change in the structure of the tax administration and assessment (see page 3) has affected the distance to the work place for a large number of staff member negatively, because they have been relocated from 271 municipal tax administrations to 25 tax-centres, so only a small part of the staff member will not have additional transportation time/costs or have to move their home.

However, in Poland during decentralisation in the early 1990'es this was not an issue, when approx. 100,000 staff were with 6 months job guarantee from the central government to local governments, because basically they did not change place because they already worked in de-concentrated central government offices located at the local level.

6.5. Job security

When transferred to the local level, the staff members will often be closer to the politicians and have more personal relations to these. In this way, the staff is more dependent on personal contacts and after elections, new politicians might bring in their own staff corps and release the former – especially if they have been well related to the former local government.

At the central level, the distance to the political level is longer, a more professional staff structures exists including criteria for hiring and firing and staff are not that likely to be changed after elections as at the local level.

The best way to establish more job-security is to create a professional corps at local level and build up a professional job employment process, where staff members are selected by academic grades and professional merits. Until this is established, a national service commission should guide the LGs on their staff policies to avoid mishandling.

In the Philippines, local governments have the right to hire, fire and promote staff, which traditionally caused patronage and nepotism at the local level and likely staff members are changed after local elections. To avoid this and encourage professionalism in the Philippines, the LGs must follow the national Civil Service Commission's guidelines for most positions in the local administrations.

This has improved the HRD policies in the LGs although some LGs have in recent years created a number of time-limited positions and others jobs, which the guidelines do not cover and in this way have avoided the central regulations.

6.6. Further training and professional development

Regular further training to update knowledge and development of skills is a natural part of a position at the central level and a budget line is normally dedicated for this in a branch ministry.

Likewise, on-the-job-training and interactions with professional colleges support the professional development of the staff members.

Local governments do rarely have as efficient HRD policies as the central level because of the non-existence of a HRD department and/or resources for further training. Further, the possibilities for professional development is less due to fewer academics, more simple job functions and a more ordinary (IT) infrastructure.

It is therefore important to create possibilities for the development of a professional environment and funds for further training. The setting up of an HRD unit can also facilitate this.

Although far from the European context, an interesting approach exists in Uganda, where the implementation of an unconditional grant to the local governments was accompanied by a capacity building grant to ensure training and capacity building activities in the LGs. The use of the grant is regulated by a training and capacity building plan designed by newly established HRD units in the LGs. The experience with the capacity building grant is in general positive and LG staff are benefiting from the grant. However, it seems like the external funding of the training and CB does not encourage LGs to be cost efficient in their selection of training providers.

7. Final remarks

The overall purpose of decentralisation is to build up a system which generates better service provision to the citizens. By being closer to the citizens, local governments have better possibilities to respond to local needs and demands and apply and benefit from local resources.

For such a system to function it is essential that qualified staff is available at the local level, either attracted and hired directly or transferred from the central level during the devolution of tasks.

In general, staff is attracted by good working conditions, salaries and other benefits and possibilities for professional development and career opportunities, therefore the establishment of HRD policies and management systems are essential.

In general, human beings are reluctant to changes, and transfer of staff from central to local level is a change that should be guided carefully to avoid the resistance from the staff members. If they are convinced that salaries and other benefits, pensions, career opportunities, further training, professional development and job security can be maintained the process will proceed a lot easier.

In general, it is recommended to:

- Use the guidelines in the EU directive to guide the transfer of staff from the central level to the local level
- Create uniform career structures centrally and locally with possibilities of moving from one sector to the other
- Establish similar pension systems at local and central level with an independent (private) fund
- Create a pension system linked to the individual staff member and not the sector, thus creating room for enhanced job mobility
- Establish clear and efficient management and HRD policies

- Let decisions on staff's hiring, firing and promotion be done locally
- Establish certain guidelines in a national service commission to avoid local nepotism and avoid unstable job security
- Use tools from change management theory to guide the transfer process