European Institute of Public Administration
Institut européen d'administration publique

The Regulation of Executive Pay in the Public and Semi-Public Sector across the European Union – Phase III

'A closer look at the Italian and Polish system: the reforms, the forms of linking of remuneration to reference points and practices to rule and master the exceptions to the cap system for specific positions'

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European Institute of Public Administration (EIPA)
O.L. Vrouweplein 22
6211 HE Maastricht
Tel.: +31 43 32 96 222
Website: www.eipa.eu

Contact person
Cristiana Turchetti (project manager)
Tel.: +31 43 32 96 298
E-mail: c.turchetti@eipa.eu

Author
Paola Bruni (researcher)
Tel.: +31 43 32 96 266
E-mail: p.bruni@eipa.eu

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1. Introduction

The aim of this comparative research project as a whole has been to gain insights into the regulations concerning executive pay in the public and semi-public sector across the range of EU member states, in particular with respect to the application of pay caps and performance-related pay, with the underlying objective of identifying good practices and lessons applicable to the case of the Netherlands, where executive pay in the public and semi-public sector has been a topic on the political and societal agenda for a considerable time.

In phase 1 of the project, we reviewed the international academic literature on the rewards of senior officials and gave a general inventory of the regulatory policies on executive pay in the public and semi-public sector of eight selected EU member states, i.e. the Netherlands, Belgium, France, Germany, Italy, Poland, Sweden and the United Kingdom, resulting in report 1.

In phase 2, we delved considerably deeper into the political, managerial, legal and societal context of the regulatory policies in each of the eight countries, based on primary empirical research. The results of this part of the research are found in report 2. From the analysis in phase 2, it has become evident how large the cross-national variety is in terms of:

- reward levels,

- structuring of the salaries,

- issues and considerations regarding the level of pay,

- regulation of the pay levels and demarcation of the categories of officials that are subject to the regulations

However, the commonality was that for each country, the level and structuring of the pay was a matter of political and societal debate: in a number of countries because the salaries are generally seen as too high, not sufficiently transparent and unfittingly generous for public officials, while in other countries the main concern was that the job market for positions in the public and particularly in the semi-public sector have become so close to the private sector executive job market that salary levels in the public sector are effectively too low to attract and retain the right people to fulfil these crucial jobs in the public service.

Out of the analysis in phase 2, two countries came to the fore that especially deserved further investigation from the Dutch point of view, i.e. Poland, with its strong focus on a pay cap system, but with very limited scope for performance-related pay, and Italy, which also applied a pay cap, but which in addition has an elaborate system of variable and performance-related pay segments.

Therefore, the specific focus of phase 3 of the research project is to delve more into the precise policies and mechanisms for regulating and controlling the pay of high-level executives in Italy and Poland in order to understand the degree to which the findings and lessons learned for both countries could be transferred to the Dutch system.

For each of the two countries, we focused on:

- the reforms and policies themselves,
- the precise linking of the remuneration to a formal reference point,
- the approach to the practice of performance-related pay,
- the mechanisms to control pay levels and enforce the regulations,
- the specificities of the regulations in the semi-public sector,
- the control and enforcement regulations,
- the best practices to rule and master the exceptions to the cap system,
- the management of the transition period from the older policies to the new regulations.

The analysis of all the above mentioned aspects of the pay system regulations for the public and semi-public sector in Italy and Poland was essential to estimate to what extent the good practices from these countries could likely work just as well in the Dutch political-administrative context.

2. The case study of Italy and Poland: investigating the most interesting aspects of their pay system in the public and semi-public sector

2.1 Italy

2.1.1 The reforms of the pay system and additional regulatory measures: overview of the situation in the Public Sector

In Italy all the civil servants of national, regional and local public administration fall under the term 'managers' and are paid according to the same rules[1].

In general, the pay system within the public sector is characterised by the application of two mechanisms: the pay cap fixed at a standard of a specific position and performance-related pay. The salary specifications at both national and regional level[2] are negotiated by the Agency for the Collective Negotiation of Public Administration – ARAN (in Italian: 'Agenzia per la Rappresentanza Negoziale delle Pubbliche Amministrazioni'), originally established by Art. 50 of the Legislative Decree No 29 of 1993. This agency, in fact, represents the public administrations within the collective labour agreement (in Italian 'contrattazione collettiva nazionale di lavoro – CCNL[3]') and carries out all activities related to the negotiation and definition of the 'collective agreements' (in Italian 'contratti collettivi') of the staff of the various sectors of public employment; including the authentic interpretation of the contractual clauses and the regulation of labour relations in the public administration.

In more detail, the salary composition of the Italian public civil servants at all levels, local and national, and with regard to every position is composed of five different components; the first four are always present and in the large majority of cases the fifth and optional component is also there.

[1] Article 23 ter of the Legislative Decree of 201/2011 converted into Law 214/2011 (also called the 'Salva Italia' decree).
[2] As established by Legislative Decrees 29/1993, 165/2001 and 150/2009.
[3] The national collective bargaining of labour (in Italian 'contrattazione collettiva nazionale di lavoro' – CCNL) is a procedure through which the main rules and general principles to be respected in the implementation of a working contract are established periodically. The result of such a procedure is the so-called 'contratto collettivo nazionale di lavoro' (national working collective contract) and represents the base on which all the contracts within public administrations have to be based. All the rules and basic economic references described in the 'contratto collettivo nazionale di lavoro' (national working collective contract) must be respected since they are supposed to represent both the rights and duties for employers, as well as those of the employees. Both categories, employers and employees, are in fact represented during the collective bargaining by their own trade unions actively involved in the procedure.

The components are:

- Component 1) Fixed base-salary

It comprises a fixed minimum contribution established by the Agency for the collective negotiation of Public Administration (‘Agenzia per la Rappresentanza Negoziale delle Pubbliche Amministrazioni’ – ARAN) in respect of the general principles described in the collective labour agreement (in Italian ‘Contratto collettivo nazionale di lavoro – CCNL’);

- Component 2) Dual position-based component:

  - 2a) Centrally determined portion;
  - 2b) Portion at the discretion of each organisation.

This is a variable contribution that is established and calculated according to the function attributed to the manager. Within this component B, again, there are two more sub-components: the first is again fixed and established within the collective labour agreement (in Italian ‘Contratto collettivo nazionale di lavoro’) and is called ‘retribuzione di posizione’ (position remuneration), and the second is determined by each body/office independently, according to their own resources devoted to the remuneration of their employees;

- Component 3): Performance-based component

This is the so-called reward component (in Italian ‘componente premiale’) which is assigned according to the results of the individual performance evaluation;

- Component 4): Seniority-based component

This comprises the amount of money established for the individual seniority pay (in Italian ‘retribuzione individuale di anzianità – RIA’);

- Component 5) – Optional: Allowances

This comprises some supplementary or personal allowances.

All five components of the Italian public civil servants' salaries are summarised in the chart below together with the subject designated to decide the concrete economic value for every single component. The specific role of all the actors involved will be described in detail in the paragraph on the 'controlling mechanism' .

Characteristic of the salary component	**Name of the component**	**Ratio of the component**	**Subject designated to decide/calculate the economic value**
Always present	1) *Fixed base-salary*	fixed minimum contribution	Agency for the collective negotiation of Public Administration (ARAN)
Always present	2) *Dual position-based component* • ***2.1*** *Centrally determined portion (position retribution)* • ***2.2*** *Portion at the discretion of each organisation*	Variable contribution calculated according to the function attributed to the manager Fixed amount established within the CCNL Variable contribution established in relationship to their	ARAN The belonging administration

		own available economic resources	
Always present	3)*Performance-based component (reward component)*	Variable contribution assigned in relation to the individual performance evaluation[4]	The belonging administration in compliance with the general principles described in the C.C.N.L.
Always present	4) *Seniority-based component (R.I.A)*	Contribution calculated on the base of the years of service	The belonging administration respecting the general principles of the CCNL
Optional	*5) Allowances*	Variable contribution calculated on the basis of supplementary or personal allowances	The belonging administration

In practice, of course, the incidence or the specific economic volume of the above-mentioned five components may vary among the salaries of different managers according to the different services, offices or ministries they belong to.

The current asset in Italy is the result of a long and challenging reform path of the overall public administration system started during the 1990s and having the general aim of simplifying, modernising and improving the efficiency and effectiveness of the administrative machine in

[4] According to the Law n.150 of 2009 for highest level managers (which have to be maximum the 25% of the overall number of employees working in the belonging institution) the performance related pay component of the salary has to correspond to the 30% of the entire retribution.

order to comply with the EU and OCSE standards. One additional but no less important factor that played a very relevant role in the public debate about the need for a reform in the public administration was the growth in public debt and the very high financial impact of the public expenditures[5].

The various public administration reforms adopted during those years, from 1992 until 1999, have been implemented with more than 10 Legislative Decrees and are still remembered in the country by the names of the ministers that drafted them: Minister 'Cassese', Minister 'Bassanini'. During those years, the reforms tried to renew the image of the public administration, to shorten the bureaucratic procedures and improve the overall performance of the system intervening in three levels: the structure of the public administration, the personnel (managers and employees) and the type of activities and services delivered[6].

With regard to the reform of the structure of the public administration, the very aim was to ensure a better distribution of the powers between national and sub-national authorities (regions and municipalities) and more fiscal independence and coordination[7].

The reform of the public administration personnel, instead, was focused on the promotion of a better distinction and distribution of responsibilities and powers between politicians and managers. From the 1990s onwards, in fact, the formal distinction was established between political functions (policy-making civil servants like ministers) and administrative ones (policy-implementing civil servants like managers of a public administration department at national level). As described in the Legislative Decree No 29 of the 1993, for example, ministries are only responsible for the design of the policies (they have political responsibility), but not for their implementation (administrative responsibility). The administrative tasks and responsibilities in fact belong fully to managers (so called 'dirigenti – capi dipartimento – segretari generali') working within the competent ministry[8].

Finally yet importantly, the 1990s reforms first introduced, and later fostered, a result-based management approach based on a system of 'incentives/premium' for public administrations'

[5] L. Giuliano 'Lo sviluppo qualitative della pubblica amministrazione', 2008

[6] *Ibidem*

[7] MINISTERO DELL'INTERNO – DIPARTIMENTO PER GLI AFFARI INTERNI E TERRITORIALI 'Testo unico delle leggi sull'ordinamento degli enti locali' approvato con Decreto Legislativo 18 agosto 2000, n. 267

[8] The way in which this specific distinction between political responsibility/function and administrative ones has been conceptualised and implemented in Italy is very unique and not present in any other European assets where ministries continue to be responsible also for the implementation policies adopted by the managers ('Dirigenti') working within the Ministry they head.

managers on top of their basic component of salary to promote and reinforce the efficiency of the public sector[9]. The disbursement of the bonus component for public sector managers' remuneration was, in fact, introduced and connected to the assessment of their performance in relation to the objectives attained by them within their functions.

In 2009 and 2011, the Italian government again introduced a series of reforms aiming at modernising once again the overall structure of public administration and cutting salaries of the top-level public administrators to reduce public debt after the economic crisis in 2008.

The reform of 2009, also called the 'Brunetta reform', again from the name of the Minister who drafted the text, was implemented with the Decree 150/2009 that reinforced – within the Italian pay scheme – a performance management system in the Public Administration based on performance-related pay. Because of this reform, monetary rewards related to individual performance are assessed via a structured 'system of appraisal' and must represent the 30% of the total salary for managers belonging to the highest range. According to the decree 150/2009, every single administration has to identify autonomously its own objectives and indicators to measure its own success. This structured procedure, which involves four main actors for its correct implementation, is called 'Performance cycle management' (Ciclo di gestione della performance) and is composed of three different stages. The roles of the several actors involved, together with the stages which are part of the 'performance cycle management', will be explained in more detail in the paragraph devoted to 'performance-related pay'.

The 2009 reform also introduced the obligation for public administrations to differentiate the evaluations of their individual employees by the introduction of different 'merit ranges' (fasce di merito) within which a different 'result-related compensation amount' was associated. According to the reform every administration is obliged to identify at least three different 'merit ranges' with the bigger economic compensation reserved for managers belonging to the higher one.

In addition, because of such a new structured performance measurement system within public administration, the 2009 reform also led to the creation of some new bodies actively involved in the performance cycle at different stages and with different responsibilities, as already

[9] R.Occhilupo and L. Rizzica, 'Incentivi e valutazione dei dirigenti pubblici in Italia', Banca D'Italia, 5 Gennaio 2016

mentioned above. The first new bodies created were the 'Independent Evaluation Organs' (Organismi indipendenti di valutazione) with the aim of monitoring – within every public sector organisation – the correct implementation of the performance cycle[10]. The second new actor created by the reform is an additional controlling body, this time an external one, called: 'Commission for the evaluation, transparency and integrity of pubic administrations' (in Italian 'Commissione per la valutazione, la trasparenza e l'integrità delle amministrazioni pubbliche' C.I.V.I.T). The 'Commission' started to operate in 2010, fully independent from the central government, with the main mission to support the optimisation of productivity, efficiency and transparency of the Italian public administrations. Law No 15 of 2009 specifically entrusted to the Commission the task of directing, coordinating and supervising the performance evaluation in relation to the functions of the government, ensuring the transparency of the system and the visibility of the indices produced to measure the operational performance. Next to this task – which is principally intended to promote the efficiency and quality of public services provided for citizens, also recognising and effectively rewarding the good work of individuals and groups in administrations – there was the task of ensuring total transparency of all the authorities in elaborating their own performance indicators. In concrete terms the Commission had to guarantee the accessibility of those data regarding the operational performance of authorities in order to promote a transparent shared control of the public sector between institutions and citizens. The intention of the Reform, by fostering and promoting the transparency of the data, was to ensure the integrity of government the accessibility of data and thereby reduce the serious phenomenon of corruption.

After 2012, with Law No 190, also called the 'anti-corruption law', adopted during the government of premier Mario Monti, the 'Commission for the evaluation, transparency and integrity of pubic administrations' changed its name to 'National Authority for Anticorruption, transparency and evaluation of public administrations' (in Italian 'Autorità nazionale anticorruzione e per la valutazione e la trasparenza delle amministrazioni pubbliche – ANAC). In 2014, with Law No 114 of 2014 adopted during the government of Matteo Renzi, the ANAC was totally abolished and all its functions, together with the personnel, were absorbed by a new agency – created with the same law – simply called 'National Authority for anti-corruption'.

[10] The (OIV) Independent Evaluation Organs (Organismi indipendenti di valutazione) have a very relevant monitoring role within the performance management cycle. For example, they validate the performance reports and control the correct implementation of the awarding and evaluating system.

In 2011, another reform principally adopted to reduce the public debt by cutting the costs of public administration and for this reason also known as Save Italy (in Italian 'Salva Italia'), was implemented with Law 214/2012. Article 23 ter. of Legislative Decree of 201/2011, converted into Law 214/2011, established that within 90 days from the adoption of the Law all the people having working relationships with the national public administration and paid by using public resources would have a total annual economic compensation not exceeding the salary of the first President of the Court of Cassation (primo Presidente della Corte di Cassazione). Specifically Art. 23 ter established a fixed maximum reference point for remunerations of national public administration managers.

As of 2012, all salaries of national public administration managers including those of top officials have become subject to such an imposed cap. Moreover, Article 13 of the Legislative Decree No 66 of 24 April 2014 established the maximum limit for the remuneration of the first President of the Court of Cassation at €240 000 gross per year. Therefore, as of 2014, no salary in the national public administration should exceed this amount including public managers up to the Prime Minister. Art. 23 ter of Law 214/2011 also sets a limitation on cumulative salaries, introducing an 'anti-cumulative provision': even in the event that a person holds more appointments in the public administration (plurality of appointments), he/she cannot receive more than 25% of the total amount of the salary received for the first appointment (including bonuses and reimbursements).

Consequently, Italy uses a reference point that pegs the rewards for high-level officials to a standard wage level of one particular function, in this case the salary of the first President of the Court of Cassation (primo Presidente della Corte di Cassazione), together with a performance-related pay component in the calculation of public administrators' salaries.

The standards do not regulate hourly rates but only set standards that tie the maximum remuneration that is received by top managers in public administrations. As already underlined, salary specifications (including hourly rates) at both national and regional level are in fact negotiated by the 'Agency for the collective negotiation of Public Administration' ('Agenzia per la Rappresentanza Negoziale delle Pubbliche Amministrazioni' – ARAN) in compliance with the general principles described in the collective labour agreement (in Italian 'Contratto collettivo nazionale di lavoro – CCNL') and have to be included and respected in every working contract with public administration.

At the beginning of the Renzi presidency (from February 2014 until now), the discussion about the cutting of costs of high-level public administrators was still ongoing, and focusing on several aspects, not only the purely financial ones. The main changes under discussion, in fact, regarded the introduction of more meritocratic career paths for managers, the increase of their managerial accountability and responsibility, as well as the review of the taxation system of the public administrators' salaries.

Because of the above-mentioned sociopolitical context, on 7 August 2015 a new Law for the reform of public administration was approved and entered into force on 28 August of the same year: Law No 124/2015 that is also known as 'Legge Madia' from the name of the Minister who initiated it. This Law, being a 'delegated act[11]', is part of the Italian regulation, but with regard to some specific chapters and topics will actually start producing all the expected effects only once the Government adopts and implements all the executive decrees. The areas in which the Government is required to adopt and implement the executive decrees are: public management, central and local reorganisation, digitisation, simplification of the administrative procedures, rationalisation and control of subsidiary companies, anti-corruption and transparency. At the moment most of the executive decrees have accomplished the legislative process and most of the above-mentioned topics have been covered, but overall the implementation of the Law is not complete yet.

In general the reform aims at modifying the recruitment, granting and revocation methods of appointments; as well as the training, education and bonus system for public administrators at all levels; not only national. The overall expected results of the reform, addressed to the overall public administration system (national – regional – local) is to foster a more 'professionalised', competitive and accountable system.

In particular, the topic of public managers and performance evaluation is contained in Art. 11 and the executive decrees on this topic have now been adopted and implemented by the Government.
Art 11 of Law No 124 of 2015:

[11] The 'delegated act', according to the Italian constitutional asset, is an ordinary law adopted by the Parliament that recognises the Government as being responsible for exercising the legislative function on a specific given topic contained in the delegated act in order to concretely implement the main contents and general principles of the Law.

- Re-introduces the concept of the 'unique role[12]' (ruolo unico) not exclusively at national level, as it was in the past with Law No 80 of 1998, but within all levels of public administration. Through this concept or mechanism there will be a better homogenisation of all the public managers' salaries, which despite the existence of a unique pay system and a cap applicable to all managers, is still too much characterised by high differences in the economic volume of individual salaries among managers belonging to the same public administration level: national, regional or local. In addition to this, always to foster harmonisation, there will also be a homogenisation of the recruitment and careers access procedures mainly based on a clearer and unified identification of requested skills and recognition of performance merits. The expected side result of such a harmonisation, at both economic and human resources management level, should be the support of workers' mobility[13] among agencies or bodies of public administration.

- Dismisses the distinction in two ranges among national public managers (Dirigenti Fascia 1 – Dirigenti Fascia 2) together with the connected difference between the two economic values of such salaries: managers of level I were gaining a higher salary than managers of level II, as was explained in the Art. 23 and 28 of the Legislative Decree 165/201.

- Establishes some 'independent commissions' within each level of government: national, regional and local, which will be responsible for the monitoring and control of the granting rules, together with the adoption of valuable performance evaluation systems. The members of these commissions will be selected according to a more specific and more transparent procedure, which will ensure a higher level of independence and competency.

[12] Within the 'unique role' measure for the national public administration managers will fall into the following categories: the managers of the national administration, the managers from the national non-economic public entities, those from the public universities, public research institutes and governmental agencies. The 'unique role' for regional managers will instead comprise: the appointed regional managers, those working within the regional non-economic public entities, those from the regional agencies, chamber of commerce, industry, craft and agriculture; and those working for the national health system. When it comes to the 'unique role' for managers working at local level, the following are included: local managers and provincial and regional secretaries.

[13] Law No 124 of August 2015 Chapter III 'Personnel'

- Confers all the managerial tasks through the adoption of a ‘selective comparative procedure’ (in Italian: ‘procedura selettiva comparata’) based on the publication of an official notice/tender in which all the requirements and criteria laid down by the interested public administration will be described. Those requirements and criteria will be described following some general recommendations and principles previously identified by the competent ‘Independent Commission’. In granting the tasks also the professional competences, the previous performance evaluations and past working experiences of the candidate will be considered.

- Establishes that every appointment can last a maximum of four years for all the public administration managers, with the possibility of being renewed only once subject to participation in the public notice/tender. The revocation of the appointment, before completion of the regular term of four years, can happen only for ‘objective circumstances’: if or when the manager does not succeed in the accomplishment of the objectives connected with his role and position. This failure to achieve the targets needs to be verified by the competent ‘Independent Commission’. In addition, the Law maintains the existing condition according to which is possible to revoke the appointment of a manager at any time ‘in case of the internal reorganisation of the administration’. The only thing that changes is that now the revocation can be done only after having asked for the opinion of the ‘Independent Commission’, which is mandatory, but not binding.

- Reinforces and promotes a more independent evaluating system able to better measure the effectiveness and quality of the services delivered by the public administration through the implementation of some pre-established ‘standards’ capable of measuring both: the performance in relation to the individual results and the overall results reached by the organisation. From now on, the performance evaluations will matter more in the assignment of managerial positions and promotions.

- Reinforces the role of the ‘Agency for the collective negotiation of Public Administration’ (‘Agenzia per la Rappresentanza Negoziale delle Pubbliche Amministrazioni’ – ARAN) in relation to its controlling functions over the trade union prerogatives, together with its technical support to public administrations in the measurement and evaluation of performances and in the human resources management

through the stipulation of an ex-ante agreement between the interested public administration and the Agency.

- Reconfirms the cap applicable to all managers with the fixed reference point already explained in Art. 23 ter and specifies that the 'accessory part of the salary' – i.e. the components of the salary different from the fixed base part such as the position-based, performance-based and allowance components – must represent 50% of the total compensation of the manager excluding the seniority-based component.

- Establishes, with regard to the performance-related component, that it has to represent 30% of the overall compensation calculated according to the above-mentioned rules.

In addition, the topic relating to the need for a clearer distinction between administrative responsibility and managerial responsibility is also included in the Law. The differentiation between political duties and administrative duties are in fact considered essential to increase the managerial autonomy and performance responsibility of managers.

Nowadays, according to the National Institute for Statistics (in Italian ISTAT) and the data collected by the ARAN agency, it is possible to affirm that at least the issue about the need to reduce costs of the public sector seems to be going in the right direction. The graphic below in fact, available on the website of the National Institute for Statistics, shows that the salaries of public administrators have not grown since 2009; instead they have been constantly decreasing.

Per capita trend in salaries of the Italian public administration

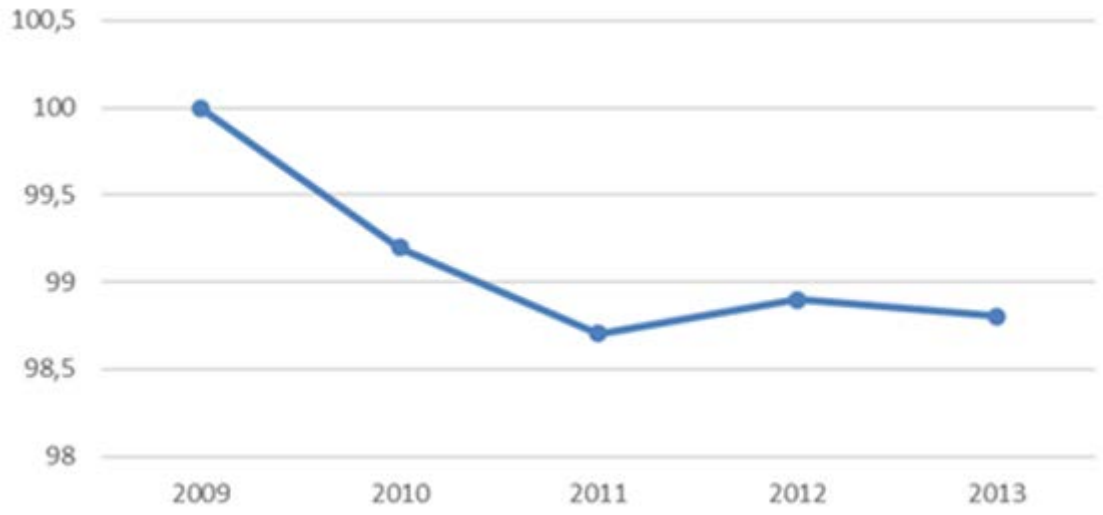

Chart taken from the ISTAT website www.ISTAT.it, original title: 'Il crollo delle retribuzioni dei lavoratori pubblici: lo dice l'Aran' (Title: The collapse of the salaries of public workers: the Aran agency confirms).

To have a clearer and more detailed idea of the current precise economic value of public administrators' salaries at managerial level, it is possible to refer to some data collected and elaborated by the ISTAT and summarised in the chart below. The chart shows – on average – the salary amount received by public administrators' managers belonging to different sectors of administration in 2015, as for example: ministries, people working in the field of research (national research institutes), hospitals and military personnel and so on.

SECTOR	**SALARY AS OF 2015 PRICES**
Ministries	€61 880
Tax agencies	€58 625
Presidency of the Council of Ministers	€71 263
Non-public economic entities	€60 901
Regions and local self-government	€55 794
National health service	€57 614
NHS – doctors / veterinarians	€71 789
Research	€45 963
School	€51 312
Universities	€56 000
Police	€60 000
Military	€75 000
Fire departments	€71 833

Chart taken from the ISTAT website www.ISTAT.it, original Title 'Gli stipend della pubblica amministrazione' (Average salaries of public administrators managers)

2.1.2The linking of remuneration to formal reference point

In general, in the framework of the regulatory measures, various methods may be implemented to achieve the goal of regulating the executive payment of the public management (cf. Brans, Peters, Verbelen, 2012). The following methods of regulating executive pay result from institutional effects and may lead to higher or capped levels of remuneration:

Method 1) The introduction of a mechanism to make the decision on rewards automatic by formal and informal reference points (pegging). These mechanisms can take four different forms:

- A) Linking the rewards to the average wages in society;
- B) Pegging the rewards for high-level officials to a standard wage level of one particular function (e.g. the Judges of Appeal or the pay-level of a minister or the head of government);
- C) Taking 'civil service salaries as reference points for highly integrated pay systems. (…)', meaning that top office remuneration may be derived by 'percentage-wise deviations from top civil service pay';
- D) A set of reference points that are rather loosely coupled.

Method 2) Maximising pay increases to corrections for inflations by the adjustment of wages to rates of inflation to maintain purchasing power. This way of regulating executive pay may result in a capping of the salary if pay increases are limited to the annual inflation rate only.

Method 3) The use of expert commissions to decide about wages of public high officials based on a comparison of rewards between corresponding positions in the public and private sector.

Method 4) 'Pay for Ethics' by which public officials agree formally or de facto to receive higher but more transparent rewards in exchange for receiving fewer external rewards or less visible allowances of all kinds.

The Italian case falls within the 1B case. Italy uses, by an automatic mechanism, a fixed reference point that pegs the rewards for high-level officials to a standard wage level of one

particular function, in this case the salary of the first President of the Court of Cassation (primo Presidente della Corte di Cassazione) paired with the use of performance-related pay.

In particular, art. 23 of Law No 214 of 2011 (Reform 'save Italy', in Italian 'Salva Italia') recognises as a reference point for the establishment of the cap on the salary of the First President of the Court of Cassation. In addition to that, art. 13 of the Legislative Decree No 66 of 24 April 2014 also establishes a cap itself on the salary of the First President of the Court of Cassation. This cap on the salary of the First President of the Court of Cassation is €240 000 gross of pension contributions and income taxes per year. According to this and starting from 1 May 2014, none of the salaries of national and regional Public Administration managers can exceed this amount.

2.1.3 Performance-related pay (PRP)

In general, the impact of the introduction of PRP within the pay system for public administration managers has to be analysed according to the multiplicity of objectives for introducing it. The main argument put forward by countries for implementing PRP is that it acts as a motivator, by providing extrinsic rewards in the form of pay and intrinsic rewards through the recognition of effort and achievement. Overall, however, the types of objectives pursued with PRP vary across countries, with Nordic countries focusing more on the personnel development aspects, most Westminster countries focusing more on the motivational aspect and others such as France or Italy stressing the leadership and accountability of top civil servants[14].

Since 2009, with the 'Brunetta' reform mainly aimed at improving the quality, efficiency, transparency and competitiveness of the public administration, the performance-related pay system component of managers in the Italian public sector has been reinforced and based on a more structured procedure called 'Performance Cycle Management'.

The rationale behind this choice of reinforcing the relevance of the performance assessment at national, regional and local level is connected with the necessity of better recognising the merit of the best employees and economically rewarding them in order to maintain and foster a better

[14] Performance-Related Pay For Government Employees, OECD, www.OECD.ORG, page 3

quality of services, the productivity of the personnel and introduce a result-oriented approach. On the other hand, it aimed at discouraging the bad practices of public administrators, which were – at the time of the reform – compromising the quality of the services and animating the public debate due to low efficiency, high absenteeism, limited transparency and low accountability of the overall system[15].

According to the law every single public administration body must have a 'performance cycle' which includes three successive stages: the programming (Piano della performance), the measuring and evaluation (sistema di misurazione e valuatazione della performance) and the report on the achievements due at the end of the year (relazione sulla performance). It involves four different actors. Three of them are internal to the public administration body and one is external. They are, respectively:

- the political/administrative authority,
- the managers/employees,
- the independent assessment bodies (OIV)
- the 'Commission for the evaluation, transparency and integrity of public administrations' (C.I.V.I.T); nowadays replaced by the ANAC: Anticorruption, transparency and evaluation National Authority (Autorità nazionale anticorruzione e per la valutazione e la trasparenza delle amministrazioni pubbliche).

The role of the involved actors within the 'performance cycle' can be summarised as shown by the chart below:

Role / Task	Responsible authority/body
Identification of the basic methodologies to apply in the performance management cycle	Commission for the evaluation, transparency and integrity of public administrations (C.I.V.I.T); now replaced by the ANAC
Establishment of the policy priorities	The political/administrative authority
Implementation of policy priorities through the management of activities in service delivery for citizens	Managers and employees

[15] G. Rebora (2015) 'La nuova riforma della PA e Il fascino discreto del performance management' available at http://www.funzionepubblica.gov.it/semplificazione/le-semplificazioni-del-governo-renzi

Methodologically supports the implementation of the performance management cycle and ensures the application of the methodologies prepared by the Commission (C.I.V.I.T)	The independent assessment bodies (OIV)

With regard to the stages of the 'performance cycle', they are as explained below.

1. The first stage: 'the programming' (Piano della performance) is the most challenging one. It has to be adopted annually by each public sector body and must contain the strategies, policies and operational objectives, together with the indicators for the measurement and evaluation of both: individual and collective performance. To set the objectives there are some explicit criteria to observe which are identified in the Law and are summarised by the acronym 'SMART'. This means that the objectives must be: specific, measurable, assignable, realistic and time-related.

2. The second stage of the performance cycle, the measuring and evaluation (in Italian 'sistema di misurazione e valuatazione della performance'), has the aim of identifying and establishing ex-ante the modalities for the measurement of the collective and individual performance. The individual performance of managers or top-level executives must be measured in a different way from the one used for the other 'lower level employees'. For managers, in fact, the performance measurement has to be 'objective' and 'subjective'. In detail, when it comes to the 'objective performance evaluation' the managers must be based merely on the ways they manage to contribute to the achievement of the 'individual targets' for which they have been appointed or assumed. In contrast, in the case of 'subjective performance evaluations' there are the professional competences, skills and working approaches, the elements which are put under examination. For the other employees, those belonging to the lower levels, the measurement and evaluation of their performance is based merely on the way they manage to contribute to the achievement of the body, agency or office objectives they belong to, their professional behaviour, their team working approach and the delivery of good quality results. Their 'personal contribution' is less relevant and influencing than it is for the top-level managers.

3. The third and last phase of the performance cycle management, which consists of reporting the achievements and is done at the end of the year (in Italian 'relazione sulla performance'), underlines both: the collective and individual results/objectives achieved in relation to what was programmed for the body/office with the available human and financial resources. It is within this report that all the criticalities, changes, challenges or failures has to be denounced and evaluated as well. The validation of the performance report, which falls under the competence of the 'independent assessment bodies (OIV)' is the obligatory condition needed to receive the performance-related economic awards.

In consideration of the fact that there is a big variety and there are operational differences in the nature of the objectives and functions among public administration offices, the Reform only outlines the mandatory steps of the performance cycle, the internal and external actors to be involved together with their role, but does not adopt a unique system for performance measurement and monitoring itself. With regard to performance measurement and monitoring, in fact, it just sets out some general principles, such as the one mentioned above about the identification of SMART objectives in the programming stage, and relies on the support of the Commission for the respect of the general principles and the specific application in the different contexts where a specific public administration body/office operates. The Commission (CIVIT), created with this Reform, acts in full autonomy and is responsible for directing, coordinating and supervising the evaluating functions.
The specifications for the economic volume of the performance-related awards are explicitly described in the Law. When the reform was adopted, the distinction between two ranges of the management was still valid and it was established that:

- to those managers belonging to the first range (fascia 1) – which were 25% of the total number of employees – was assigned 50% of the total amount of the resources devoted to the performance-related award..
- For those managers belonging to the second range (fascia 2) the total amount devoted to the performance award was the remaining 50% of the total amount devoted to the performance-related awards, but considering that the personnel belonging to the second range represents 50% of the total numbers of employees, the amount devoted

to them (fascia 2) is economically less since it has to be distributed among a higher number of people.

- The volume of the performance related pay component of the salary for those public administrators belonging to the highest range must be the 30% of the total compensation.

To have an idea of how much the performance-related pay component is economically relevant within the payment of public administration managers, the chart below can be helpful. It shows the salaries of ministerial managers of both ranges[16] (fascia 1 – fascia 2) with all the five components which are part of them (as explained in paragraph 1.1.), among which there is the performance-related one named 'result' (in Italian 'risultato').

	Managers level 1 (25% of the total number of employees)	Managers level 2 (50% of the total number of employees)
Tabellare	56 510.2	43 493.3
Posizione fissa	36 309.2	12 113.7
Posizione variabile	72 614.5	16 703.8
Risultato (result)	16 728.6	10 643.3
Altro	6 264.5	3 174.9

The chart shows that the performance-related pay component, the fourth row from the top "Risultato (result)", has a higher economic volume for managers belonging to Level 1 (dirigenti fascia 1), numerically smaller than that of managers belonging to Level 2 (dirigenti fascia 2). Numerically the value of the performance-related award for managers belonging to Level 1 is 16.728 and that for managers belonging to Level 2 is 10.643; confirming that the economic volume of this component is higher for managers on the first level then for those belonging to the second one. As already mentioned before, since 2009 the performance related pay component of the salary has to represent the 30% of the total amount of the compensation.

[16] R. Occhilupo e L. Rizzica, "Incentivi E Valutazione Dei Dirigenti Pubblici In Italia", 2016, p.15

In addition to this general rule about the volume and incidence of the performance-related pay component within the salary for top-level public officials belonging to both ranges (fasce), by the way, it is still possible to encounter big differences in salaries among managers belonging to different ministries. Still observing data from 2012, in fact, it is possible to see that the performance-related pay component of the salary of a manager working for the Ministry of Justice, for example, is one-fifth of that received by a manager working for the Ministry of Education. This difference is connected with the influence of several factors, for example the different economic volume of the other components that compose the salary: the seniority-based one, the position-based component and so on. Also the total amount of money devoted in each department to the performance related compensation can be different, as well as the number of employees among which the performance related pay budget amount has to be divided.

According to most of the academic literature and some studies carried out by national and international institutes, the effect of the introduction of a performance-related pay component within the salaries of public administrators is questionable. In Italy for example, even if the French and English models have constantly inspired the country, due to some structural differences,[17] the effects are having a different and less remarkable impact.

The questionable success of the performance-related pay experience in Italy, according to most of the literature and studies, is determined by two endemic elements: the Italian regulatory design and some structural factors.

With regard to the structural factors, the most influential aspect is the low flexibility of the model adopted for the measurement of the performance. Despite the fact that the model contains just the general principles and conditions, the way it is designed does not take into consideration the different dimension and the type of activities carried out by the different public administration bodies, together, and the expected outputs which are extremely different and imply a different level of responsibility for managers[18].

[17] One of the main structural differences between Italy and France, for example, is connected with the educational ad hoc training of French public administrators and the very rigid selection procedure embodied in the system, which ensures the training and selection of high-qualified administrators. With regard to the comparison between England and Italy, the structural differences are connected with a clearer separation of duties and responsibilities between 'Departments' and 'Agencies'. In England the 'Departments' are responsible for the political strategy and the 'Agencies' are responsible only for the operational and implementing duties. This clear separation is not present in the Italian system.

18 G. Rebora (2015) 'La nuova riforma della PA e Il fascino discreto del performance management' available at http://www.eticapa.it/eticapa/wp-content/uploads/2014/10/riforme-rebora-RU28sett.pdf

Considering the regulatory design, the problem is connected with the fact that the evaluation of the performance is done only at the final stage of the 'performance cycle management' with the ex-post report and its effectiveness might be compromised by the quality of the previous stages composing the overall cycle. For example, if the quality of the ex-ante programming step done at the beginning of the 'performance cycle' is not excellent (piano di programmazione) in matching the objectives with the strategy, the quality of the final stage – the ex-post report – properly dealing with the measurement of the performance may consequently also be compromised.

The last but no less important factor, which according to the literature can compromise the PRP in Italy, is connected with the poor managerial and administrative autonomy granted to the managers, especially after the 'Brunetta' reform. The latter, in fact, by introducing some fixed procedures within the performance cycle, makes managers' positions less flexible and forces them to assume more legal responsibilities that might compromise their managerial and administrative autonomy. This situation is extremely evident, for example, in the financial planning when it comes to the planning and management of expenses: managers are obliged to respect timing and conditions to be in line with the performance management cycle, but their managerial and administrative skills and strategies might be compromised.

Also the role of the controlling and monitoring agencies – involved in the performance cycle management – influences the impact of the performance-related pay system. The following paragraph will focus on a more in-depth analysis of these bodies and the way they operate.

2.1.4 Control mechanisms

In order to assess the compliance with the regulations it should be pointed out that the limits and standards established by law for the remuneration of top managers in national and regional public administrations and for the compensation of the President of the Italian Republic only concern the case in which the salary is paid by the state. This means that top managers are not prohibited from receiving salaries and compensations higher than the existing cap applicable in private institutions or ownership of private assets. Law 214/2011, in fact, sets a **limit on cumulative salaries only in public administrations**, so only when the compensations are paid by public administrations.

Specifically, Law 214/2011 establishes that when holding two appointments in public administration, one cannot receive more than 25% of the total amount of the salary received for the first appointment (including bonuses and reimbursements); but it does not regulate or put thresholds on the incomes from the private sector, even in the case of second appointments. In this situation, also the controlling and monitoring procedures of the entitled bodies are not allowed to be executed.

The above-mentioned situation, together with **no encompassing system of disclosure** of data on the salaries of all managers of the Public Administration, provokes weaknesses of the controlling mechanism. Despite the existence and involvement at different stages of controlling/monitoring authorities in fact – as for example the 'Agency for the Negotiating Representation of Public Administration' which collects annually the salary declaration of managers, the nature of the collected data is incomplete. In fact, it only concerns the salary received by top officials in their public function and does not show additional private income or assets. Moreover, there is **no law imposing the disclosure** of the full assets of top managers in public administration, even if those holding political offices (such as ministers and the Prime Minister) often have their income disclosed by national media.[19]

Not even the change introduced by the 2009 reform that obliges public administrations to publish online all their reports of the 'Performance cycle management' together with the amount of money given to every employee according to their performance-related pay part of the salary, can be evaluated as an effective or binding control mechanism.

The only effective or binding control mechanism, which includes also a sanction in case of bad management of public resources together with the potential payment of salaries higher than the amount established in the threshold, is described in Art. 28 of the Italian Constitution and the Decree of the President of the Republic n.3 of 1957. These legal sources describe in general the concept of "administrative responsibility" for both: offices and single employees, recognising them responsible for the application and respect of the rules regarding the correct management of public money in the implementation of the administrative function.

[19] See for instance the news item published on a National newspaper disclosing the assets and income of members of the government. Information retrieved at: http://www.repubblica.it/politica/2014/05/22/news/guadagni-86831697/#gallery-slider=86808412 (Last access on 30 June 2015).

In case, due to the ordinary control mechanism implemented by the involved agencies, will be proved that public money have not been spend according to the principles described into the Constitution, the Civil code and/or the administrative law code by a certain public administrator (the payment of too high salaries is also contemplated within one of these cases), the employee personally responsible of that will be punished with a "sanction for loss of revenue to the state" (in Italian" danno erariale nei confronti dello stato"). According to this procedure, the responsible person will repay the State back for the same amount of the evaluated economic damage he/she provoked in the implementation of the administrative function.

In addition to that, by observing the overall payment scheme adopted in Italy, it is possible to identify four main actors involved in the control, monitoring and reporting on the correct implementation of the pay system regulations, which are:

1) the *Agency for the Negotiating Representation of Public Administration- A.R.A.N;*
2) the '*Department Of Public Functions*';
3) the '*Independent Evaluation Bodies' – O.I.V.*
4) *the* 'Anticorruption, transparency and evaluation National Authority'- *A.N.A.C.*

1) The *Agency for the Negotiating Representation of Public Administration*[20] was established by the Legislative Decree No 29 of 1993 with the aim of legally representing the public administrations within the national collective labour agreement[21] (in Italian 'contrattazione collettiva nazionale di lavoro' – C.C.N.L.) and giving them technical assistance for the correct interpretation and implementation of the contents, general principles and rules described in the C.C.N.L. With specific regard

[20] The Agency has a Steering Committee composed of five members whose appointment occurs through a decree by the President of the Council of Ministers. Three of them are chosen by the President of the Council of Ministers by agreement with the Minister of the Treasury, one by the 'Conference of Presidents of Regions' and the other by the 'Conference of Municipalities' together with the 'Conference of Provinces' ('ANCI' and UPI). The members of the Committee are usually people with huge and high-level knowledge in the labour law field and cannot hold any elected or political position. The term of office is four years and they can be re-elected only once. Within his team, the Agency can recruit all the employers necessary according to its mission, with no numerical limit and through public competitions. *('Art. 50 Legislative Decree No 29 of 1993, Law No 15 of 2009').*

[21] The national collective bargaining of labour (in Italian 'contrattazione collettiva nazionale di lavoro' – CCNL) is a procedure through which the main rules and general principles to be complied with in the implementation of a working contract are periodically established. The result of such a procedure is the so-called 'contratto collettivo nazionale di lavoro' (national working collective contract) and represents the basis on which all the contracts within public administrations have to be based. All the rules and basic economic references described in the 'contratto collettivo nazionale di lavoro' (national working collective contract) must be respected since they are supposed to represent both the rights and duties for employers, as well as those of the employees. Both categories, employers and employees, are in fact represented during the collective bargaining by their own trade unions actively involved in the procedure.

to the control and monitoring functions the Legislative Decree establishes that the Agency – in cooperation with I.S.T.A.T (the Italian Statistic Institute) – collects and drafts every three months a report on the economic retributions of national public servants to be shared with the Government, the stakeholders committee and the competent Parliamentary Commissions. In order to draft the above-mentioned report properly, the Agency has also access to the data collected by the Ministry of Treasury, such as the state budget, the economic programming and the provision of public labour costs.

In addition to that, still according to the Law, national public administrations are obliged to send to the Agency all the subscribed contracts within five days indicating, for each of the salary components, from where the money will come with reference to the annual financial budget.

With regard to the procedures and fields of applications of the labour agreement (in Italian 'contrattazione collettiva nazionale di lavoro' – C.C.N.L.), the 2001 and 2009 reforms brought some changes in the procedure and the role of the Agency itself. Everything is described in Art. 46 and 47 of the Legislative Decree 165 of 2001 and Art. 2, 5, 40, 41, 46, 47, 48, 55 of the Legislative Decree 150 of 2009. The reforms of 2001 and 2009 on the role of the ARAN and fields of application of the collective labour agreement (in Italian 'contrattazione collettiva nazionale di lavoro' – C.C.N.L.) wanted to 'reorder' the national collective labour agreement for public administration to reinforce the competitiveness of the public sector with the private sector. Because of this, the reforms limited the field of application of the C.C.N.L and the role of ARAN only to some specific components of the overall salary of public administrators such as: 'the fixed based salary' and the 'Centrally determined portion' (please refer to paragraph 2.1 for more detailed references). The other components are decided by the belonging body or office, always in compliance with the general principles described in the CCNL, but with more decision-making and economic freedom[22].

More specifically the C.C.N.L and the decision-making role of ARAN cover only the following fields:

- rights and duties connected to the employment relationship;

[22] M. Delfino 'La nuova contrattazione collettiva nel lavoro pubblico: soggetti e procedimenti', available at http://www.regione.emilia-romagna.it/affari_ist/rivista_5-6_09/707%20delfino.pdf

- relations and trade unions' prerogatives;
- disciplinary proceedings;
- performance appraisal;
- mobility and economic progressions;
- constraints, limits, actors and resources devoted to the 'supplementary bargaining' (contrattazione integrativa);
- contract structure.

On the other hand, the following topics are excluded:

- the organisation of the offices,
- the areas subject to trade union participation,
- acts connected with the management of labour relations,
- the appointment and revocation of executive/management positions.

2) The '*Department of Public Functions'*.

This Department, thanks to Law No 114 of the 2014, took over all the performance monitoring and evaluating procedures once assigned to the ANAC: Anticorruption, transparency and evaluation National Authority (Autorità nazionale anticorruzione e per la valutazione e la trasparenza delle amministrazioni pubbliche). The 'Department for the Public Function' (Dipartimento di Funzione Pubblica), created in 1983 with Law No 93 and reinforced in its functions and responsibility by Law No 124 of 2015; collects and publishes all the performance reports and data received from the several 'Organismi Indipendente di Valutazione' (independent evaluation bodies) on a public website called 'Performance Portal' (in Italian Portale della performance) available at the link www.performance.gov.it. It offers citizens unique access to all the data published by the administrations, a direct way to check the level of transparency within administrations and the achievement of the performance objectives. More specifically, with the contribution of all the public administrations and public servants themselves, the available data concerns:

- the list of the managerial positions existing in all public administrations,
- the list of the people holding those managerial positions in every public administration,
- the curriculum vitae of all the managers,

- their position in the ranking of the competition with whom he/she had access to the position.

Within this Department, according to a preliminary discussion carried out on the 25 August 2016 over a new Legislative Decree which will be implemented in the context of Law No 124 of 2015 (Riforma Madia), a new Commission will be created: the 'Commission for the state public management'[23]. This Commission, when and if the above-mentioned Legislative Decree is officially approved by both parliamentary chambers, will be created to ensure a higher level of transparency in the selection and appointment of top-level managers to avoid political abuse and at the same time ensure the administrative implementation of the policies. In this way the power of the political body (the Government at national level or the political body of any other public administration office at regional and local level) to identify people to appoint as top-level managers (in Italian 'dirigenti generali') stays, but there will be a supervisor of the whole apparatus. The Commission, in fact, can intervene ex-ante or ex-post confirming or not the procedures for the appointment of top-managers. In practice the national administration will send to the Commission the list of the potential candidates for a top-manager vacancy (those who have applied to the public competition) with all the relevant documentation and the Commission, within the following 30 days, will select the best five profiles among which the public administration can select the preferred one. In this way, a high level of transparency will be ensured together with a very objective evaluation of the profile of candidates.

3) The '*independent evaluation bodies*'.

The '*independent evaluation bodies'* (O.I.V.) are agencies established within each public administration by their own political-administrative organs. They independently perform monitoring functions in the process of measuring and evaluating the performance. They can comprise a single member or a panel of three members.

In practice they:

[23] Next to the Commission established at national level, two more commissions for regional and local public administrations will be created and named: 'Commission for the regional public management' and the 'Commission for the local public management'.

- verify the proper adoption of the performance evaluation system together with the validation of the final individual performance reports;
- verify that as part of the performance cycle the administration realised a substantial integration between economic and financial planning and strategic management planning;
- promote the proper use of the performance assessment results for the monitoring and evaluation of the overall objectives of the organisation;
- promote and certify compliance with obligations related to transparency and integrity measures;
- verify the results and good practices for promoting equal opportunities.

4) The *'Anticorruption, transparency and evaluation National Authority'- A.N.A.C.*

This agency was created with Law 190/2012, and then the Legislative Decree No 90 of 2014 converted into Law No 114 of the same year redesigned its institutional mission. Nowadays, by the way, this agency is no longer involved in the controlling and monitoring of the pay-scheme rules, since these kinds of tasks have been given to the 'Department of Public Function'. It is possible to affirm that the Agency was doing the same tasks that are now being implemented by the Department and the same information has emerged from the interview.

In conclusion, concerning the national public administrations, moreover, no **sanctions are foreseen in the event of exceeding salaries,** either in the Legislative decree or in Law 214/2011. Rather, public administration bodies are encouraged to rectify deviations from the standards, but there are no indications of specific modalities and timing.

2.1.5 Overview of the situation in the semi-public sector in Italy

The semi-public sector in Italy comprises all companies with a public participation, i.e. when the state or other public institutions own shares. Such companies to be classified as 'semi-public' need also to pursue a public goal and receive funds issued from the state using public money. In addition, according to Article 2449 of the Italian Civil Code, if the state or public institutions participate in a company, the statute may entitle the state or the participating public institution to nominate one or more members of the supervisory body.
Public companies are completely subject to private law. Therefore, the salaries of top executives of semi-public companies are **contracted individually** between the person who will hold the position and the company itself. Nevertheless, generally, public companies also have

to comply with Legislative Decree No 66 of 24 April 2014 that **established a cap of €240 000 gross per year (maximum salary of the first president of the Court of Cassation)** for the executive pay of public managers.

But, the semi-public sector pay system is characterised by several 'exceptions' from the general pay scheme.

In fact:

- public companies have not been subject to the Brunetta reform (legislative decree No 150/2009), which introduced a performance management system in the public administration that tightens the link between public executive pay and performance. The reason for this exclusion from the reform may be that the commercialisation of public companies has already led to structures of increased performance-related remuneration.
- The 'salva Italia' reform of 2014 was not aimed at the salaries of top managers of certain companies of the semi-public sector, companies which have a part of their shares owned by the State, but which exclusively issue financial instruments other than shares[24]. (Check the debate between prime minister Renzi and the CEO of the company 'Ferrovie dello Stato' (the Italian railway services)) [25.] According to this restriction the cap **does not apply** to the salaries of managers of companies with **direct or indirect public control which are present or not present in the stock market and which do not publicly issue shares but exclusively other types of financial instruments.**[26]
- Article 23 ter of the Legislative Decree of 201/2011 converted into Law 214/2011 in conjunction with Article 13 of the Legislative Decree No 66 of 24 April 2014 applies to the salaries of **managers** of companies partially owned by the State which issue shares as well as other financial instruments. But, since the legislation defines *managers* as CEOs and top executives, the cap does not affect directors of semi-public companies who do not exercise executive functions.

[24] Amendments have excluded the application of Article 23 ter of the Legislative Decree of 201/2011 transposed in Law 214/2011 to semi-public companies which issue exclusively 'financial instruments' different from shares.
[25] Information retrieved at: http://www.ilgiornale.it/news/interni/minaccia-moretti-renzi-se-mi-tagli-stipendio-vado-1003855.html (Last access on 30 June 2015).
[26] Article 23 ter of the Legislative Decree of 201/2011 converted in Law 214/2011 in conjunction with Article 13 of the Legislative Decree No 66 of 24 April 2014

Due to this scenario, the cap seems to apply to only a handful of semi-public companies, and certainly not to the biggest ones. Companies like Eni (the company controlling the flow of gas and other fossil energies in Italy), Enel (the company controlling electric energy in Italy), Finmeccanica (the biggest IT group in Italy), Cdp (the agency specialised in deposits in Italy), Poste Italiane (the National Postal Services) and Ferrovie dello Stato (the National Railway Service) are excluded from the cap.

The standard does **not regulate hourly rates** but only sets a cap that limits the maximum remuneration that can be received by top managers in semi-public companies which issue bonds. Hourly rates are negotiated individually in each contract. Furthermore, the salaries of public managers of public companies are **negotiated individually** between the person who will hold the position and the company itself. As a result, the hourly rates and remuneration arrangements are also determined individually.

On top of this framework, in which the limits and standards established by law on the remuneration of top executives (CEOs) of semi-public companies that **issue shares as well as other financial instruments** only concern the salary to which the state contributes by virtue of holding shares of the company, **top executives are not prohibited from receiving salaries and compensation paid by private institutions or owning private assets annually.**

Another interesting point is that there is no agency that regularly collects all data regarding the salaries of managers and CEOs of public companies. Thus, there **is no encompassing system of disclosure** specifically for top executives in the semi-public sector. However, the information can be retrieved indirectly, as every natural person needs to disclose his or her income annually by law to the *Agenzia delle Entrate* (the agency that collects taxes in Italy). Although there is no law imposing the disclosure of the full assets of top managers in public administration, media channels often publish the statistics and amounts of salaries of top executives of semi-public companies.[27]

2.1.6 Control mechanisms in the semi-public sector

Since the 2009 reform on performance-related pay did not directly apply to the semi-public sector (because the commercialisation of public companies has already led to structures of increased performance-related remuneration) and considering the restriction in the application

[27] Ibid.

of the cap for managers of those companies with **direct or indirect public control which are present or not present in the stock market and which do not publicly issue shares but exclusively other types of financial instruments,** an additional controlling instrument has been introduced.

Ministerial Decree 166 of 2013, in fact, establishes that the salary of CEOs of such semi-public companies should not be increased by more than 75% of the previous salary; but this corrective measure does not rule out the possibility of those managers having salaries higher than those of top officials in the public administration; this is also due to the fact that the specific composition of their salary does not need to conform to the stipulations of Legislative Decree 165 of 2001 (for instance, in 2012 the CEO of the National Railway Service received a salary of €873 666).[28]

The law does not refer to any monitoring mechanism that would involve **accountants**. However, because the salaries of top executives of semi-public companies are contracted individually between the person who will hold the position and the company itself, it is possible that the company monitors the management of executive pay through accountants. For instance, in companies that have a **two-tier structure, the supervisory board** may hold this function. In companies with a **one-tier structure, the shareholders may exercise a monitoring function over the appointed CEOs**.[29] Hence, CEOs of companies (including semi-public ones) need to report to their shareholders and in the case of a two-tier structure also to the supervisory board. Because the state or public bodies hold shares in semi-public companies, CEOs need to report their actions also to them as shareholders sitting on the board.[30] It is important to stress in this context that pursuant to Article 2449 of the Italian Civil Code, if the state or public institutions participate in a company, the statute may entitle them to nominate members in one or more of the supervisory bodies.

Each semi-public company that issues shares as well as other financial instruments is encouraged to monitor the compliance of the salaries of its officials with the new standards established in Article 23 of Legislative Decree 201/2011 converted in Law 214/2011.

[28] Information retrieved at: http://www.ilgiornale.it/news/interni/ecco-stipendi-dei-manager-pubblici-1003908.html (Last access on 30 June 2015).
[29] Dorresteijn A., Monteiro T., Teichmann C., Werlauff E., European Corporate Law, Second Edition, Kluwer Law International (2009).
[30] Dorresteijn A., Monteiro T., Teichmann C., Werlauff E., European Corporate Law, Second Edition, Kluwer Law International (2009).

Monitoring is assigned to each company rather than to one national monitoring agency. More precisely, a memo of July 2013 from the Presidency of the Council of Ministers invited all bodies concerned to report to the government whether:

- There had been a deviation from the standard imposed by Article 23 of the Legislative Decree of 201/2011 converted in Law 214/2011.
- The deviation had been corrected to fall within the aforementioned standard.
- The body has established internal regulations to classify all salaries issued to managers and determine whether a deviation from the standard is registered.[31]

It may be derived from these guidelines that there seems to be **no sanction system** per se. The legislation enacted so far to support the provisions of Article 23 ter of Legislative Decree 201/2011 converted in Law 214/2011 in conjunction with Article 13 of Legislative Decree No 66 of 24 April 2014 (for semi-public companies which issue shares as well as other financial instruments) does not present any sanctions that would exist if salaries were exceeded. Rather, companies are encouraged to rectify deviations from the standards. This may imply having the manager in question return the portion of the salary exceeding the cap.

2.1.7 Ruling and mastering the exception to the cap system for specific positions in the public and semi public sector

As already stated, the Italian pay system within the public sector is characterised by the application of both mechanisms: the pay cap fixed at a standard wage level, the reference point being the salary of the first President of the Court of Cassation (primo Presidente della Corte di Cassazione), and performance-related pay.

In addition to the cap, according to which none of public administration and/or Independent Administrative Authorities (Autorità Amministrative Indipendenti[32]) managers – including

[31] Information retrieved from the official document circulated by the Presidency of the Council of Ministers: http://www.funzionepubblica.gov.it/media/1084356/nt%2033516%20del%2015-7-2013-disposizioni%20su%20trattamenti%20economici-monitoraggio%202013.pdf (Last access on 30 June 2015).

[32] The independent administrative authorities, within the Italian legal system, are public bodies governed with legal personality. They were born in the 1990s with the aim of ensuring the proper functioning of the market rules, especially after the entry of European Community law within national law, with a particular focus on those markets that have been for years a monopoly. In practice their role is to protect public interests in specific economic and social sectors because of the presence of numerous and different interests, categories and operators. The appointment of the members is carried out by the Parliament or the Government to ensure the independence and impartiality of the authority as a whole, over the interests of the operators involved. The authorities have the legal nature of public non-profit institutions.

public managers up to the Prime Minister – can receive a salary higher than that of the first President of the Court of Cassation (about €240 000 gross per year), one additional rule to limit the salary of managers has been established.

This additional rule, included in Law 214/2011, does not apply to a specific position, but regulates a particular case. It is devoted, in fact, to those public functionaries holding two appointments: one in the public administration where he/she belongs and the second in a ministry, in a national public agency or in one of the Independent Administrative Authorities (Autorità Amministrative Indipendenti).

Article 2 of Law 214/2011 states that: 'in order to avoid the accumulation of economic treatments, staff who are called – preserving the income recognised by their membership of the public administration body they originally belonged to – to exercise managerial or equivalent positions ….. at ministries or national public bodies including independent administrative authorities, cannot receive as remuneration or compensation for the assignment or for reimbursement of expenses more than 25% of the total amount of remuneration received for the first appointment[33]'.

As specified in Art. 3 of the Law, the implementation of the limit requires the necessary cooperation of the recipients of the discipline. In particular, the competent staff or human resources departments within public administrations must ensure the collection of the financial statements made by the managers. The statements have to contain all the assignments in place paid by public finance, together with the identification of the appointing administration and the related fees. The statements must be made in the form of 'substitutive declarations by notarised deed' (dichiarazione sostitutiva di atto notorio) and must be addressed to the authority or administration with which the manager is running the economically prevailing assignment.

The collection of all the declarations must be made by 30 November each year. The implementation of the reduction, if the limit of €240 000 gross per year is exceeded, must be implemented either directly by the belonging administration of the employee or by the appointing one (the one for which he/she has been asked to deliver services). Therefore, the belonging administration or the one conferring the economically prevailing assignment, whether at state, regional or local level, must act as a 'subject of coordination' with regard to

[33] Presidenza del Consiglio dei Ministri – Dipartimento di Funzione Pubblica, Circolare N.8/2012 'limiti retributivi' – art. 23 d.l. n. 201 del 2011 convertito in l.n. 214 del 2011 – d. P.C.m. 23 marzo 2012 (G.U. 16 Aprile 2012 n. 89)

all the other administrations involved in order to make the application of the reduction effective.

When, according to the declaration collected by the competent body, the public administration manager receives overall remuneration exceeding the limit, there will be a calculation of the difference between the payable remuneration and the admitted remuneration specified by art. 3 of Law 214/2011 of €240 000 gross per year. This amount, in practice the calculated difference between the payable remuneration and the admitted remuneration specified by art. 3 of Law 214/2011, will then be shown in the payroll as "deduction (trattenuta)" under Art. 3 of d.d.l 201 of 2011', subject to prior notification within a reasonable time to the interested person.

In general, by Law, there are not exceptions cases allowed within the Italian system for any specific position, despite the case of employees from the "Constitutional Bodies" and the "Italian Central Bank". According to the Chapter 4 of the Italian Constitution, in fact, legislations about the payment system cannot apply to "Constitutional Bodies" and the "Italian Central Bank" due to the "nature and mission of them and the necessity to preserve the maximum level of independency for the correct implementation of their own functions[34]".

Among the "Constitutional Bodies" there are the President of the Republic, the Parliament, the Council of Ministers, the Constitutional Court and the Judiciary. These bodies, together with the "Italian central Bank" can determine the payment system by themselves as established within the Constitution.

For all the other positions and bodies, instead no exceptions are allowed, as also emerged from the report of the interviews, due especially to the very high reference point and threshold established by the system. Also with regard to the rule against the accumulation of economic treatments, law allows no exceptions; even if within this case more episodes of wrong application of the Law, with the consequent wrong and higher retribution perceived by the interested employee, happened during past last 5 years especially at regional level[35].

[34] Art 55 – 82, Chapter 4 " the republic system", Italian Constitution.
[35] L. Olivieri "Dirigenti locali: il cumulo degli stipendi è un illecito", available at www.leggioggi.it

With regard to the semi-public sector pay system, the situation is a bit more complicated due to the definition of semi-public companies itself and the existence of several 'exceptions' from the general pay scheme.

According to the general definition of semi-public companies as described by Art. 2449 of the Italian Civil Code, in fact, the semi-public sector in Italy comprises all companies:

- With a public participation, i.e. when State or other public institutions own shares;
- That pursue a public goal;
- That perceive funds issued from the State using public money.

For those companies, in general, the cap applies regularly, but due to the latest development of the pay scheme regulations there are two major cases of exceptions that have also caused several scandals and debates during the last ten years.

The first is connected with the content of Article 23 of Law 2014/2011 that establishes the cap for 'managers', 'CEOs' and 'top executives' of semi-public companies. Among the above-mentioned listed managerial positions which fall under the limitation, by the way, that of 'directors who do not exercise executive functions' is not explicitly included. As a consequence, it is possible to have, within a semi-public sector company, a 'director' who earns more than EUR 240,000 gross per year in the case of companies such as: ENI (the company controlling the flow of gas and other fossil energies in Italy), Enel (the company controlling electric energy in Italy), Finmeccanica (the biggest IT group in Italy), Cdp (the agency specialised in deposits in Italy), Poste Italiane (the National Postal Services) and Ferrovie dello Stato (the National Railway Service) …

The second exception is connected with the 'Salva Italia' or Save Italy reform of 2014 (transformed in Law 214/2011). Since this reform was not addressed to managers of those semi-public companies which have a part of their shares owned by the State, but which exclusively issue financial instruments other than shares; in practice the cap for managers does not apply to companies with direct or indirect public control (whether or not they are listed in the stock market) and which do not publicly issue shares but exclusively other types of financial instruments.

At the beginning of August 2015 – for example – a big debate, connected with the above-mentioned cases of exemption from the application of the cap for semi-public managers, exploded in the most popular national newspapers. The company concerned was RAI 'Radio Televisione Italiana', the company responsible for the provision of radio and television services on a national scale. Within the period of public consultation for the re-elections of the CEO and managers of the Company, the existing managers have decided to start to undertake 'debt issues' (titoli di debito) quoted on the financial market. In this way RAI no longer falls under Law 214/2011, since it becomes a semi-public company which does not publicly issue shares but exclusively other types of financial instruments, and its incoming managers and CEO can practically receive a compensation higher than that imposed by the cap: €240 000 gross per year[36].

2.2 Poland

2.2.1The reforms of the pay system and additional regulatory measures: overview of the situation in the public sector

The remuneration of top level officials in the Polish public sector is determined by the national pay system, most specifically by the 'Law on the Salaries of Persons holding Managerial Public Posts', made in 1981. Currently there is no additional regulation by law in the sense of a cap policy to regulate the salaries of top officials in the public sector.

In practice, the 'Law on the Salaries of Persons holding Managerial Public Posts' establishes that remunerations are determined on a base salary with a multiplier, and a variable part – such as benefits – with another multiplier. The level of pay is defined by a decree of the Prime Minister. It is based on a multiplier system in which the positions of the civil service are divided into several groups and for which each is assigned a different multiplier (coefficient). A relevant number is assigned according to the position of the public official and multiplies this base salary. (The definition of the multipliers' range has been derived from the research and analysis of 120 000 positions in public administration.) The remuneration is thus determined

[36] S.Feltri – C. Trecce 'Rai, il trucco per aggirare il tetto stipendi: così nuovo dg potrà prendere 500 mila euro', Il fatto Quotidiano, 2 Agosto 2015, available at http://www.ilfattoquotidiano.it/2015/08/02/rai-il-trucco-per-aggirare-il-tetto-stipendi-cosi-nuovo-dg-potra-prendere-500mila-euro/1928324/

by the product of a given multiplier and a base reference wage, which is defined every year by the Budget Law.

State administration in Poland combines open and closed systems of employment and career development. The structure of public administration in a broad sense encompasses state administration and self-government administration. The state administration covers organs and institutions that perform functions of the state by virtue of legal provisions.

Civil Service in Poland is a concept of a narrow scope of government administration existing in ministries and central offices at national (i.e. central) level and voivodeship offices at regional level as well as services, guards and inspections, strictly defined by law, that act on the regional and supra-local level.

The model of Polish civil service differentiates between:

1) members of the 'Civil Service Corps (CSC)' such as *civil service employees* and *civil servants*. A civil service employee stands for an individual employed person on the basis of an employment contract in accordance with principles set forth in the relevant statutory provisions. A civil servant stands for an individual employed person on the basis of appointment in accordance with principles set forth in the relevant statutory provisions. The number of civil service corps members as of June 2009 was 121 004, including 5 348 civil servants, representing 0.8% and 0.03% respectively of all employees in the national economy.

2) Other categories of public employees not included in the civil service corps, such as self-government, health, education, the judiciary, etc.[37]

The Law from 1981 also defines the pay of the ministers. Their salaries consist of a base amount plus a function bonus that is determined again through a multiplier system defined by the

[37] 'Employment statuses of those two groups are regulated by two different legislative acts. In both cases workers are divided into those employed on the basis of regular job contracts and acts of appointment', p. 2 'Poland: Working conditions in central public administration', Eurofound, available at http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/nationalcontributions/poland/poland-working-conditions-in-central-public-administration

ordinance of the President of the Republic of Poland. The base reference wage is also defined by the Budget Law, as for the group of senior civil servants. Because of this, the base reference wage changes every year[38].

During the economic crisis of 2008, the debate on the salaries of high-level officials in the public sector opened again. It concerned whether to freeze the salary levels of the top officials and, indeed, this was done in 2008. In 2009, moreover, the posts of senior civil servants were re-incorporated into the civil service corps, after being excluded in 2006 with the aim of including the senior civil servants in the management tasks of the state and rendering the composition of the remuneration of senior officials the same as for the rest of the civil servants in public administration.

Various legal changes were consequently introduced in the years 2008-2012 which influenced, to some extent, career and employment security in the Central Service Corps and public offices. The new 'Act on civil service' (from 21 November 2008 with amendments), for example, extended performance appraisals also to the employees of the civil service corps – previously only civil servants had to undergo assessment – with the first assessment to be implemented between the first eight and 11 months of work.

During the last three years the debate, however, was focusing on whether wages were high enough to attract and retain qualified staff. According to the literature and political debate the system seems still capable of motivating staff and attracting people, but when the still ongoing small economic slowdown stops (according to the forecasts within 2016-2017[39]), the private sector might return to being more attractive than the public sector and the Public Administration salaries might not turn out as competitive as they are currently.

[38] In principle, annual changes in the base reference wage are derived through the deliberations of a tripartite commission. (The three parties in the commission are the Government, the labour unions, and private sector employers. Discussions of public sector wages are only one item in the tripartite commission's agenda. The commission also discusses other major social issues such as increasing the retirement age. (Hence the presence of private sector employers.) In practice, the Government's proposals have prevailed in recent years. From 2003-2009, the base wage increased each year. In 2010, the base wage was frozen at its 2009 level and remained frozen until the end of 2013.

[39] 'It is expected that Poland will drop below the 3% deficit ceiling within 2016-2017' p. 13 'Poland: reforming Government Pay Setting Practices' available at http://www.worldbank.org/en/news/feature/2013/07/18/poland-reforming-the-public-sector-pay-system

According to the EC Country report, in fact, the Polish economy continues to experience a stable economic expansion driven by domestic demand. Real GDP is expected to grow at robust rates of 3½% per year in 2016 and 2017, well above the EU average. These growth rates might reinforce the private sector and foster the discrepancy between private and public sector wages for the highest-level professionals and managerial positions may make recruitment and retention for such positions more difficult.

2.2.2 The linking of remuneration to formal reference points: use of a base salary defined by pay scales for Poland.

In Poland, the 'Law on the Salaries of Persons holding Managerial Public Posts' substantially links the remuneration to a rather fixed reference point for the base salary, but loosely coupled reference points for the determination of bonuses. These are variable bonuses that are linked to scales in the pay band, or a bonus that is multiplied by varying multipliers.

In general, the base salary of staff in the civil service is composed of two elements:

A) a base reference wage, which applies to all civil servants and is adjusted on a yearly basis

B) the so-called multiplier which applies to individual staff and is applied to the base reference wage to yield a base monthly salary.

In addition to the base salary, composed of the two elements listed above, staff also receive another part of compensation in the form of:

1. a length of service bonus (a percentage that increases in monthly salary for each year of service up to 20 years)
2. an anniversary bonus (a one-time bonus granted to staff after 20 and 30 years of employment)
3. a 'thirteenth month' salary, i.e. an additional month's pay at the end of the calendar year.

Taken together, the base salary and the three bonuses represent 85% of the total compensation. The remaining 15% can be composed by:

- an award for particular achievements in professional work
- a bonus for belonging to the 'civil service cadre'[40]
- a task bonus for temporally taking on additional work, typically to cover staff leave
- hazard pay which, in the case of civil servants, applies to tax collectors in charge of delinquent accounts and staff working in adverse environments, such as mines).

These latter bonuses do not represent a large part of compensation. The award for professionals' achievements, for example, constitutes about 8% of compensation and the remaining bonuses about 7%.

In a more conventional system, each position in the civil service would be assigned to a grade and each grade would have a single multiplier, but the Polish system is considerably more flexible. Until 1999, the Polish civil service had no grade structure per se. Positions had titles, but there were many different titles, set out in many different laws, each pertaining to some subset of the civil service. In 1999, the Government attempted to group position titles within the civil service into grades and continued those efforts in 2009 following the approval of the new Civil Service Law from 2008. As stated in the Government Ordinance 211 of December 2009, such grades (listed below) were identified, but in the following year, the grading system was refined again. The grades are:

1. High level civil servant
2. Mid-level management
3. Coordinating and 'independent' civil servant
4. Specialist
5. Support level civil servants.

[40] Within the civil service, the Polish legislation recognises a particular status to 'civil service cadre'. This status is assigned to individuals (ad personam) and not to positions. Thus, a civil service position within public administration may be filled by a personal member of the cadre – i.e. holding this status personally - while another, identical, can be filled by an ordinary civil servant free of this status and relative economic rewards. When established in the late 1990s, the 'civil service cadre' was supposed to become an 'elite core', constituting around 20% of the total civil service. Currently, the cadre has only 8 000 members, constituting about 6% of all civil servants.

In the following years, after 2009, the grading system was refined more and more. Each ministry was required to evaluate its civil service positions according to a common methodology, assigning each position a number of points, and grouping its positions accordingly.

In principle, the classification should have been based on the job requirements of each position: the technical background required, the scope of management responsibilities, etc. Some ministries, however, tended to classify positions according to the characteristics of the current occupant, rather than according to the requirements of the job itself. As a result, current position classifications do not necessarily reflect the actual requirements of the jobs to which they apply.

At the same time, no attempt was made to try to link grades to specific salaries. Instead, the resolution authorising the new system merely incorporated the existing range of multipliers for all the positions in a given grade. Thus if the current multipliers for staff assigned to a particular grade ranged from 2 to 8, the range for that grade was fixed at 2 to 8. As a result, the range of multipliers in each grade is extremely wide. As shown in Table 3, multipliers for support staff (the fifth group in the original five-grade classification system) ranged from 0.8 to 2.7. For high-level civil servants, they ranged from 2.2 to 8.0. Under this system, a support staff could have a higher multiplier than a high-level civil servant. In the second round of grading, some ministries expanded the number of grades and narrowed the range of multipliers in each grade. The Ministry of Education, for example, now has eight grades. The range within each grade nevertheless remains extremely wide.

In practice, the range of coefficients assigned to a given position tends to be fairly narrow. As shown in the table below (‘Concentration of Multipliers within Civil Service Positions’) the vast majority of staff with a given position title receive approximately the same coefficient. This is particularly true for lower level positions and becomes less common for higher positions.

Table 'Concentration of Multipliers within Civil Service Positions'

Position Title	Common Range of Multipliers	% of Staff within Common Range
Department director	5.3-5.9	46%
Deputy director	4.1-4.7	69%
Division head	3.2-3.8	84%
Chief specialist	2.3-2.9	85%
Senior specialist	2.0-2.6	86%
Specialist	2.0-2.6	88%
Clerk	1.7-2.3	93%
Secretary	1.7-2.3	82%
Inspector	1.4-2.0	87%

For example, 82% of secretaries and 93% of clerks are assigned a coefficient between 1.7 and 2.3. 88% of specialists and 86% of senior specialists are assigned a coefficient between 2.0 and 2.6. The difference between multiplier ranges becomes wider in more senior positions, for example only 46% of department directors receive multipliers within a similarly narrow range (5.3-5.9). No categories up to the one of 'Senior specialists' share the same multipliers range; they are all different from each other.

At ministerial level, the task of allocating the wage budget among individual management units involves a struggle between the director general (DG) of the ministry and the managers of each unit. Within the budgetary sphere as a whole, there are thousands of separate budget management units, each of which is, for legal purposes, a separate employer.

Within a given ministry, the manager of each unit, in principle, has the authority to alter the wage coefficients (multipliers) of individual employees. In principle, unit managers can use this discretion to reward high performing staff, or to offer an attractive wage to a potential new recruit. This discretion is, however, checked by the DG of each ministry. DGs are responsible for ensuring that the aggregate wage spending in the ministry remains within the ceiling fixed

in the ministry budget. The interests of the two parties therefore differ. While a unit manager may wish to increase the salaries (i.e. multipliers) of the staff in her domain, the DG must ensure that the ministry's overall wage bill remains within the ceiling set in the annual budget. To this end, the DG must fend off demands from all the unit managers within the ministry. No clear rules govern this process. Individual unit managers must negotiate individual requests with their DGs. The likelihood of success is increased if a unit manager can show savings elsewhere in the wage bill. Thus the departure of a senior staff (with a high multiplier) may free up funds to increase the multipliers of the remaining staff in the unit. However, there is no guarantee that the freed-up funds will remain in the unit. The DG can assign them elsewhere.

2.2.3 Performance-related pay (for the bonuses)

As discussed in the paragraph above, even though Poland does not officially use 'pure' performance-related pay for the public sector staff, a similar adapted system seems to apply for the calculation of the bonuses, which represent a minor part of their overall compensation.

These performance-related bonuses can be variable and in general do not represent a large part of compensation: the award for professionals' achievements, in fact, constitutes about the 8% of the overall total salary and is usually assigned as an award for particular achievements in professional work, without any additional specific criteria or structural evaluation procedure.

As already discussed, since the Polish economic slowdown is expected to stop within the current or the coming year – and it is expected that the private sector will return to be more attractive, at governmental level there is a big discussion on how to reinforce the attractiveness of the public sector. Among the discussed options, the introduction of 'performance-related pay', albeit in a more effective and structured way within the calculation of public administrators salaries, is still strong and ongoing, even though a large part of the stakeholders involved in the debate are still afraid of its effectiveness due to some empirical records which demonstrate all the challenges and difficulties of performance assessment; especially when management skills are weak.

'For Poland, the best option may be to rely on promotions to reward staff performance. Annual performance evaluations can be used as an opportunity for managers to discuss performance issues and career prospects with individual staff, but not as a basis for financial rewards'[41].

2.2.4 Control mechanisms

With regard to external forms of control, in the Polish system there is no formal obligation for collecting or publishing salaries. Despite this, some salaries become known thanks to the intervention of other two laws: the 'Law on Access to Public Information' and the 'Law on Persons Holding Managerial Public Posts'.

Despite that, an internal mechanism for self-regulation of pay exists with regard to the pay calculation for senior civil servants and is described in the 'Civil Service Human Resources Management Standards'. This law determines the element that should be taken into account by the director general when calculating the basic pay of a civil service corps member. This might be, amongst others, the result of the job evaluation, performance and job market determinants. The standard does also stipulate which elements should not be included, such as competences of the employee that are not related to the tasks or relevant to the office held.

Because of this, by the way, several unintended effects happened:

- Unjustified differences in pay of senior posts
- A formal differentiation/multiple existence of organs authorised for the calculation of the pay of a person holding a DG position.

For example: if a person holds a position outside the civil service, the Head of the Civil Service decides the level of pay; and if a post is held in the civil service, the pay is calculated by the political Head of Office, and does not require the involvement of the Head of the Civil Service. This has led to differences in pay of senior civil servants and high-ranking state positions on the expense of the latter.

[41] Page 23, 'Poland: reforming Government Pay Setting Practices' available at http://www.worldbank.org/en/news/feature/2013/07/18/poland-reforming-the-public-sector-pay-system

At ministerial level, moreover, aggregate control over the wage bill is exercised through the budget. At the start of the budget cycle, the budget circular sets out the aggregate budget ceiling for each first tier budget user (e.g. each ministry). While it does not specify wage bill ceilings for each ministry, it does specify the methodology that is to be used to calculate the wage bill, so that in practice the wage bill for each ministry is fixed at the start of the budget process. Prior to the 2008 economic downturn, there appears to have been considerable game playing between the sectoral ministries and the Ministry of Finance in the estimation of each ministry's wage bill requirements[42]. For each ministry, wage bill estimates were based on the number of authorised positions (head counts) in each ministry, multiplied by the average salary of staff in that ministry in the previous year. As not all authorised positions were filled (some were temporarily vacated due to maternity leave, for example) wage bill estimates exceeded actual requirements. The surplus was used to increase salaries of existing employees. Since the wage freeze went into effect, the use of head counts has been abandoned. Instead the Ministry of Finance merely allocates each ministry the same amount as it was allocated in 2009.
The budget, once reviewed by the Ministry of Finance (MOF), adopted by Government and enacted by Parliament, sets out an overall budget ceiling for each ministry in the form of 'parts' ('czesci' in Polish). One or more 'czesci' comprise the wage bill ceiling of a given ministry. Within each 'czesc', each ministry is free to allocate its wage bill ceiling among budget management units as it sees fit.

Looking at the current situation it is possible to affirm that the system for controlling the aggregate wage bill works fairly well. Aggregate wage bill spending has remained a fairly constant percentage of GDP over last ten years. This success reflects the ability of the MOF to enforce spending ceilings at the stage of budget preparation and wage ceilings (at the 'czesc' level) on individual first-line budget users during budget execution. But it also reflects the influence of the EU-imposed 'excessive deficit procedure' (EDP), which Poland must observe as long as its deficit exceeds three percent of GDP. Although the EDP does not set a ceiling on the government wage bill, it does set out an aggregate general government deficit target of three percent of GDP and requires the Government to present an acceptable plan for reaching

- 42 The World Bank (2013) "World Bank recommends reform of Poland's public pay system" available at http://www.worldbank.org/en/news/press-release/2013/07/18/world-bank-recommends-reform-of-polands-public-pay-system

it. The plan presented by the Polish government includes a wage freeze, which went into effect in January of 2010. Once Poland drops below the three percent deficit ceiling, however, the EDP will no longer be in effect. To replace it, the Government proposed to impose its own fiscal responsibility rule, which will limit the growth of central government expenditures to the trend growth rate of GDP, once a structural deficit of one percent of GDP is achieved.

With regard to the monitoring of individual wages, at present the MOF does not do it. This information is monitored, instead, by individual ministries. It is, however, accessible to the MOF. Information on staffing levels and wages at the subnational level (except for teachers) is not easily obtained. Local governments in Poland are independent employers. Subject only to national legislation and collective bargaining agreements, they determine their own staffing needs and wage levels and are not required to report them to the central government.

A very important and relevant actor in the field of controlling the implementation and respect of the remuneration system is the 'Supreme Chamber of Control' which, by Constitution, is the highest controlling and auditing organ of the state. The *Law on the Supreme Chamber of Control* gives the power to the Chamber, which is the highest external entity that controls the organs of public administration, to audit the Parliament's chambers Chancery, the President's Chancery, the Highest Court, the Ombudsman, the Senate's Chancery, National Council of Radio and Television, the Institute of National Memory – the Commission Persecuting Felonies Against the Polish Nation, the General Inspector of the Protection of Personal Data, the Constitutional Tribunal, the National Election Office and the Labour Inspector's Office.[43] The institutions enlisted need to make all the documents requested available to the Supreme Chamber of Control.[44] The authorised members of the Supreme Chamber of Control can enter the premises of the offices under control freely, collect the relevant documentation, hear witnesses and demand information from third parties, with the help of specialists.[45]

Another important actor to ensure compliance with all the regulations on working conditions in public administration is the 'National Labour Inspectorate (NLI)'. The most important controlling and supervisory tasks of the NLI include:

[43] Art. 4(1) Ustawa z dnia 23 grudnia 1994 r. o Najwyższej Izbie Kontroli.
[44] Ibid., Art. 29(1)(1).
[45] Ibid. Art. 29(2).

•health and safety at work;

•observance of the law in the area of employment relations;

•remuneration for work and other due benefits;

•working time;

•holiday leave;

•entitlements connected to parenthood;

•employment of the disabled;

There are also specific areas of working conditions which belong to the competences of other authorities. In case of CSC, some responsibilities are – for example – shared by the Chief of Civil Service, the Council of Civil Service, and the Minister of Finance.

Conflict cases connected to work relations are solved by 'labour courts', with minor exceptions, when the directors of superior offices, disciplinary commissions or the Prime Minister are the appropriate bodies.

2.2.5 Overview of the situation in the semi-public sector in Poland

The salaries of semi-public officials, officials working in state-owned or state-run enterprises, are regulated by 'Law on Salaries of People Managing Certain Legal Entities' or the so-called 'Remuneration Act' introduced in 2000. This law introduced a cap policy for remuneration in the semi-public sector. It covers different topics: the functioning of the cap, the bonus system and the extra benefit system.[46] It has been designed as a tool to make the system of payments more transparent and to lower the salaries. The financial crisis of 2008 has influenced the calculation of the base salary of managers in the semi-public sector, which is taken into account

[46] http://www.eurofound.europa.eu/observatories/eurwork/articles/debate-over-law-capping-pay-of-managers-of-state-owned-enterprises

to establish the salaries of top officials. The reason was the state of public finances and government's attempt to fight the crisis. In addition, since 2011 the base salary has been frozen.

In more detail, the Law (Journal of Laws No 26, item 306) applies to the managers of organisational units and their deputies, members of management and supervisory boards, chief accountants, heads of independent public healthcare funds and liquidators. Under this law, the maximum monthly remuneration of the managers concerned cannot exceed a certain multiple of the average monthly remuneration in the corporate sector in the fourth quarter of the previous year. For more details, refer to the table below about statutory limits on salaries of senior managers in state-owned enterprises.

Maximum salary	**Type of entity**
Seven times average wage in the corporate sector	Commercial law companies with shares owned by companies with a majority holding of the State Treasury or local/regional government organisational units exceeding 50% of the initial capital or stake
Six times average wage in the corporate sector	State-owned enterprises, State organisational units with legal personality, excluding universities, sole-shareholder commercial law companies formed by the State Treasury or local/regional government units, commercial law companies in which the State Treasury or local/regional government units hold initial capital or stakes of over 50%, foundations that receive public subsidies from central government exceeding 25% of their annual revenue, State agencies' research and development institutions, specific funds created by law

Four times average wage in the corporate sector	Local/regional government organisational units with legal personality, foundations that receive public subsidies from local/regional government exceeding 25% of their annual revenue
Three times average wage in the corporate sector	State units and state budget-financed enterprises, excluding public administration and judiciary bodies, auxiliary bodies of state budget-financed enterprises, independent public healthcare funds

Chart taken from: 'Debate on law capping pay of managers of state-owned enterprises'; EurWork – European observatory of working life; available at http://www.eurofound.europa.eu/observatories/eurwork/articles/debate-over-law-capping-pay-of-managers-of-state-owned-enterprises

In addition, the law regulates the principles of granting annual bonuses and various extra benefits, such as welfare and transportation benefits. The law also capped the salaries of councillors and members of the management boards of local/regional government units formed by legislative bodies at these levels. Since an administrative reform in 2002, the law can be applied to the remuneration of municipal (gmina) executive officers (voits), mayors, city presidents and their deputies elected by direct suffrage.

Nowadays the *Law on Salaries of People Managing Certain Legal Entities*[47] is criticised for not being flexible because of the lack of the flexibility of salaries, as it is impossible to adjust the salary to the enterprise's needs, the responsibilities of the manager, as well as the results the manager achieves.[48] As a consequence, the rules for remuneration of managerial staff in State Treasury companies have been subject to numerous analyses which have contributed to attempts to change the *Remuneration Act*, and which is currently still being reviewed.

At the time the Law was adopted it appeared that it was not only ineffective but also detrimental. Its ineffectiveness was reflected in the variety of ways of evading its provisions,

[47] Ustawa z dnia 3 marca 2000 r. o wynagradzaniu osób kierujących niektórymi podmiotami prawnymi,
[48]http://biuletyn.piszcz.pl/component/content/article/98-archiwum-biuletynu/biuletyn-20-luty-2013/375-kominowka-wci-budzi-wtpliwoci192

while its detrimental effects have two dimensions. On the one hand, some managers may tend to succumb to a kind of passivity, resulting from a lack of new candidates for the managerial posts in certain state-owned companies. They avoid the risk of taking up a job in private enterprises, where stronger motivation in the form of higher salaries is always accompanied by fiercer rivalry and stricter assessment criteria. On the other hand, the law fosters the stereotype of 'unjustly high salaries' for management staff – a cliché frequently used by trade union officials.

Because of this animated debate, in 2014, in fact, the Ministry of State Treasury drew up the '*Draft Principles (assumptions) of the Bill on Rules of Exercising Certain Rights of the State Treasury and Local Government Units'*, which introduces rules according to which remuneration of management board members of certain companies would be determined by the supervisory board or another statutory supervisory body under remuneration rules (regulations). It is still unclear, however, which kind of companies will be included in the proposal. The conditions of paying out remuneration and awarding other benefits connected with work performed by members of management bodies of crucial entities for the State Treasury would be determined in accordance with separate rules. Determining remuneration in the above-mentioned way would *not* be subject to the limits set out in the Remuneration Act. Rather the remuneration of managerial staff at State Treasury companies should be made more flexible in such a way as to make their level depend on, first of all, the economic and financial condition of the individual entities.
The *Remuneration Act,* however, has not been changed until now and remains the basic legal act applicable to remuneration of managerial staff at State Treasury companies following the aim to reduce excessive salaries.

The rules stipulated in the Act are effective for people who are in charge of entities in which the State Treasury has **a majority share**. (For companies with the minority share of the State Treasury, everything is decided by supervisory boards or general meetings of management board members. In the case of agreements on providing management services, a common practice is used: to determine fixed monthly remuneration, variable remuneration which depends on achievement of targets and lack of income/benefits from subsidiaries, etc.).
The most important rules for remunerating management board members include:

- maximum monthly remuneration of such persons may not exceed six times the average monthly remuneration in the enterprise sector (i.e. currently PLN 20,727.48 gross);

- what constitutes the basis for determining the maximum monthly remuneration amount is currently the average monthly remuneration in the enterprise sector in Q4 2009;

- maximum three-monthly severance pay is applicable;

- depending on the financial results achieved or the extent of completion of other tasks an annual bonus may be awarded whose amount may not exceed three times the average monthly remuneration. In the case of bad or deteriorating economic and financial results, the annual bonus for the president and members of the management board is not awarded;

- the reference point for the base salary is the average of monthly salary (media) in the enterprise sector (without any additional rewards which are based on profit) from the fourth quarter of the **previous year** as issued by the President of the Central Statistical Office.[49] (before the amendment of 2011).

Because of the above-mentioned principles, **the salary for the top officials employed in the companies can be a multiple (depending on the position: max. six times) of the base salary.[50] The law provides limits on the salaries. Therefore, such a salary is a maximum, which functions as a cap. This also means that a company can propose lower salaries.**
In 2011, however, due to an amendment to the law, the base salary from 2009 was reintroduced as a fixed reference point, and the base salary of the previous year no longer applies.

Later on, in **2013**, as a consequence of the implementation of the emended law, a significant number of managers left public companies because – when the companies were acquired by the state – their salaries went down.[51]

[49]Ustawa z dnia 3 marca 2000 r. o wynagradzaniu osób kierujących niektórymi podmiotami prawnymi, Art. 8(1), 8(3).
[50]Ustawa z dnia 3 marca 2000 r. o wynagradzaniu osób kierujących niektórymi podmiotami prawnymi, Art. 8(1), 8(3).
[51]http://tvn24bis.pl/wiadomosci-gospodarcze,71/odprawy-odszkodowania-szefom-panstwowych-spolek-ustawa-kominowa-niestraszna,416478.html

To try to solve this side-effect the ministry adopted, later in April 2013, the document: '*Good practices in the field of determining remuneration amounts and components in the case of entering into managerial contracts with management board members of certain State Treasury companies*'[52], which defines guidelines to be used in the determination of remuneration set out and paid out on the basis of managerial contracts. Its main principles include:

- The contract's amount should not differ from the average remuneration level on the market (+/- 10% for a given sector), and should consist of two components – a fixed (60%) and a variable (40%) part.

- The variable part of the remuneration should depend on the achievement of targets and be linked to such ratios and financial results, such as: net profit, income, EBITDA, profitability or liquidity, as well as the completion of investment processes.

- At fuel and energy sector companies, 50% of the remuneration's variable part should depend on completion of investment processes, with consideration given to, in particular, their scale, innovativeness and timely completion.

Another important aspect of the Remuneration Act is the one concerning the 'managerial contracts' within which, under precise circumstances, **the law is not applicable.** Those are contracts which may be signed by a natural person, or a person who conducts his own business activity and who will implement a pure 'management services agreement' with a company.

Within these type of contracts, if the person:

- establishes personal or material security for possible claims arising in connection with non-performance or improper performance of the contract;
- or at his/her own expense takes out third-party liability insurance in connection with management;

the limitation under the *Remuneration Act* does not apply and makes the Law inapplicable for these positions. In fact, when one of the two above-mentioned circumstances apply, the

[52] http://nadzor.msp.gov.pl/nad/program-profesjonaliza/25353,Dobre-Praktyki-wynagradzania-menedzerow.html

Remuneration Act become inapplicable; this means that the 'managerial contracts' can be included among the exceptions to the general cap system.

2.2.6 Control mechanisms in the semi-public sector

Art. 15 of the *Law on Salaries of People Managing Certain Legal Entities* states that the salaries have to be published and are not covered by the law on the protection of personal data; but in the case of 'managerial contracts' within companies supervised by the Ministry of Treasury (i.e. companies in which the State Treasury has **a majority stake)** the salary cannot be revealed without consensus among the interested parties.

With regard to sanction methods, Art. 13 of the law states that if the salary, the annual award, and dditional benefits exceed the limits given by the law, it means that *the surplus given is de iure void*. Art. 14(2) prohibits the appointment of persons having been a part of the supervisory body when Art. 14(1) was infringed for the next term.

Furthermore, Art. 202(1) of the Constitution stipulates that the 'Supreme Chamber of Control' is established as the highest controlling, auditing organ of the state. The Law on the Supreme Chamber of Control gives the power to the Chamber, which is the highest external entity that controls the organs of public administration, the National Bank of Poland, the state legal persons,[53] the organs of the local self-government, self-governing legal persons,[54] other self-governing entities as well as other entities such as enterprises in which public means are used.[55] Art. 10 of the law prescribes that the documents produced by the Supreme Chamber of Control are made public except for those protected by the law of secrecy.

[53] Art. 2(1) Ustawa z dnia 23 grudnia 1994 r. o Najwyższej Izbie Kontroli.
[54] Art. 2(2).
[55] Art. 2(3).

2.2.7 Ruling and mastering the exceptions to the cap system for specific positions in the public and semi-public sector

The Polish system allows for deviations from the general civil service pay determination scheme for five categories of public sector personnel. Each of these five will be discussed below.

1. The civil service cadre. One of the benefits that membership of the cadre offers is a salary bonus. The size of the bonus depends on the professional rank of the employee within the cadre (ranging from rank I, which has a multiplier of 0.47; to rank IX, with a multiplier of 2.05). In practice this amounts to a bonus for cadre membership ranging from PLN 881 (rank I) to PLN 3841 (rank IX). The World Bank has been critical of these additional benefits for cadre members because they result in pay inequities and unequal pay for identical jobs (WorldBank 20143: 13).

2. Second, there are the uniformed services, who are rewarded based on their own base wage, which is about 15% below the normal civil service base wage. During the 2011 election campaign the army and police (but not the fire brigade) were promised an increase in base salary, despite the pay freeze that had been imposed in response to the economic crisis. This was granted in the 2012 budget.

3. Third, judges and public prosecutors have their own variant of the multiplier system. Their base reference wage is the average wage in the economy as a whole. Actual salaries of judges and prosecutors are then calculated as multiples of this base. In this way, wages for judges and prosecutors rise (or, in theory: shrink) automatically with wages in the economy as a whole.

4. Fourth, teachers. The large majority of teachers in Poland are employed by local governments, only a small number employed by central government. Their salaries are determined according to the methodology specified in the teachers' charter.

5. Lastly, the group of non-statutory public servants, of which there are about 120.000 in Poland, falls outside the multiplier mechanism. It used to be the case until 2010 that

their wages were determined entirely at the discretion of managers, subject only to minimum wage legislation and the aggregate budget constraints on each ministry. Since 2010 there has also been a grade system for non-statutory public servants. It ranges from grade 1 to grade 21. The salary range in grade one is relatively narrow: the highest earning officials in grade one receive 17% more than the lowest-earning officials in that same grade. This range per grade becomes wider as the grades go up. In grade 21, the top of the range is seven times that of the bottom of that range.

3. The management of the transition period in Italy and Poland: characteristics and lesson learned

The preceding chapters have described and analysed the background, content and implications of traditional and new policies and regulation concerning the management of executive pay in the public and semi-public sectors. We have shown that different specific motivations, ideas and constraints occur in the different countries, and that each system has its own set of stakeholders, which are organised and related to one another in country-specific ways. Designing and formulating the pay regulations in such a way that fits the motivations and interests of the various stakeholders has emerged as an important factor for the success or failure of a given remuneration policy. The *content* of the policy determines for the largest part what will be the positive and negative consequences for the various stakeholders involved, such as the individual managers in the public and semi-public sector, the political executive responsible for the performance of the administrative apparatus, parliament and the wider public.

In this chapter, we devote attention to specific and very important aspects of pay regulation and its reform: transition periods and transitionary provisions. With this concept we refer to, on the one hand, the period of time between the final announcement of the new policy and the complete implementation of it and, on the other hand, the provisions that are taken in order to let the transition from the old regime to the new regime take place as smoothly and effectively as possible.

Implementation specifications, transition periods and transitionary provisions have been a very important part of the considerations in the Dutch debate on the new laws on executive pay and

have been one of the focal points of the Council of State in their obligatory advice on the legislative proposals. Transition periods and transitionary provisions are of great relevance, for a number of reasons.

First, executives and their salaries are protected against arbitrary pay cuts by means of the European Convention of Human Rights, and in most countries by their national civil service law or labour law. This means that political leaders must tread carefully when reforming the rewards regime, as it could be in violation of legal provisions.

Second, most of the new and reformed remuneration policies have been aimed at limiting the increase in executive pay, making parts of it conditional on specified performance levels, freezing it, or even bringing it down to lower levels. As such, most of the reforms are aimed at achieving a more austere approach to rewarding the managers, going against the interest of the managers in financial and in prestige terms. This aspect has made the effecting and acceptance of the policy by the individuals involved difficult, and it is also what has made the debate on more moderate rewards in the Dutch public and semi-public sector difficult in recent years. While it is a matter of fact that with most policy reforms there will be some stakeholders that benefit more than others from the new regulations; in the case of executive pay this aspect is of particular salience. This situation exists because the primary stakeholders – the public managers – are also the same people who are advising their ministers on policy and are the ones who need to implement and enforce the same policy reforms. Therefore, public managers are not only an important group, but also the most important and powerful stakeholders, ready and able to defend their interests. In this way, non-acceptance by executives is likely to hinder the effectiveness of the policy. This means that if political leaders want their remuneration policies to succeed, attention must be paid to dampening the negative effects on the main stakeholder-implementors.

Third, if the new regulations are too sudden and too detrimental to the position of executives in the public and semi-public sector, this can create shock effects which produce undesired side effects of the policy. For instance, resignation of high-performing managers, or a sudden loss of interest on the part of potential executives in taking up a position at the top of the public and semi-public sector may in the end defeat the purpose of the policy.

For all of these reasons, it is important that the new policies are well thought-through in terms of their ‘implementability’ and the degree to which the negative consequences for the stakeholders involved can be eased, take gradual rather than immediate and complete effect,

involve some sort of compensation on a non-financial aspect which may maintain levels of attractiveness in the labour market, etc.

Policies and measures aimed at the regulation of executive pay have a substantive component (i.e. how high or low is the cap, how big a portion can be earned by high performance, what are the applied conditions and exemptions etc.). However, as argued above, it is important to note that there is also a significant procedural component to the topic, which can have a strong impact on the acceptance and effectiveness of the new policy, and that is the way in which the policy is implemented and what kind of provisions are made to make the transition from the old pay regime to the new one as smooth in general, and in which the negative consequences for the individuals involved are eased.

Choices can be made in terms of gradual implementation in the sense that the scope of individuals to which the policy applies is gradually widened (hierarchical grade by hierarchical grade, function type by function type, organisation type by organisation type) or in terms of the intensity of the policy (if the pay needs to be cut by 5%, it could be cut by 1% each year for a period of five years rather than an overnight cut of 5%). Alternatively, it could be decided that the new policy only applies to new hires or new appointments and that individuals on existing appointments continue to fall under the old regulations. Such transition policies can be attractive from a political point of view because the new measure can be announced in its full stringency, but can for the moment only be applied in a less far-reaching variant, thereby avoiding shock effects in the public sector labour market which could drive sought-after officials out of the executive ranks. On the other hand, such policies have their drawbacks in the sense that they cannot lead to the same immediate results as the main policy intends, and it can be financially costly. In this chapter, the transition policies that were applied accompanying the main policies as described in chapter 4 are better described and commented.

3.1 Italy

Reforms related to the level and structure of executive pay in Italy have taken on a particularly gradual character. This has not exclusively been with the purpose of ensuring a soft landing for the new policies (reasons of political feasibility, increasing necessity, and trial and error also played a role here), but the overall result has been a long-term reform path. In some ways this reform path has been largely linear, and in other ways the reform path has been capricious,

when the implementation process of one government's policy change was not yet completed before the government fell and the next government decided to partially dismantle the reforms introduced by the previous government, while the public administration had not yet fully digested the reform (Ongaro, 2009: 225).

The present arrangements are therefore the result of a long path of reform (involving more than 10 consecutive Legislative Decrees) which effectively started in the 1990s and has not yet reached a definite completion. Reforms in executive pay in Italy need to be seen in the context of wider public sector and public management reforms, which have been aimed at simplifying, modernising and improving the administrative apparatus, as a result of fiscal tightness as well as encouragement by international organisations such as the OECD, the EU and the OSCE. Consequently, the general implementation of change to the level and structure of executive pay have been ongoing and gradual over a multi-year and even multi-government period of time.

More concretely, it is important to make a distinction between the implementation processes of (a) pay caps and (b) performance-related pay. Concerning the pay cap that was introduced in 2011, which pegs the salaries of all public officials to the maximum of the salary of the President of the Court of Cassation, this too took immediate effect after its introduction and was not accompanied by transitory provisions or gradual steps for the salaries of those involved. This cap, which was introduced as part the larger 'Salva Italia' austerity operation, only applied to new appointments; the existing salaries of already appointed civil service executives were not adjusted downward.

Concerning the implementation of the 'anti-cumulative provision' of 2012, however, which was meant to put an end to the accumulation of multiple salaries, the measure introduced was that the salary for individuals fulfilling multiple jobs could not be higher than 25% of the salary of the first appointment. In order to enforce this, an enforcement and disciplinary policy was developed. The latter states that if it is detected that an individual's total remuneration exceeds this 25% ceiling, the person involved will be notified and the exact amount of money that he or she received in excess will be calculated and automatically deducted from his or her monthly pay cheque (see Art. 3 of d.d.l 201 of 2011).

Concerning the introduction of performance-related pay, the decision was made in the 1990s to disburse the bonus component that the managers used to receive regardless of a form of assessment of their performance, and replace that bonus with the possibility of receiving a similar amount of money if their performance was on a par with the objectives set beforehand.

In this way, the introduction did not, in and of itself, entail a lowering of the salary as such, but only a conditionality that was applied to receiving the annual bonus. Well-performing public managers were able to maintain their old salary level, whereas underperforming managers would see their income decrease. With this arrangement, it is questionable whether the performance-related pay really helped to incentivise overall performance, since in comparison to the pre-reform situation, overperformance was not rewarded as much, whereas underperformance was penalised.

Although the general implementation process has been gradual, the performance-related measures of 2009 and 2011 introduced overnight, i.e. without a transitory period in which the executive was given a chance to get accustomed to the new situation, an assessment without the sanctioning instrument of higher or lower wages. In addition, as a way of package-dealing and to ease the negative impact and potential labour market shocks as a result of transitions from one pay regime to another, in its recent reform plans the Italian government has chosen to not isolate changes in the pay arrangements from other reforms. Because of this they made financial reforms part of a greater reform package that also included meritocratic criteria for selection and recruitment and increases in managerial responsibility. In this way, it was intended to allow the loss of attractiveness for executive jobs caused by downward adjustments in remuneration to be compensated in part by fairer criteria for selection, recruitment and promotions and greater managerial responsibility.

3.2 Poland

In Poland, there have been a number of policy changes and reforms over the years, where choices have had to be made with regard to the implementation strategy and period. Where measures were aimed at moderating or lowering the salary of executives, or where the structure of the grading system is involved, it is important to focus the attention on how they have been implemented, both from an effectiveness point of view and from an acceptance point of view. The account below addresses the implementation of remuneration reforms in Poland in chronological order.

In 2000, the Remuneration Act was adopted, introducing a cap policy to remuneration in the semi-public sector, but the Polish Confederation of Employers (KPP)[56], representing many state-run enterprises, has long opposed the legislation, which it believes violates EU law. In September 2004, KPP threatened to lodge a complaint with the European Commission, unless the government repealed the law. Meanwhile the government has announced proposals to relax some aspects of the statutory pay limits. The implementation of the law capping the salaries of the managers of state-owned entities has provoked relatively little controversy as regards its consequences for local and regional government units. The maximum monthly remuneration of municipal executive officers, mayors and city presidents stipulated by the law far exceeds that actually paid by most local and regional governments. However, the law has prevented these people from receiving an extra bonus that was customarily granted by many local and regional legislative bodies. These rules have been challenged by the regional authorities, which have had their position upheld by the Supreme Administrative Court (Naczelny Sąd Administracyjny, NSA).

However, heated debate has arisen over the law's provisions on the salaries earned by the managers of state-run enterprises. Opponents of the law argue that, as a result of its provisions, State Treasury-controlled companies often cannot employ eminent managers because of the unsatisfactory remuneration they can offer. The majority of specialists are much more interested in better-paid posts in the private sector. Only a minority are attracted to the state sector by the challenge of managing a large enterprise. Others are motivated by their state sector employers through extra bonuses, such as extra pensionable benefits, training, business travel or company credit cards. According to the managers, there are many ways of evading

[56] Employers' organisations have always been opposed to the enforcement of all or most of the controversial provisions of the 2000 law. The most ardent critic is the Polish Confederation of Employers (Konfederacja Pracodawców Polskich, KPP) (PL0209104F), which represents such major state-run enterprises such as the PKN oil group (Polski Koncern Naftowy Orlen, PKN Orlen), the National Lottery (Totalizator Sportowy), Polish Post (Poczta Polska) and the Polish Airports State Enterprise (Przedsiębiorstwo Państwowe Porty Lotnicze). On 2 September 2004, the president of KPP, Andrzej Malinowski, stated that the law was a legislative fudge adopted merely for populist reasons. According to KPP, the limits imposed on remuneration should apply solely to the management staff of public entities redistributing benefits, such as public healthcare funds, while for State Treasury-controlled companies the regulations violate the principle of equality of private and state economic entities. The KPP president pointed out that in 2000 the European Integration Committee Office (Urząd Komitetu Integracji Europejskiej, UKIE) expressed two contradictory views of the draft law. Initially, it stated that the draft complied with EU law. Later on, however, following the case law of the European Court of Justice, it stated that the law lacked legal clarity.

the law – such as being a member of supervisory boards of other companies or being paid for preparing analyses for affiliated companies. An illustration of the point may be the ownership structure of the Gdynia Shipyard (Stocznia Gdynia). Its management staff are reportedly not paid in accordance with the law. Despite the fact that the State Treasury has 73% of votes in the general assembly of shareholders, it holds only 45% of the company's shares.

Also the new Act on civil service (2008) introduced extended performance appraisals to senior civil servants.[57] The Civil Service Act of 21 November 2008 entered into force on 23 March 2009 as one of the measures taken on the basis of the Resolution of the Council of Ministers of 2008 on the finalisation of public administration reform. The year 2009 was devoted to implementation of the provisions of the new act and to legislative work on implementing provisions. These regulations refer mainly to remuneration issues, disciplinary procedures, performance evaluation, qualification procedures and procedures on cooperation between directors-general and the Head of Civil Service.

Another new measure taken up under the Civil Service Act is the elaboration and implementation of a strategy on the management of human resources in the Civil Service. The strategy should contain a diagnosis of the Civil Service, a definition of its strategic aims, implementation system and financial framework. The result was that in the Civil Service Act of 2008 there is considerable emphasis on implementation provisions, and transitional and harmonising provisions. For instance, the law gives detailed guidelines about the competencies, role and composition of the Civil Service Council, a group of 15 members from the administrative apparatus and parliament who advise the Head of the Civil Service and the responsible minister on all issues relating to the functioning of the civil service, including remuneration. What is striking is that the Civil Service Act often refers to other law, such as the Budget law and the Labour law, as the legal instrument to turn to if and when the Civil Service Act itself proves to be insufficiently specific for a given case. In addition, the Civil Service Act has a detailed chapter on transitional and harmonising provisions, where in 22 articles it states which rules apply during the transition period. For instance, for recruitment procedures that have not yet been concluded on the day the law takes effect, the previous regime still applies. The same applies to preparatory service initiated and uncompleted until the day the Act would enter into force, and periodic evaluation of Civil Servants, uncompleted

[57] https://dsc.kprm.gov.pl/sites/default/files/pliki/ustawa_-_wersja_english.pdf

prior to the day the Act enters into force. Also, the various exemptions of positions that are excluded from the new policies are summarised.

The Government Ordinance of December 2009 introduced a new grade system. The implementation of the new grading system was not a complete success, given that the allocation of the new grades should have been based on the job requirements of each position, but in a considerable number of cases it was the characteristics of the current occupant, rather than the characteristics of the task, that determined the grading.

In Poland from 2009-2010, there was a salary freeze in response to the crisis of 2008. In the case of a wage freeze, no real implementation choices need to be made: the Ministry of Finance just continues to allocate each ministry the same amount it was allocated in 2009. From a financial point of view, the wage freeze has worked fairly well as a means to control the aggregate wage bill.

In 2013, private companies were bought by the state, and this meant a decrease in the salaries of their executives. In response to the relatively drastic salary cut, a significant number of mangers left the newly nationalised companies because of the salary cut. The cut was implemented based on the document: '*Good practices in the field of determining remuneration amounts and components in the case of entering into managerial contracts with management board members of certain State Treasury companies*', which defines guidelines to be used in determination of remuneration set out and paid out on the basis of managerial contracts, but it could not prevent considerable numbers of executives from resigning.

4. Present context and arrangements in the Netherlands

4.1 Political-administrative system

In line with the Continental Rechtsstaat concept, in the Dutch political-administrative tradition, law is seen at the primary source of authority. This is the result of two foreign factors: firstly the influence of France's occupation in the early 19th century and secondly the impact of the legalist tradition of thinking about the state as was dominant in Germany in the first half of the 19th century. Moreover, at least until the period after the Second World War, public administration in the Netherlands was dominated by lawyers. Nonetheless, the Dutch version of the Rechtsstaat diverges slightly from the more closed Rechtsstaat regimes in, for instance France and Germany, in the sense that government is relatively open to external ideas, expertise

and interest representation (Kickert and In ‘t Veld, 1995; Pollitt and Bouckaert, 2004, Van den Berg 2011).

Neo-corporatism in the Netherlands

From the 1880s to the 1970s the divisions in Dutch society were pacified and governed by means of the system of pillarisation, meaning a social and political system in which on the one hand communities were relatively separated and on the other hand elites cooperated in governing the country.

The main pillars were the protestant, the Roman Catholic, the socialist and the liberal pillars. Each pillar operated by means of its own separate institutions: churches, broadcasting associations, newspapers, trade unions, schools, hospitals and housing associations. While at the community level segregation was the norm, at the elite level conflicts and tensions were relatively effectively settled by means of consultation and negotiation. Individualisation and deconfessionalisation in the 1960s heralded the collapse of the pillarised system. New political parties emerged and challenged the old established parties, leading to additional political fragmentation.

The structure and style of Dutch politics has changed in various respects since the early 1980s. It became generally accepted that a continuation of the elaborate social security, high wages and high state intervention that had characterised the post-war model, were not helping to address the fiscal problems of that time. In line with the Dutch tradition of consultation and negotiation, state actors, employers’ organisations and trade unions devised the 1982 Wassenaar Agreement, implying a combination of restrained wage development, policies of new public management and the extension of involvement of third sector organisations (Visser and Hemerijck, 1997). This pact proved economically successful and acquired international fame as the Dutch neo-corporatist Polder Model, in which government worked together with the social partners (employers and unions) and the often deconfessionalised successors of the formerly pillarised civil society organisations.

The political system

Politics in the Netherlands is based on a system of proportional representation, resulting in a multi-party landscape and generally minimal winning coalitions. In the Netherlands, ‘deliberation, consultation, and pursuit of compromise and consensus form the deeply rooted

basis traits of […] political culture' (Kickert and In 't Veld, 1995: 53). These principles and their accompanying practices have proved effective in administering a society characterised by the political, religious and regional cleavages as the Netherlands is. No party has ever possessed an absolute majority in parliament, which makes coalition governments a necessary condition for government stability. In addition, coalition majorities have often been narrow enough for governments to choose to co-operate and negotiate with minority parties and interest groups as well.

The parliamentary nature of Dutch executive government corresponds to and reinforces the consensual and deliberative nature of Dutch governance in which there is no central figure or body that can easily push through drastic policy shifts (Pollitt and Bouckaert, 2004: 270).

The administrative system

In the Netherlands, the public domain consists of all those actors and organisations responsible for the collective interest (Van Braam 1988: 155). This is divided into the 'public-public' and the 'private-public' domains. The public-public domain refers to the public administration under public law, including its ancillary organisations such as government foundations and state owned enterprises. The private-public domain comprises societal self-governance by citizens, societal groups, civil society and private companies that are contracted to contribute to the implementation of tasks in the collective interest.

Historically, and from the late 19th century onwards under the pillarised society heading, non-governmental organisations under private law have always been heavily involved in the delivery of tasks in the collective interest. Indeed, for a number of tasks the government was also not responsible for the funding of these activities. As the pillarised society started to erode from the 1960s onwards and finally dissolved in the early 2000s, both the funding and the influencing of areas such as health care, education and social housing by the state increased. This went hand in hand with a transformation of these organisations from organisations traditionally legitimised by pillarisation to management-driven intermediary organisations.

In the 1980s and 1990s, many of the health care organisations and schools that were formally linked to either pillarised constituencies or local public authorities merged, scaled up and/or privatised to become such management-driven organisations. As part of this transformation, executive pay increased, while democratic legitimation and accountability decreased, which has been called the post-pillarisation syndrome (Van der Meer, 2014).

Thorbecke's 1848 constitution consolidated the administrative system of national, provincial and municipal government and the water authorities. Central administration consists of the totality of the ministries and the executive organisations which fall under the responsibility of ministries (agencies). The constitutional task of the central administration is to prepare and implement the agenda of the government and parliament. While all ministries have their headquarters in The Hague, the executive agencies are located throughout the country.

Next to agencies, independent administrative bodies have become an important category of national level administration since the 1970s (see section below). Moreover, Dutch administration contains various kinds of semi-governmental organisations and 'almost every sector of government policy consists of a myriad of consultative and advisory councils, which are deeply intertwined with government and form an "iron ring" around the ministerial departments' (Kickert and In 't Veld, 1995: 53).

Civil service staffing principles

The Dutch civil service system is traditionally a departmental civil service with very few characteristics of a unified civil service. The only part of the national civil service that can be seen as a unified, career structure is the Foreign Service, but as this section of the national civil service is limited to only one department, is does not alter the fact that the civil service is organised per department, rather than as a general service at the disposal of the government (Van der Meer and Dijkstra, 2000).

It must be noted that a truly unified civil service would be difficult to sustain in a system in which the ministers have a large degree of autonomy concerning the issues within their policy areas and their ministry. To a certain degree, the unlikelihood of a unified civil service in the Netherlands can be understood in terms of the political fragmentation of Dutch society: political fragmentation leads to coalition governments, coalition governments prevent a centralisation of power within the core executive, absence of strong central power in the cabinet allows for high ministerial autonomy and high ministerial autonomy implies that each minister is largely free to develop and implement their own personnel management policies and practices. This is where we see the political context at work in constraining the range of options for civil service systems design (Van der Meer and Dijkstra, 2000).

Besides attempts to unify policy processes, the unification of personnel policy has been on the agenda since 1945 too. The decentralisation of personnel policy has created considerable variation across departments, which is seen as undesirable. Therefore, interdepartmental

personnel support units have been created. Interestingly, in this respect, a differentiation is made to separate the senior civil service from the rest of the civil service. The senior civil service is now served by the Algemene Bestuursdienst (ABD), which will be discussed below. The rest of the civil service, which includes the vast majority of national civil servants, is appointed to the national civil service in general, but their staffing arrangements are managed at the departmental level. The departmentalised nature of the general civil service stands in contrast to the top of the civil service, for whom a service-wide career structure was set up within the Ministry of Home Affairs in 1995, the ABD.

4.2 Law on Standards for Remuneration of Executives in the Public and Semi-public Sectors

The present Law on Standards for Remuneration of Executives in the Public and Semi-Public Sectors, which goes by the shorthand WNT, took effect in December 2012. It prescribes a pay cap (§2) of about €180 000 (including holiday allowance and end-of-year bonus) before tax for all executives in the public and semi-public sector. Each year the maximum is calibrated by ministerial decree based on the development of the contractual salary costs of the government, informed by calculations by the National Bureau of Statistics (CBS). The cap applies to:

- At the central government level: secretaries-general, directors-general, inspectors-general and the other members of the so-called top management group within central government, vice-admirals, generals, lieutenant-admirals and lieutenant-generals and the executives of independent administration bodies.
- At the sub-national levels of government: secretaries of the provinces, secretaries of the water authorities and city managers, and clerks within the provincial government and municipalities.
- The chief executives (incl. the supervisory board) of public bodies and other neo-corporatist structures, including public hospitals, public schools and public broadcasting associations.
- The chief executives (incl. the supervisory board) of regulatory bodies and equivalent public entities.
- The chief executives (incl. the supervisory board) of semi-public bodies (for example museums, charitable institutions) of which 50% or more of their income, and at least €500 000 per year, for three consecutive years, is derived from government grants.

- The chief executives (incl. the supervisory board) of semi-public organisations in which the government has a substantial amount of influence, for example in the selection of the board members or in the decisions that are made by the board.

Enforcement is carried out by the responsible minister, in response to information that accountants, the Tax Service, pension funds and insurance companies are legally obliged to provide. The WNT also created an advisory board for the policy on standards for executive remuneration, which submits a report to the government at least every four years about the remuneration policy and about the improvement and effectiveness of the WNT.

5.Transferability aspects to be used in the Dutch executive pay regulation

5.1 Key institutional differences between Italy and the Netherlands

The Italian political-administrative system operates in a way which is – in broad terms – similar to that of France, Spain and other southern European countries: the so-called 'Napoleonic tradition system'. Like other Continental systems, the law is an '*instrument of the state for intervening in society rather than serving as a means of conflict resolution between different societal actors* (Knill 2001: 65).' Separate systems of public law regulate relations between the state and citizens. Administration is closely bound up with the law and there is a complex hierarchy of constitutional law, statutes, regulations, administrative notes and circulars that define the scope and content of all administrative action. Where administration discretion is exercised, it is checked by a system of judicial review, the scope of which is much wider than in the Anglo-Saxon traditions.

The main features of these types of political-administrative systems (Italy, Spain and France) include a unitary organisation of the state, a technocratic orientation toward decision-making and a prominent nation-building role for government (Chevallier 1996a: 67-68). More so than in the Germanic tradition, unified administrative rather than political or legal arrangements

impose uniformity. The civil service is led by an exclusive administrative class, most of whose members are trained and recruited in a few key educational institutions. All roles of public office, whether elective or appointive, are constrained by the legalistic, etatist tradition. In legislative terms, there is a high degree of legal formalism – or 'management by decree' (Panozzo 2000) – coupled with sectoral and local 'clientelism'.

Despite this, in Italy, significant devolution processes have modified the originally strongly unitary organisation of the state. One of the major processes affecting the relationship of state and society has been privatisation. The influence of privatisation is more subtle and includes the establishment of independent administrative authorities for regulation of the privatised sectors and the diffusion of independent public bodies (in Italy nine independent administrative authorities were established ex novo, or their tasks and power were significantly revised from 1990 to 2006). These developments have distributed public powers among numerous institutions and contributed to breaking the monolithic structure of the state, and this may have contributed to attenuating the previously dominant, strongly organic conception of the state.

Italy has also traditionally known a system of corporatism, where only selected interests have direct access to public decision making at the behest of the state. Political parties used to incorporate corporate interest in an almost organic way, in so-called 'collateralismo'. This feature has been transformed into a more classic corporatist system, for example in the renouncement of 'collateralismo' in 1992 by 'Coldretti'. Besides 'Coldretti', some important associations have also renounced the 'collateralismo' and accepted a wide role typical of private interests in public decision-making processes, both at the policy formulation and at the policy implementation level.

Moreover, in Italy, especially since the civil service reform in 1993, there has been a shift from political micromanagement to distinguishing the two spheres – political and managerial – with the consequence that the administrative powers of cabinets have been reduced (Ongaro and Valotti 2008).

Also a gradual shift from party politicisation of tenured, career officials to a spoils systems occurred in Italy, though the picture is more faceted (Ungaro, 2009 chapter 3). Since the enactments of legislative decree 29 in 1993, major changes have included partial formalisation of the civil service, with the civil service being deprivileged and elements of performance-based reward introduced. At the same time, the latitude of individual public sector organisations has significantly increased. The distinction between the "national labour

contract" (C.C.N.L) and the so-called "integrative labour contract of the individual public sector organisation" (contratto di lavoro integrative) moved the most fundamental decisions concerning personnel management from the public system as a whole (i.e. from central regulators) to individual public sector organisations (Borgonovi and Ongaro, forthcoming; Ongaro 2009).

5.2 Opportunities in terms of transferability for the Italian case

The recent reform programmes and current arrangements regarding the remuneration and other personnel aspects of top executives in Italy have largely had three objectives: first, to contain the degree of politicisation; second, to increase the managerial accountability and responsibility together with the performance level; and third, a review of the taxation system of public administration salaries.

In the Netherlands, instead, the main issue regarding executive pay in the public sector has been the lack of public legitimacy for the executive pay in highest level of public administration and intermediary organisations such as: higher education institutions, hospitals and other health care organisations, social housing corporations and state-owned enterprises (including banks that were nationalised in the context of the 2008 financial crunch).

Despite the fact that the objectives and circumstances within which the performance – related reforms in Italy took place were quite different from the Dutch one, still some aspect of the Italian system could be taken into account to discuss their potential transferability in the Dutch executive pay regulation and mechanisms.

It is important to underline, in fact, how the case study of Italy can offer interesting insights into the overall regulation of executive pay in a country that, originally (during the 90s), had high levels of civil service politicisation and relatively modest instruments for incentivising its top level officials; together with the need of combining legitimization of the public officials and ensure good performance of the public sector. These last two objectives, being also quite popular within the Dutch current debate, offer one additional reason that justify the logic behind the possible comparison of these two countries.

About the aspects and procedures that could be positively considered for transferability it is possible to elaborate the following consideration:

1. The composition of the executive pay articulated in five different components could fit well into the present Dutch context because it could contribute to make the pay system even more stable, structured and transparent; fostering in this way the legitimization within the political and social debate that represent still one of the main challenges faced by the Dutch system. From the point of view of implementation, in addition, since the 2 core relevant criteria, namely position and seniority, are already discounted in the scales and steps of the current BBRA scheme, the inclusion of the additional missing ones could result very easy and fast. Concretely there will be the need to add in the BBRA scheme only the performance related component and the allowances one.

2. The introduction of a Law that fix the percentage of the resources devoted to the performance related pay within the components of the salary, as it is in Italy for employees belonging to the highest range thanks to the Law n.125 of 2009 that imposed the rule of 30%, could also work and contribute to the promotion of higher legitimacy for top level public managers since higher salaries would be proved and justified by better performances and not by not transparent criteria.

3. Performance-related pay, as it has been introduced and then reinforced in Italy with the Law n. 125 of 2009, could have a very high chance of success in the Netherlands. Firstly, it could contribute in limiting executive pay costs (as demonstrated for the Italian case by the data summarised in the chart on pag. 17 about "Per capita trend in salaries of the Italian public administration") and promoting higher legitimacy; and secondly the effectiveness on the level of incentivisation for higher overall performance might have even a higher impact due to two reason. The first one is that the Netherlands, like Italy, have experienced the privatization of the public sector and public employment; the second is that in the Netherlands salaries have not been freeze due to the economic crises of 2009. This means that while in Italy since 2009 the law n. 125 was applied only to new appointed managers (and they have not been that much) due to the economic crises, in the Netherlands a more structured performance related award system - together with a certain fixed percentage of the performance related pay within every salary - could be applied immediately to all the managers and not only to the new one multiplying the effects that have been already positively registered in Italy.

4. As emerged from the desk researches and interviews (check the ARAN interviews' feedbacks at the end of this document), two types of controlling mechanisms ensure the overall Italian arrangement. The first one is represented by ordinary controlling and monitoring procedures conducted by the involved agencies at different stages in the implementation of their own functions with no power of sanctions (ARAN, Department of Public Function and ANAC). The second one is a sanctioning mechanism that applies in the event that the set rules are not abided by according to the Constitution. Both aspects: the involvement of different agencies and a sanctioning mechanism established by law or even by Constitution could fit within the culture of the Netherlands due – respectively – to two different factors. The first one is the "corporate nature" of the society in which agencies could easily be introduced. The second one is connected with the motivating culture spread among Dutch public sector managers that is based on "working to contribute to the public cause". A sanctioning mechanism established by law and/or by Constitution as in Italy (Art.28 of the Constitution and Decree of the President of the Republic n. 3 of 1957 about the " sanction for loss of revenue to the State" within the administrative responsibility), in fact, would fit in a productive way within the Dutch culture of public manager, representing an instrument to punish with a sanction all those that eventually might not positively " contribute to the public case" and ruined the public administrators image and culture, compromising in this way also the legitimacy for highest salaries.

5.3 Key institutional differences between Poland and the Netherlands

After the fall of communism in Poland in 1989, public administration in general and the civil service in particular underwent many changes and reforms. Poland could rely on a pre-communist political-administrative culture of its own, which emphasises basic values such as the approach of civil servants favouring the interests of the state, their impeccable civic attitudes, moral integrity, the respect associated with the status of the civil servants, and the idea that service to the country and its society is an honourable activity in itself (Itrisch-Drabarek 2012: 34). While in the 1990s most experts advocated the use of a career civil service model (for reasons of stability for a state facing the process of constant changes), in the early 21st century a position-based civil service was preferred by decision-makers. In their 2003

study, Bossart and Demmke categorised the Polish civil service as a mixed model that was leaning more towards the career model. In Polish society, the civil service still faces accusations of inflexibility, hierarchical nature and the lack of connection between work efficiency and the system of remuneration. In addition, politicians have continued to exert a strong influence on the functioning of the Polish civil service. This leads to ongoing debates concerning the party-political impartiality of the Polish civil service and of individual senior civil servants. As another result of the political influence on the civil service, the civil service itself has been the subject of political bargaining. As such, the administrative apparatus has seen as many new reform plans as there have been governments in the post-Communist period (Itrich-Drabarek 2012).

5.4 Opportunities in terms of transferability for the Polish case

Also in the case of Poland, it is possible to identify some transferability options suitable within the Dutch system, considering also the fact that these two countries appears to have already quite a lot in common.

Just like in the Dutch BBRA salary scheme, for example, the Polish system takes into account an official's seniority (a percentage that increases in monthly salary for each year of service up to 20 years), which in the Netherlands is factored in by means of the steps-within-grade system. Also in accordance with the Dutch practice, there are anniversary bonuses (one-time bonuses granted to staff after specified numbers of years of service) and there is an end-of-year bonus, or thirteenth month of pay. In this sense, the similarities between both systems are considerable.

With regard to the attitude and culture diffused among public administrators, despite the different historical origins of that for the two countries, it is also possible to find very familiar motivations. In Poland as well as in the Netherlands there is a strong perceived value and respect in working for the interest of the state, a strong moral integrity and the perception of this kind of position as a very honourable one.

Switching the attention from the aspects in common to the particular practices that would fits well within the Dutch system, it is possible to affirm the following.

1. In Poland, the annual base reference wage is determined by the outcome of deliberations within a tripartite commission which brings together representatives of government, trade unions and private sector employers. This deliberative and inclusive way of reassessing and eventually setting the reference wage, is a practice that fits well

within the Dutch neo-corporatist practice of making policy decisions; so this mechanism could be easily adopted within the Dutch system.

2. It is relevant to note that Poland in 2006, just like the Netherlands in 1995, created a specific structure for the group of most senior officials (ABD in the Netherlands), excluding them from the pay schemes of the rest of the civil service. In Poland, however, this was reversed in 2009 and compensated by the new possibility for public administration offices' directors to choose more independently the specific multiplier to apply (within the ranges established by law) and have the highest one for the highest position. The reincorporation of the top civil service with the rest could also be possible in the Netherlands if combined and compensated, like in Poland, by side instruments (for example stronger performance related pay components) that will in any case award competency and leadership. The reincorporation of top civil service together with a side compensation instrument might contribute to raise the legitimization, foster public acceptance of public sector managers and salaries, which represent one of the main challenges faced by the Dutch system nowadays.

3. Since in the Netherlands there is a push to moderate the wages, so that acceptance and legitimacy can be safeguarded, the overall Polish system of "multipliers" together with deliberations within a tripartite commission to decide the base reference wage might be considered as a transferable solution. Establishing every year a set of multiplier that applies to individual staff, and is applied to the base reference wage to yield base mobility might reduce the wages and in that way foster the acceptance and legitimacy thanks to the involvement of all the stakeholders within the decision-making procedure.

4. Lastly, taking into account the Polish semi-public sector where also the multiplier system applies, it is possible observe that a similar system might also work for the Dutch case together with a series of "implementing and supporting instruments" capable to foster the good practices and limit the potential inflexibility of the system. With this regard, in fact, the Polish case can represent for the Netherlands a lesion learned: in case of application of a multipliers system also in the semi-public sector might be useful to include some side instruments to promote and facilitate both: the effective application of the rules, a certain level of flexibility due to the nature of the sector itself and the promotion of best practices to foster the impact.

6.Conclusion

The phase III of the study on the regulation of executive pay in the public and semi-public sector - implemented through desk researches and interviews - delved into the specific system implemented in Italy and Poland, with the very final objective to estimate to what extent the good practices from these countries could likely work just as well in the Dutch political-administrative context.

With regard to the Italian case, and in comparison with the Dutch system, it is possible to summarise the existing system as follows.

The present arrangement for executive pay in Italy is the use of a fixed reference point that pegs the reward of executives to that of the President of the Court of Cassation (about €240 000 gross per year). The Dutch equivalent of this function would be that of the President of the Hoge Raad, who earns, depending on seniority, between €6 864.06 and €9 159.50 gross per month, excluding allowances. In Italy, the pay for each public administration manager is negotiated individually - always respecting and applying the general principles and parameters contemplated in the collective labour agreement (C.C.N.L) as established by the A.R.A.N. - whereas in the Netherlands only the civil servants in the very top rank are individually negotiated. Executive pay in Italy is composed of at least four and at most five different components. In the Netherlands, the pay for civil servants up to scale level 18 is established in the so-called BBRA. The BBRA gives an overview of all salaries up to scale 18, which takes into account position (component 2 in Italy) and seniority (component 4 in Italy).In Italy, the pay cap is then coupled with the use of performance-related pay of on average about 30% of their total salary.

With regard to Poland, instead, from the study emerged that the main legal instrument to regulate the remuneration of top-level officials is the law of 1981. The law specifies that there is:

- (a) a base salary which applies to all civil servants and is adjusted on a yearly basis and

- (b) a set multiplier which applies to individual staff and is applied to the base reference wage to yield a base monthly salary.

In addition, there is a variable part (benefits) with another set multiplier, which can amount to no more than 15% of the overall pay. There is no additional regulation that puts a cap on

executive salaries. Performance-related pay can be granted at the discretion of administrative leadership, but does not follow specified criteria or a structural evaluation procedure.

Given the variance across political-administrative systems in terms of institutional features, political-administrative traditions and historical experience, it is essential to exercise caution when trying to transpose the good practices from one system to another, as the interventions that were carried out in country A - and were successful in that country's context - might not have the same effect, or might even have the opposite effect in country B.

In order to specify the opportunities and limitations of transferability from the Italian and Polish cases to the Netherlands, we proceeded as follows.

First, we have set out the present context and arrangement in the Netherlands. Then we delved into the Italian case and assess the scope of transferability of the findings for Italy to the Dutch context. The same procedure for the Polish case was fallowed as well.

It is important to underline how both countries, due to the nature of the systems per-se and since the latest implemented reforms and changes focused respectively on the pay cap system in Poland and the performance related pay in Italy; offered positive and reasonable lessons learned and transferability options for the Dutch case.

The study demonstrated that both systems, reforms and mechanisms could offer, in fact, relevant ideas and insights when it comes to the challenge of maintaining the good quality of public service administration together with reducing the costs in order to foster the legitimacy for the executive pay in highest level of public administration.

For this reason, it is not possible to affirm which country between Poland and Italy could offer the most suitable solutions, but indeed, it is possible to identify lessons learned for both cases having in mind that the Italian system focuses more on the performance related pay, and the Polish one on the pay Cap.

To summarise, it is possible to say that in both cases, Italy and Poland, offers at least 4 aspects each with a high possibility of transferability to the Dutch system. They are respectively:

- the composition of the executive pay articulated in five different components,
- the introduction of a Law that fix the percentage of the resources devoted to the performance related pay within the components of the salary,
- the fostering of performance-related pay,

- a sanctioning mechanism established by law and/or by Constitution as an instrument to punish with a sanction all those that eventually might not positively " contribute to the public case" and ruined the public administrators image and culture,
- the introduction of a "tripartite commission" which brings together representatives of several groups of interests (government, trade unions and private sector employer) to be involved (at least) in the debate and/or decision about the base reference wage,
- the reincorporation of all top civil service together with a side compensation instrument,
- the system of "multipliers" together with deliberations within a tripartite commission to decide the base reference,
- application of a multipliers system also in the semi-public sector.

Annex I

1.1 Method / nature of the online questionnaires.

At the beginning of the study the implementation of some interviews with officers working for the main authorities dealing with the supervision, monitoring and control of the pay system for both countries were planned, but due to their explicit request and timing the interviews have been carried out in the form of 'online questionnaire' supported by integration of telephone interviews.

The on-line questionnaire, submitted via mail and then double-checked by phone, was semi-structured, which means that:

An 'interview guide' drove the respondent with a list of questions and topics that needed to be covered during the answers.

The respondent followed the guide, but was able to include additional topical trajectories that may stray from the guide when he or she felt this appropriate or not sufficiently focused.

Aims of the online questionnaire:

With regard to the Executive Pay regulations in Italy and Poland, the aims of the questionnaire were to:

(a) check and validate with practitioners the findings of our desk research;
(b) collect practitioner insights and real-life background information on the regulations and their workings;
(c) collect in-depth insights into the experiences of exception-management in the various countries, from which lessons can be drawn.

Interview guide:

For Part 1: Legal arrangements and context

Specific legal arrangements: Together with the questionnaire, respondents will receive information on our desk research concerning their country of expertise.

Relevant circumstances: the main purpose here was to get additional information about the institutional, political and societal context in which the pay regulations (a cap policy in Poland and performance-related pay in Italy) came into being and are presently functioning.

1) What were the specific circumstances under which the regulations came about, in terms of:

- Institutional setting
- Political landscape of that time
- Societal sentiments and pressures of that time?

2) To what extent have the following aspects facilitated or hindered the successful implementation of the regulations since their implementation:

- Institutional setting
- Political landscape
- Societal sentiments and pressures?

For Part 2: Exception management in a cap system

In a cap system, for political or constitutional reasons, there are bound to be some exceptions and exemptions. However, for reasons of clarity, fairness and effectiveness, it is important to restrict the number of these exceptions to a minimum. In this part of the interview, we delved into a number of exceptions in each country, tracing the following aspects of each case:

3) How did the case (i.e. specific group of executives to be exempted) come onto the agenda?

3.1 Who were its main proponents?

3.2 What were there interests and incentives?

3.3 What arguments were used to make the case for exemption? What was the nature of these arguments (constitutional, political, utilitarian, other)?

3.4 What actor or institution was competent to judge whether the exemption was justified?

3.5 What was the decision taken? Exemption granted or not, and if so, what/how is the exemption formulated and what are the conditions?

3.6 What measures were taken to contain the scope of the exemption and prevent a spill-over to other groups of officials?

3.7 How did the implementation of the exemption go?

3.8 What can be said about the effectiveness of the exemption?

3.9 Are there, within the semi-public sector, laws that contemplate the possibility of different salary schemes, where the maximum varies for instance with the scale of the organisation in certain sectors (e.g. housing, education) (these maximums are usually lower than the general maximum of the law)?

3.10 In the Netherlands limited companies (enterprises) are not subject to the WNT. Are there specific regulations in the Italian / Polish laws for limited companies, or are they subject to the same set of rules and maximum salary as the public sector?

Part 3) Control and monitoring mechanisms

4) What about the monitoring and controlling mechanisms? Is there any control mechanism (a controller, other sources that contain the same kind of information), to control whether or not all companies deliver information on the salaries and performance of their employee to the responsible authority/body?

5) It emerged that often government has to rely on self-reporting by companies and there seem to be no sanctions. Does government get an insight into the percentage of companies that do not obey the law, and if so in what manner?

6) Is there any political debate on whether or not this system works and whether or not it is desirable that government maintains the law?

Part 4) Additional specific country case questions

In this part of the questionnaire, due to some specific information that emerged from the desk research, each country replied to specific additional questions:

4.1 Poland

1. The financial crisis was the reason to introduce a base salary. Was there also a political/ethical discussion like in the Netherlands that a minister's salary is 'a decent maximum for all officials in the public sector'?

2. If that is the case, how important was that argument and how much support was there for that point of view in the political and/or public debate?

3. According to our desk research, during 2013 a significant number of managers left public companies because – when the companies were bought by the state – their salaries went down. Are there also 'real' public entities (which were always public and are not nationalised companies) subject to this law, and did they see such a drain of managers as well?

4. Did managers, labour organisations and/or ILO object against such a drop in salary with a call upon the right to property in the 'Convention for the Protection of Human Rights and Fundamental Freedom'? If so, what was the outcome of such objections?

5. In the Netherlands, based on the above-mentioned property right, the salary remains untouched for four years and is then decreased in four years by 25% of the difference between the actual salary and the maximum that the law prescribes. Is such a gradual decrease foreseen in Poland?

6. To what extent did the opposite occur: to what extent did privatising public organisations influence salaries earned and to what extent has this been an influence – like in the Netherlands – to standardise remuneration in these sectors?

4.2 Italy

1. In the Netherlands, based on the 'Convention for the Protection of Human Rights and Fundamental Freedom' on property, the salary remains untouched for four years and is then decreased in four years by 25% of the difference between the actual salary and the maximum that the law prescribes. Is such a gradual decrease foreseen in Italy?

2. To what extent did the opposite occur: to what extent did privatising public organisations influence salaries earned and to what extent has this been an influence – like in the Netherlands – to standardise remuneration in these sectors?

1.2 Contacts of the interviews

ITALY

- ‘Agency for the Negotiating Representation of public administration’ (Agenzia per la rappresentanza negoziale delle p.A) ARAN
  www.ARAN.it
  Sergio Gasparrini
  Telephone – segreteria di presidenza
  06.32.483.259/260
  Fax 06.32.483.252
  E-mail presidenza@aranagenzia.it

- ‘Department of public function’, which is the body to whom the Agency for the Negotiating Representation of Public Administration sends report regularly.

  www.agid.gov.it
  Dott. Stefano Pizzicannella
  s.pizzicannella@palazzochigi.it
  tel. 334 6094333

- ANAC ‘Autorità nazionale anti corruzione e per la valutazione e la trasparenza delle amministrazioni pubbliche’

  www.anticorruzione.it
  Switchboard: 06/367231
  Fax 06 36723274
  Casella istituzionale di posta elettronica certificata
  (PEC): protocollo@pec.anticorruzione.it

POLAND

- ‘Supreme Chamber of Control’
  wsm@nik.gov.pl
  contact 0048 22 444 5442

- ‘State Treasury’ / Ministry of Finance
  media@msp.gov.pl - (22) 695 81 82
  inwestor@msp.gov.pl – (22) 695 90 01
  (22) 695 90 02
  Minister: Henryk Kowalczyk
  CONTACT

  phone: /+48 22/ 695 87 90

  fax: /+48 22/ 628 19 14
  minister@msp.gov.pl

1.3 Report of the interviews

ITALY

1. Answer from the 'Department of public function'

Part 1: Legal arrangements and context

1. What were the specific circumstances under which the Executive Pay regulations in Italy came about, in terms of the following?:
    - Institutional setting
    - Political landscape of that time
    - Societal sentiments and pressures of that time

In a period of budget constraints there was a deeply felt need to 'moralise' the level of salary across the public sector compared to the conditions of the real economy. This perception was even worsened by media disapproval of single cases of public managers or officials accumulating notable positions (and remuneration) at the same time. Thus, in 2011 a bill was issued that put a cap on public salaries and hindered the phenomena of accumulating salaries for civil servants.

2. To what extent have the following aspects facilitated or hindered the successful implementation of the regulations since their implementation?:
    - Institutional setting
    - Political landscape
    - Societal sentiments and pressures

All the listed aspects have somehow facilitated the issuing of this new regulation: the societal sentiments and the pressures of that time probably played a comparatively major role.

Part 2: Exception management in a cap system

3. How did the case (i.e. specific group of executives to be exempted) come onto the agenda?

   Constitutional bodies were exempted thanks to their constitutional power of self-regulation. Likewise, the Italian Central Bank implemented the regulation according to its own features and independence.

3.1 Who were its main proponents?

It was proposed by the Government and subsequently approved during parliamentary discussions, but these exceptions result naturally from the Italian constitutional system.

3.2 What were their interests and incentives?

n.a.

3.3 What arguments were used to make the case for exemption? What was the nature of these arguments (constitutional, political, utilitarian, other)?

Mainly constitutional. See above

3.4 What actor or institution was competent to judge whether the exemption was justified?

It was a decision of the Government (by a decree-law), ratified subsequently by the Parliament.

3.5 What was the decision taken? Exemption granted or not, and if so, what/how is the exemption formulated and what are the conditions?

See above.

3.6 What measures were taken to contain the scope of the exemption and prevent a spill-over to other groups of officials?

No spill-over was to be feared from these exemptions.

3.7 How did the implementation of the exemption go?

The Department has no monitoring ongoing on these exemptions due to the independence/autonomous status of these institutions.

3.8 What can be said about the effectiveness of the exemption?

As already said it was a mandatory exemption based on our constitutional system.

3.9 Are there, within the semi-public sector, laws that contemplate the possibility of different salary schemes, where the maximum varies for instance with the scale of the organisation in certain sectors (e.g. housing, education) (these maximums are usually lower the general maximum of the law)?

No, as mentioned above the only exception regards constitutional bodies and the Italian Central Bank. According to the constitution only these 2 bodies can be exempted "because of the nature of their mission", as stated in the constitution.

3.10 In the Netherlands, limited companies (enterprises) are not subject to the WNT. Are there specific regulations in the Italian/Polish laws for limited companies, or are they subject to the same set of rules and maximum salary as the public sector?

No.

Part 3) Control and monitoring mechanisms

4) What about the monitoring and controlling mechanisms? Is there any control mechanism (a controller, other sources that contain the same kind of information), to control whether or not all companies deliver information on the salaries and performance of their employees to the responsible authority/body?

5) It emerged that government often has to rely on self-reporting by companies and there seem to be no sanctions; does government get an insight into the percentage of companies that do not obey the law, and if so in what manner?

6) Is there any political debate on whether or not this system works and whether or not it is desirable that government maintains the law?

Part 4) Additional specific country case questions

7) In the Netherlands, based on the 'Convention for the Protection of Human Rights and Fundamental Freedom' on property, the salary remains untouched for four years and is then decreased in four years by 25% of the difference between the actual salary and the maximum that the law prescribes. Is such a gradual decrease foreseen in Italy?

8) To what extent did the opposite occur: to what extent did privatising public organisations influence salaries earned and to what extent has this been an influence – like in the Netherlands – to standardise remuneration in these sectors?

ITALY

2. Answer from the 'ANAC'

'The questionnaire is not really consistent with our focal mission since during the last years these kinds of tasks have been more and more implemented by the Department of Public Function. I recommend interviewing them for a more consistent point of view.'

ITALY

3. Answer from the ARAN (interview implemented by phone)

Part 1: Legal arrangements and context

1. What were the specific circumstances under which the Executive Pay regulations in Italy came about, in terms of the following?:
    - Institutional setting
    - Political landscape of that time
    - Societal sentiments and pressures of that time

In Italy, there was a constant and continuous attention over this topic. The main two relevant periods which led to the most meaningful changes of the payment- system were the 2000s and 90s; and during these two main periods of changes the climate was different. In the 90s the reforms were connected with the "privatization process" of the public employment sector, so

all the adjustment can be considered as a side effect from this main change. There was the strong need to harmonise the rules of the public sector employers with the private one, and it is also connected to this necessity the creation of the ARAN: there was the need for an agency dealing with this change and the collective labour agreement (CCNL) application.

In 2000, instead, when this topic came back on the political agenda, the country was experiencing the economic crises and was trying to fight against the widespread absenteeism within public offices. In addition there was a strong "anti – caste" argument mainly diffused by media which contributed to make the atmosphere more heavy and push the government to adopt reforms and cuts.

Despite the fact that the general climate within these two periods of reforms was different, it is possible to affirm that the topic of linking the remuneration with the performance of public administrators has always been there. Still today political powers and institutions are wondering if the mechanism born in the 90s is working properly or not. Our agency, since 1993, within the standard models of contract applicable to all public administrator explicitly states a part of the retribution connected with the result, but the fact that there was not a big impact of this system brought to an additional change. In order to reinforce the impact over the salaries of the component related to the performance, in fact, was adopted and additional Law: law n. 150 of 2009. According to the law there is a precise mechanism to respect within every public administration called "forced mechanisms for the distribution of the performance reserve" (in Italian: meccanismo forzato di distribuzione della premialita`).

According to this mechanism all the employees has to be divided into 3 levels. Within the highest one, which has to include the 25% of the overall personnel, the 50% of the resources appointed for the performance remuneration has to be allocated. The performance related part of the salary, in addition, must represent the 30% of the overall retribution. This reform was adopted as a solution to motivate the public sector employees and foster their productivity.

2. To what extent have the following aspects facilitated or hindered the successful implementation of the regulations since their implementation?
    - Institutional setting
    - Political landscape
    - Societal sentiments and pressures

The societal sentiments and the media pressures of that time probably played the major role. But, in order to understand the aspect of the implementation it is important to underline in which direction the changes and reforms worked. After the establishment of a cap in 2011 there were 2 types of changes: first of all was established the threshold also to the salary of the reference point identified by the cap (240.000 euros), and then the application of the general rule itself was extended: from being effective only at national level to being effective also at regional level. Even today, the field of application is going to grow again: more and more we are moving into the direction of applying the rule also to the semi-public sector.

With regard to the performance related component, instead, the economic crises factor hindered the successful implementation of the regulation adopted in 2009. In 2010, in fact, due to the heavy consequences of the crises over our national budget, the political power decided to freeze the salaries of all public employees blocking the real implementation and the production of tangible effects of the law of 2009. Was decided to apply the law only to new appointed people and not to the one already working in the public sector with the result that the number of new appointed people is very low and the effects of the 2009 law are still not there, they are not tangible since they are not implemented in practice.

Part 2: Exception management in a cap system

3. How did the case (i.e. specific group of executives to be exempted) come onto the agenda?

   In general, it is possible to say that there are no exceptions in the public sector, a bit more in the public-private one due to the easily avoidable definition of the sector itself. Some companies, as for example the RAI, just managed to avoid the application of the rules by starting to sell financial products over the market and becoming not public-private entity anymore.

   3.1 Who were its main proponents?

   n.a.

   3.2 What were their interests and incentives?

   n.a.

3.3 What arguments were used to make the case for exemption? What was the nature of these arguments (constitutional, political, utilitarian, other)?

n.a.

3.4 What actor or institution was competent to judge whether the exemption was justified?

n.a.

3.5 What was the decision taken? Exemption granted or not, and if so, what/how is the exemption formulated and what are the conditions?

n.a.

3.6 What measures were taken to contain the scope of the exemption and prevent a spill-over to other groups of officials?

n.a.

3.7 How did the implementation of the exemption go?

n.a.

3.8 What can be said about the effectiveness of the exemption?

As already mentioned there is not a big case of exemption, due to the fact that all the reforms have been done by law and because of their own nature they were binding since the very beginning.

3.9 Are there, within the semi-public sector, laws that contemplate the possibility of different salary schemes, where the maximum varies for instance with the scale of the organisation in certain sectors (e.g. housing, education) (these maximums are usually lower the general maximum of the law)?

No, the rule apply in the same way than the public sector.

3.10 In the Netherlands, limited companies (enterprises) are not subject to the WNT. Are there specific regulations in the Italian/Polish laws for limited

companies, or are they subject to the same set of rules and maximum salary as the public sector?

In Italy nobody in the semi – public sector can be not subject to VNT.

Part 3) Control and monitoring mechanisms

4) What about the monitoring and controlling mechanisms? Is there any control mechanism (a controller, other sources that contain the same kind of information), to control whether or not all companies deliver information on the salaries and performance of their employees to the responsible authority/body?

Very specific and mandatory mechanisms of control and monitoring are not part of the system; the system relies only on "ordinary mechanisms" implemented by the actors involved in the implementation of their own functions.

5) It emerged that government often has to rely on self-reporting by companies and there seem to be no sanctions; does government get an insight into the percentage of companies that do not obey the law, and if so in what manner?

In principle the Government already knows, since it is the one paying, how much the salary of its employees are. The self- report mechanism are useful only to have control over those additional remuneration and benefit coming from other actors, or as a compensation from another public administration in case of "double appointment". Every public administration at national and regional level has its own financial and accounting department dealing with the payment of remuneration.

6) Is there any political debate on whether or not this system works and whether or not it is desirable that government maintains the law?

The political debate is always there, especially now with the Renzi government, where an additional reform is being implemented.

Part 4) Additional specific country case questions

7) In the Netherlands, based on the 'Convention for the Protection of Human Rights and Fundamental Freedom' on property, the salary remains untouched for four years and is then decreased in four years by 25% of the difference between the actual salary and the maximum that the law prescribes. Is such a gradual decrease foreseen in Italy?

In Italy, all the rules were implemented from the time they were published on the official journal to all subjects with no distinction, but the gradual decrease for already appointed employees, was part of the implementation mechanism as well by using a "consultative procedure". This means that, since the employee was declaring his compensation on monthly bases, he/she knew already if he would have been within the cap or not, and in this last case he would have been told in advance the amount of money that he would have not gradually receive anymore and the starting period of this adjustment. In practice, by the way, since the Italian threshold is high there were not too many cases or need to implement this gradual decrease mechanism.

One additional reason about the almost universal and homogenous implementation of the law is connected with the fact that the Italian public administration system recognise the responsibility of proper managing of financial resources to the "human resources manager" (capo delle risorse umane). This officer must manage the financial resources of the belonging administration according to the law and in case he/she will not do that a "personal sanction"will be applied, called "sanction for loss of revenue to the state" (sanzione per danno erariale nei confronti dello stato). When this sanction is applied the responsible person will have to personally refund the State for the same amount of the money he/she overspend or mismanaged.

8) To what extent did the opposite occur: to what extent did privatising public organisations influence salaries earned and to what extent has this been an influence – like in the Netherlands – to standardise remuneration in these sectors?

n.a

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