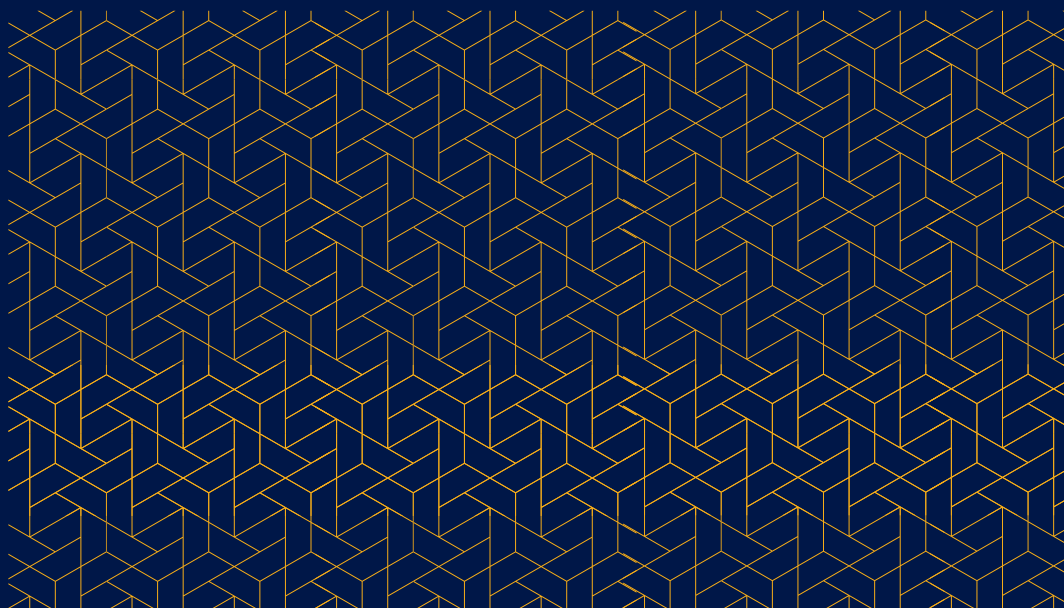


THEMATIC BRIEF

EXIT STRATEGIES AND RETIREMENT SCHEMES FOR FORMER SENIOR INTELLIGENCE OFFICIALS – INSIGHTS ON APPROACHES IN CROATIA, THE UNITED KINGDOM AND GERMANY

Dr Dragan Lozancic, David Watson, Dr Hans-Jakob Schindler

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DCAF – Geneva Centre for Security Sector Governance

Maison de la Paix

Chemin Eugène-Rigot 2E

CH-1202 Geneva, Switzerland

Tel: +41 22 730 94 00

info@dcaf.ch

www.dcaf.ch

Twitter @DCAF_Geneva

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Introduction

Dr Dragan Lozancic

Intelligence services take great care when its senior officials leave the service or retire. For whatever the circumstances and reasons for leaving the service, there is concern that such individuals could pose serious risks for national security. Governments would want to prevent former intelligence officials from disclosing secrets or using their acquired skills, personal networks or knowledge for the benefit of (unfriendly) foreign actors, organized crime groups or other illicit efforts (corruption). As a general rule, intelligence services should always take special precautions when employees leave. With access to highly classified information, exclusive insight into clandestine operations, and knowledge of special measures and techniques, senior intelligence officials warrant particular consideration.

Private corporations also worry when employees with valuable information and knowledge leave the company. Trade secrets need to be protected from competitors. Companies will usually maintain confidentiality agreements with their employees, provide financial incentives, and go through other great lengths to protect corporate interests. Public service organizations, especially ones that harbor state secrets, are no different.

The reasons for intelligence officials leaving, as well as the circumstances, can greatly vary. On the one hand, some officials will retire after a long and successful career or perhaps after their term in office ends. Such departures are generally less concerning. On the other hand, some officials may be forced or asked to leave the service against their will. Yet, others may be unhappy at their posts and simply want to leave. Some may want to pursue other professional opportunities. Such departures would rightfully be more worrisome. The stakes are higher when more senior level personnel are involved.

The risks for national security from departing senior intelligence officials are widely recognized as serious challenges. The extent of regulations, plans, and policies can greatly differ. The New York Times reported that an unusual email from the CIA's counterintelligence chief was sent to the agency's retired officers in January 2021.¹ In the note, former employees were warned against working directly or indirectly for foreign governments. They were also reminded to carefully weigh their public comments. Many felt the broad warning was a preventive measure designed to raise awareness. Its gravity would later be starkly substantiated when three former operatives

1 "C.I.A. Warns Former Officers About Working for Foreign Governments," by Julian E. Barnes and Maggie Haberman, The New York Times, January 26, 2021.

admitted to conducting hacking operations on behalf of a foreign government.²

The risks to national security should not be our only concern when senior intelligence officials leave the service. How departing employees are treated in general, especially senior officers, says a lot about our values, our ethics, and our organizational culture. If done properly, it can also serve as a preventive measure, guiding the behaviour of former intelligence officers once outside. Likewise, we would be remiss to underestimate how it affects the moral of active-duty officers. They are carefully watching how departing senior employees are treated, knowing well that they may one day be in the same situation. As a result, intelligence services would be advised to carefully craft their exit policies.

The objective of this paper is to provide insights on approaches to exit strategies and retirement schemes for senior intelligence officials based on case studies from Croatia, the United Kingdom and Germany.

Exit strategies and retirement schemes for senior intelligence officials – Insights from Croatia

Dr Dragan Lozancic

Croatia has two security-intelligence agencies: the Security-Intelligence Agency (SOA) and within the Ministry of Defence, the Military Security-Intelligence Agency (VSOA). Its employees are civil servants and have rights and obligations under the Civil Service Law³ and the Law on the Security-Intelligence System. In addition to its civilian staff, VSOA is also staffed with active-duty military personnel.⁴ These and other regulations covering universal retirement rights and early pension eligibility represent the basic legal framework for decisions on departures of senior intelligence officials.

Agencies regularly assess their human resource potential, develop plans and policies, and make executive decisions on the hiring and exiting of intelligence officers. Exit strategies for senior intelligence officials are discussed at the highest levels of management. SOA has a Human Resource Planning Board, presided over by an Assistant Director, tasked with preparing key executive decisions. A past reform

2 “Three former US officials charged in UAE hacking scheme,” by Eric Tucker and Alan Suderman, Associated Press, September 15, 2021.

3 “Zakon o državnim službenicima”.

4 Their rights and responsibilities are further stipulated in the Law on Service in the Armed Forces of the Republic of Croatia (“Zakon o službi u oružanim snagama Republike Hrvatske”)

effort focused on developing solutions to an aging work-force and insufficient modernization funds. A “two-for-one” departure/hire scheme was adopted. But despite the scheme’s transparency and early planning, it proved to be much more challenging than initially anticipated.

All employees that leave intelligence agencies in Croatia, due to retirement or for any other reason, do so according to a set of laws, internal regulations, and executive decisions. There are also plans and policies in place that provide some flexibility in dealing with staff departures prior to normal retirement. Excluding full retirement and discharge because of misconduct, disciplinary or other extreme measures, there are four general categories under which senior intelligence officials leave: (1) early retirement, (2) relocations, (3) separation agreement, and (4) redundancy. Each option is unique and entails its own set of intricacies. Employee departures have proven to be harrowing organizational challenges.

(1) Early Retirement

Early retirement is one of the most common outcomes when senior officials face uncertain prospects in the agency. Its direct bearing on individual employees varies from case to case, although on whole, it has been a widely effective measure. SOA’s human resource department plays an important role in establishing the proper criteria and procedures for early retirement. Past experiences and exchanging best practices with trusted international partner services have had a profound effect on SOA’s separation policies.

Under general social security regulations, Croatian citizens are eligible for retirement at the age of 65 and after at least 15 years of employment.⁵ Universal eligibility for early retirement at the age of 60 requires at least 35 years of employment.⁶ Compulsory retirement from civil service occurs once employees reach 65 and have worked 15 years, unless the head of the state institution and the employee agree otherwise.⁷

Two options for early retirement in Croatia’s intelligence agencies are complementarily articulated in the Law on the Security-Intelligence System (Articles 86 and 102) and the Law on Pension Rights of Military Personnel, Police Officers, and Authorized Officials⁸ (Article 6

5 Article 33 of the Pension Insurance Law (“Zakon o mirovinskom osiguranju”).

6 Ibid, Article 34.

7 Article 137 of the Civil Service Law. This agreement takes into account the requirements of the relevant public service organization.

8 “Zakon o pravima iz mirovinskog osiguranja djelatnih vojnih osoba, policijskih službenika i ovlaštenih službenih osoba”.

and 6a). The latter specifically refers to “authorized officials” serving in the security-intelligence sector.

- First option: Intelligence officers, regardless of their age, are eligible for retirement after 30 years of employment, of which at least 15 were earned as accelerated retirement benefits.⁹
- Second option: Intelligence officers can be retired early after at least 20 years of employment, on the basis of a systemic evaluation process.¹⁰

Decisions of early retirement are made by the agency’s director. Employees are eligible for compensation pay after early retirement and may also be eligible to receive full or partial pensions even if they are reemployed in the private sector.

The first option involves an eligible candidate making a formal request to retire. The intelligence service would normally weigh the loss of the particular employee against denying the request and keeping an employee that wants to leave the service. In efforts to convince highly regarded employees to stay on, promotions or new job opportunities may be offered. On the other hand, a less valued employee may be encouraged to retire.

The second option is initiated by the agency through an internal evaluation process of grading employees’ incapacity to “further develop professionally”. A standing commission reviews potential candidates on the basis of internal regulations and strict evaluation criteria. Employees under evaluation, if meeting the criteria for early retirement under the first option (30 years), could formally request early retirement under the first option. The intelligence service would, as a matter of policy, approve such requests as mutually agreed upon and solutions are always sought. Because this second option is sometimes perceived as a coercive instrument, the agency consistently struggles to minimize consequential risks.

(2) Relocations

Intelligence official can also be relocated to government ministries or other state bodies. The transfers can be temporary, lasting an explicit period of time, or permanent. As long as the former intelligence officials remain within the public administration system, the risks are less concerning compared to moving to the private sector or abroad. Civil service benefits and job security are assured. A formal agreement

9 Article 6 of the Law on Pension Rights of Military Personnel, Police Officers, and Authorized Officials. Accelerated retirement benefits allow beneficiaries to annually earn from 1.25 (12/15 months) to 1.5 (12/18 months) credited years of work.

10 Ibid, Article 6a.

of the relocation between the two state bodies is required. Although preferred, employee consent is not necessarily required.

The Civil Service Law (Articles 76-81) regulates relocations from one state body to another. With built in constraints and protection rights, civil servants are generally asked to consent to relocations. Senior intelligence officials may want to continue public service within another state institution (i.e. Foreign Affairs Ministry). As the relocation is consensual for all concerned parties, it may be considered a 'win-win' situation.

The Law on the Security-Intelligence System also allows for involuntary relocations to other state institutions without employees' consent (Article 96). Such decisions are uncommon, can be contentious, and often represent a 'last resort' instrument in the agency's exit strategy. The recipient institution would likely adhere to one of two narratives. First, the relocation could well meet its own requirements. Despite the agency's willingness to part with an employee, the transaction is seen by the recipient institution as providing added value. Second, the relocation is viewed as its concession for a greater public good. It is 'helping out' another state institution with weightier responsibilities. Sometimes both narratives characterize the relocation. In practice, such transactions often result after frank discussions at higher management levels of both organizations.

(3) Separation Agreement

The Civil Service Law (Article 135) allows for a separation agreement. In most cases, a civil servant may be unhappy or has decided to pursue employment elsewhere. SOA's policy has consistently been to respond favourably to such requests, seeking to maintain healthy relationships with former employees even after they have left the service. For highly valued employees leaving for understandable reasons, agencies could hint an "open door" policy should circumstances change. However, in rare cases, the agency's executive management and an employee facing disciplinary or other measures could come to an understanding that it would be in the best interest of both parties to sign a separation agreement. Such departures would likely pose increased risks, calling for greater vigilance during and after separation.

(4) Redundancy

The Civil Service Law (Articles 127-137) foresees that civil servants, especially after organizational changes, can be deemed redundant, after which they can be dismissed. It is also relevant for Croatia's intelligence agencies. Redundant employees have a right to litigate against such decisions, although the appeal process itself cannot stop the separation process. Employees laid off due to redundancy are

entitled to severance pay, the amount of which is based on agencies internal policies and available funds. In most instances, if senior civil servants are involved, they may face getting relegated to lower posts or being offered early retirement. Either way, particular caution is suggested when senior intelligence officials are involved.

Director and Deputy Director

Directors of Croatia's intelligence agencies are appointed to four-year mandates by the president and prime minister in a jointly signed order. Upon being appointed, directors are considered 'state officials' with rights and privileges regulated in the Law on the Rights and Obligations of State Officials.¹¹ The Law on the Security-Intelligence System stipulates how a director's term can be terminated before its four-year mandate (Article 66). Removal from office can only occur if the director resigns, permanently loses the ability to function, or because of wrongdoing, abuse of office or misconduct. The removal requires joint signatures of the president and prime minister. The same requirements apply for deputy directors.

Directors and deputy directors are also eligible for compensation pay after their mandate ends and even if they are relieved of their duties before the end of their mandate. According to Article 15 of the Law on the Rights and Obligations of State Officials, a director serving at least one year in office is entitled to receive a full monthly salary in the first six months from leaving his post and half a month's salary in the next six months. If the post was held for less than a year, but more than three months, former directors would be eligible for full monthly salaries in the first three months and half monthly salaries in the next three. Eligibility for compensation pay is also not unconditional. Compensation pay can only be received while the individual is unemployed. Resigning less than a year in office or being convicted of a crime disqualifies them from compensation pay. Former directors that were civil servants before being appointed have the right to return to civil service.

Managing Risks of Separation

The main instrument in preventing former senior intelligence officers from being a risk for national security is their legal obligations to protect classified information they had access to during their time in

11 This law ("Zakon o obavezama i pravima državnih dužnosnika") identifies certain higher-level office holders (state officials) and stipulates their rights and obligations. These state officials include the president, prime minister, members of parliament, government ministers, and heads of government bodies such as the chief of the national police and heads of national agencies (i.e. directors and deputy directors of security-intelligence agencies).

the services.¹² Outgoing intelligence officials are formally reminded of their obligations. On the other hand, there are few constraints on preventing former intelligence officials from using their skills, personal contacts and special know-how inappropriately or for unauthorized purposes. The risks are higher when senior officials leave under inimical terms. Croatia's approach involves building on existing leverages and promoting policies that attempt to improve managing risks associated with departing officials.

Directors of the intelligence services have received special attention. In most cases, former directors have been offered other senior service opportunities in the public sector, including ambassadorial and consular posts abroad. Others have retired or gone on to work in the private sector. Previously, a few ex-directors have pursued political careers.

Managing the separation of other senior intelligence officials has been mainly shouldered by the agencies and the wider intelligence community.¹³ But government support in assuring budget allocations for severance pay, enabling relocations, and providing other public sector employment opportunities, cannot be underestimated. SOA's exit policy for senior officials is part of its overall human resource planning process. It is flexible and based on a set of well-established principles. Its efforts do not end with an employee's departure. SOA aspires maintaining a lasting relationship with former staff.¹⁴

Croatia's intelligence agencies have had mixed experiences with departing officers. Some lessons were, unfortunately, learned the hard way. Senior management became increasingly convinced that 'how' departing employees were treated was a powerful gesture to its active-duty personnel about the agency's values. As a result, exit strategies came to be appreciated in a much wider context, beyond simply being a matter of national security.

The separation of senior intelligence officers is now more carefully planned and executed. It requires patience, understanding, respect,

12 Article 26 of the Law on Classified Information stipulates that officials are obligated to protect classified information even after being relieved of their duties and/or leaving office. Article 347 of Croatia's Criminal Code stipulates that officials revealing classified information can be prosecuted and sentenced up to six months to ten years in prison.

13 In addition to SOA and VSOA, Croatia's wider intelligence community also includes three other agencies (UVNS, OTC and ZSIS) and two coordination bodies (National Security Council, Intelligence Coordination Council).

14 A reoccurring debate involves the formation of an association of retired intelligence officials. Ex-senior intelligence officials have gone on to pursue academic careers or join non-governmental research institutes; they tend to be frequent guest commentators on television news programs, usually addressing national security issues. As such, they are in a unique position to influence public views and opinion.

and open communication. For example, it helps to give employees early notices, provide them with exit options and formally thank them for their service. The highest level of management, including the director, needs to be directly involved. Whenever possible, the agency has provided support for its ex-employees seeking other careers. A comprehensive exit process also includes exit interviews and security risk profiling. Departing officials are reminded of their post-service obligations to protect all classified information they have come into contact with. Organizing formal ceremonies for senior staff officials that are retiring early has been a good way of honouring their service. Showing them respect and common courtesy can go a long way in assuring chances for their maintaining life-long loyalty to the agency and sending a strong signal to the active duty 'rank and file'.

Recommendations from the Croatian perspective

Here are several fundamental suggestions for consideration and recommendations:

- Develop awareness, understanding and an appreciation for the wider implications of exiting intelligence officials. Primarily, exit strategies and retirement schemes for senior intelligence officials are essential in reducing potential risks for national security. But consider also the broader implications of how employee departures are handled, especially on how it could reflect on the intelligence agency (i.e. public perceptions, active duty staff moral).
- A legal basis for the most essential elements of separation should be established. Install clear risk prevention measures (i.e. protecting classified information). Available options for leaving the agency should be categorized, allowing adequate planning flexibility and exit strategies. Early retirement and relocations to other public sectors are effective options.
- The executive government and parliament can play an important role. Governments can offer financial incentives for early retirement and job opportunities in the public sector. Parliament, on the other hand, can raise awareness and assure proper executive support. Intelligence agencies should not be 'left on their own devices' when dealing with such challenges.
- Consider international best practices on separation of senior intelligence officials. Adopt approaches considered applicable and properly adjust to fit local requirements. For example (Croatia case), give employees early notices, provide them with exit options, show respect, maintain open communications, and formally honour them for their service. Beware that how departing employees are treated reflects back on the agency.

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- Intelligence agencies should approach other international partner services, especially those with high standards, and look to exchange experiences in dealing with separation issues. Foreign partners would likely be willing to share experiences.
 - Separation of senior intelligence officials requires careful planning and execution. Exit strategies need to consist of both a set of general principles, no matter the reasons for leaving and regardless of seniority, and specific departure-related procedures (i.e. early retirement, resignation, forced expulsion).
 - Each senior intelligence official's departure could be individually appraised on a risk assessment matrix. On the one hand, the ex-official's access to classified information and other sensitive knowledge could be matched against the potential damage to national security. On the other, the individual is assessed on the probability of actually causing damage. Thus, an extremely risky departure would involve an ex-senior official with knowledge of the most highly sensitive issues who left the agency feeling very bitter. But an ex-official with more limited access (to mostly unimportant information) who left the agency under very friendly terms would represent a very low risk.
 - Continue to foster relationships with former senior intelligence officials. Explore ways to maintain those relationships (i.e. provide funding for events and activities; consider establishing an association of retired senior intelligence officials).

Exit strategies and retirement schemes for senior intelligence officials – Insights from the United Kingdom

David Watson

The general approach taken to exit strategies for senior staff in the agencies in the UK follow the same basic exit procedures as the rest of the UK public sector and whilst the guidelines are comprehensive, there is some built in flexibility. It also depends on the willingness of central government to allocate special funding (especially early retirement or redundancy) for the exit of senior staff in any given situation. Apart from approaches taken in the UK, this chapter will also reference approaches in other countries, to give a broader perspective.

(1) Early retirement

Early retirement is probably the most common exit policy to be

adopted. It will depend on the circumstances at the time, the length of service of the individual and how flexible the Treasury (who pay for government pensions) are prepared to be in any given circumstances. Generally, the pension scheme must be adhered to but there can be exceptions given particular circumstances. An individual accrues pension by each year of service to reach a retirement benefit.¹⁵ So that the key element in retirement is years served in the scheme and the salary the employee had whilst in the scheme

In the past, set retirement ages (usually 60) meant that the most popular method of exit was to offer early retirement. As senior posts were held by career officers, senior managers were by default usually between the ages of 45-60. The pension scheme permitted that when reorganisations took place in a public sector organisation (which was usual with the appointment of a new head of agency), senior staff could be offered the chance to retire early. The agency was permitted to compensate for the remaining years before retirement age. The managers could then retire as if they had come to their normal retirement age.

For example, in the case of a 50-year-old manager, the agency would compensate for the extra 10 years. The manager would then be able to retire immediately as if he had reached the age of 60 with a full pension. Notice periods could be short and it was not unusual for a senior manager to leave within one week but be given a longer period on full pay at home before the retirement began.

Advantages: This is a quick solution and is advantageous to both the organisation and to the individual. The manager has a guaranteed income for life and will profit if he finds alternative employment as he will then have two incomes. It can be done with relatively little negotiation as the rules for payment have already been established. It also means that the manager can leave relatively quickly thus reducing the impact on the organisation.

Disadvantages: This does not always suit the individual who can be unhappy with the prospect of receiving only a percentage of his current salary when he could be on a full salary for a further 10 years. It will also have an impact on the managers status. This will be especially the case for those individuals who see the very purpose and meaning of their life as being related to their work title and status. It can also cause resentment amongst other staff if they believe that senior managers are given special treatment.¹⁶

In addition, if the senior manager has only limited contributions to

15 <https://www.civilservicepensionscheme.org.uk>

16 Daily Mail: 30 January 2011: "Fury as MI6 "dirty dozen" get cutback busting pay offs"

their retirement, then this can lead to senior managers feeling that they have not been given fair compensation. This was the case for the MI5 officer, Peter Wright whose book “Spy catcher” was allegedly written to compensate for a poor and incomplete pension.

Age discrimination legislation in the UK means that mandatory retirement by age has been outlawed although people are permitted to retire at a given age depending on the scheme. For most people this means that they can access their full pension at 50 years of age but with penalties for early access or at 60 or 67 with full access. This has made it more difficult to offer early retirement as the manager has the potential for a lengthy working life well beyond 60. This causes problems for calculating compensation.

(2) Redundancy

Under UK law, the possibility exists for a member of staff to be made redundant (which under the law is effectively sacking the individual). The rules are complex but effectively state that any employer may make a member of staff redundant (i.e. there is no job for them within a reorganised agency) as long as there are reasonable grounds. The member of staff has certain rights with regard to how “reasonable” the employer must be, but it is largely based on case law. Reasons can be structural changes in the agency, the member of staff no longer having the necessary skills or the particular post no longer existing. The member of staff will be given redundancy pay which is calculated on the years of service but can be topped up at the discretion of the agency.

Advantages: Like early retirement, this is relatively straight forward for the agency. The terms of redundancy are standard and can be easily followed without complex negotiation.

Disadvantages: This method is often not the most favoured for both, the individual and the agency. The individual may be given a one-off sum of money but has no guaranteed income in the future. Redundancy carries a stigma in society and is often associated with removal from post due to a person’s inadequacy. It is sometimes also linked to disciplinary cases. It takes time to resolve all the issues surrounding redundancy and this means that a member of staff can remain in place and cause potential damage to the organisation whilst still in post. If the manager is suspended, then this could lead to additional legal arguments and allegations of unreasonable behaviour. It is also damaging to morale as more junior staff will think that if it can happen to senior staff then it can happen to anyone.

(3) Redeployment

Increasingly, staff inside agencies are encouraged to spend time on secondment in other government and private organisations. This increases their experience and adds to their skills base. As a consequence, it allows staff to move more easily between organisations as they have a wider variety of experience and skills. This can be utilised when staff are exiting an agency.

In the UK (at least in theory), all senior managerial posts in government are open to senior managers in other government departments with the right qualifications and/or experience. Exiting senior staff can be directed towards posts in other departments or recommended to apply for certain posts. Whilst it will be likely that they will need to go through a further selection process, it offers an opportunity for the individual to continue to be in full time employment. This approach has worked very well in the UK and senior managers have been happy to take on new challenges, sometimes at grades higher than they had whilst within the agencies.

Advantages: The individual remains in full employment and for those whose self-esteem is based on their employment this can be the best option. It also means that the government does not lose valuable expertise. It has worked surprisingly well in the past.

Disadvantages: There can be considerable downsides with reemploying potentially dissatisfied staff in other government departments both for disruption and productivity. It can also damage morale in the receiving department who may feel that an outsider is given preference over staff within the department.

(4) Other approaches

Some agencies throughout the world, have redeployed senior staff within the same agency at a more junior level whilst maintaining their pay and privileges. Whilst this might have the advantage of maintaining experience within the agency it has many disadvantages especially with regard to the morale of junior staff in relation to uneven pay. Also, there is a question mark over the suitability of senior staff returning to posts when they have not updated their skill set.

Another approach that has been used is a one-off payment. This is not dissimilar to redundancy but is an ex-gratia payment where compensation is paid but without liability on either the organisation or the individual. This is often favoured in the private sector as it reduces the risk of follow up legal action. Whilst this has the advantages of a potentially quick negotiated settlement without liability, it can be damaging to morale if only made available to senior staff. Also, depending on the sum involved, it may not compensate someone who

has many years of service. Anecdotal stories say that it is also quite common for a senior manager to try to return to the agency for further payment as they feel on reflection the payment was insufficient.

Special budgets

In the UK, there are no special budgets that solely take account of senior staff exits. They are inclined to be one off allocations. Whilst all public sector organisations have allocated funds for human resources management, it only takes account of funding for regular staff management and some contingencies. There is a block of funding within the budget for staff exits but this is calculated on normal staff departures and not expensive senior staff exits as a result of reorganisation. The organisation must apply for additional funding from the Treasury that falls outside this normal scope of Human Resources (HR) management. However, it is not unusual for central government to make funding available in the case of downsizing or structural change for public sector organisations.

Extra assistance for senior managers

It is recognised that the exit of senior staff can be traumatic both for the individual and the organisation. Therefore, it makes sense both ethically and practically to ensure that staff are looked after even after their exit from the service.

In the UK staff are entitled to have access to the in-house HR facilities that deal with the transition to life outside the agencies. This may include help with CV writing, interviews and introductions to staff who have transitioned from working within the agencies to alternative employment. In addition, there is sometimes monies available for external retraining (but not on the scale offered to those retiring from the UK military). In addition, the agencies like other civil servant departments will run pensioner newsletters and conventions for retired staff.

However, none of this is aimed solely at senior staff as it is believed these are benefits that should be made available to all staff. It is believed that it is important that staff and ex-staff feel part of a family of professionals in the agencies. This maintains loyalty and a strong message to current staff that the agencies will always look after their welfare. It is therefore important that this assistance is given to everybody.

Legal frameworks

There are no special legal frameworks that determine the employment of staff in the agencies other than those that deal with

generic employment law. The principal laws in the UK are the 1996 Employment Rights Act, the 1999 Welfare Reform and Pensions Act as well as the 2010 Discrimination act. All these laws are generic in nature and many amendments have been made in recent years. When it comes to exit policies and legality, much will depend on the organisation and its own rules regarding pensions and exits (outside of redundancy and dismissal which are dealt with in the 1996 act.)

Recommendations from the UK perspective

Here several points for consideration and recommendations from the UK perspective:

- **If legislation is to be passed, then it is best to make this light touch** and to concentrate on pensions. It needs to ensure that adequate compensation is given to agencies staff and that there is the ability for early retirement to take place. Any pension scheme should take account of years in service and seniority. It is best if this is in more or less in line with other government institutions and government organisations of a similar nature. Equally, if not covered by other legislation, redundancy legislation should be considered but should be generic by nature. It is important that agency staff are not given additional employment rights. They can be offered enhanced rewards (pensions, pay etc) based on the importance of their role in society but within defined limits that society would find acceptable.
- **Have a very clear understanding of local employment law and what has worked in similar organisations.** Before embarking on any exit strategies, it is important that an employment lawyer is engaged to discuss the particular nuances within local law on exiting staff. Agencies often make the mistake of using their own internal lawyers for this who will only have a general idea of the issues. It may take slightly longer to get security clearances, but it is worth the effort. Also, it is important to look at other similar agencies in the country such as the Ministry of Defence, Police or Ministry of Interior and see what has worked and not worked within the country context. It is likely that employment rules will be similar, and they will have faced the same problems.
- **Refer to the strategic plan before making any decisions.** Every agency should have a strategic plan which will have a projected future structure as well as future operational planning. It will allow the agency to decide which skills and numbers of staff it will need. From this it will be possible to determine which posts should remain and what skills are needed. It's possible

that based on the plan, redeployment of some senior staff may still be an option.

- **Consider a range of options for exit.** It is not recommendable to rely on one single scheme. It may be best to offer a limited range of options to those who are meant to exit. This will depend on the individuals concerned and their motivations.
- **Secure extra funding.** It is advisable to secure extra funding to allow for some flexibility when making offers.
- **Act quickly.** Once an individual has been identified, it is recommendable to act very quickly. The individual should be interviewed, and an offer made. If offering alternatives, the individual should only be given a short amount of time to consider the options. Ideally, a senior member of staff should exit as quickly as possible under these circumstances (a week or less is ideal) even if it means the person remains on full pay (but not inside the office) for a prolonged period whilst the final details are agreed. This can be flexible, but it will depend on the individual. Some consideration should also be given to restricting the individual's access to databases or sensitive material.
- **Consider a communications plan for the service.** It is important to not allow those who exit the service to fill the communications vacuum. It is important that the senior manager is thanked, and attention is drawn to the valuable contribution the individual has made to the service. Where possible a leaving event should be organized for the individual (only if mutually agreed.) This will help lesson any effect on morale.
- **Early retirement is usually the best option.** Some form of early retirement has overwhelmingly proved to be the best option in most circumstances for staff with a long career inside the agencies or public sector.
- **Assist with future employment.** It is always best if the member of staff leaves happy. Part of this may be in assistance in finding future employment. This might be in the form of paying for private coaching or assistance.
- **Make final payment contingent on certain conditions.** It may be worth attaching certain conditions to the final offer. For example, agreement not to publish any material about the agency for a set period of time (or ever) without permission or not to take any post where the individual has privileged information such as working for companies that supply services or goods to the agency (or possibly wider government.)

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- **Consider giving the individual an exit interview.** This will give them a final chance to express their views, but they may also offer some useful insights for the agency.
 - **Do not re-employ staff that have exited the service.** There are countless examples of staff who have exited intelligence/security services then being re-employed at a later date. This damages morale within the service as staff see people receiving payoffs only to be reemployed. At worst it gives an individual the chance to damage the organisation in revenge for a past grudge e.g. Edward Snowden.

Exit strategies and retirement schemes for senior intelligence officials – Insights from Germany

Dr Hans-Jakob Schindler

Overview

This short case study provides an outline of the retirement and exit procedures for high-ranking members of the federal intelligence services in Germany. Since the BND¹⁷ as an all-sources intelligence service is the only federal intelligence service that includes all three possible status categories of members of the German government administration (employee, civil servant, military officer), focus will be primarily set on examples from this service.

While there are a broad range of procedures that the German federal government can employ to manage the retirement or exit of members of the German intelligence services, these procedures are not different from civil servants and officers working for other parts of the federal government. Furthermore, extra-ordinary retirement procedures, such as the so-called early temporary retirement (einstweiliger Ruhestand) have only been used sparingly when it comes to the three federal intelligence services (BND, BfV, MAD) and involved mainly the heads (presidents) of the three services. This is to avoid signalling mistrust of the government towards its intelligence community.

The case study ends with recommendations from a German perspective, which are meant to complement recommendations put forward in the above chapters relating to insights from Croatia and from the United Kingdom.

17 Bundesnachrichtendienst (BND)

Retirement and exit provisions in the Federal Government of Germany

As a basic principle, all individuals working for the federal intelligence agencies (BND, BfV and MAD) have the same status as all other federal employees of the federal government of Germany. Any specific requirements, such as security clearances, retirement procedures, etc. are part of the general provisions for employees, civil servants and military personnel of the German federal government and are not regulated by specific laws, rather by specific provisions within the general laws. Consequently, for example, the law governing the activities of the Bundesnachrichtendienst (BND Gesetz¹⁸) does not include provisions concerning personnel matters.

As an all-sources intelligence agency, the BND incorporates all three legal statuses that individuals working for the federal government can have: employees (their status is similar to civil servants with minor exceptions), civil servants and military personnel. Upper management of the BND is considered to fulfil so called “sovereign authority” (hoheitliche Aufgaben). Therefore, Art. 33 Section 4 of the German constitution¹⁹ restricts such responsibilities to civil servants and military personnel (Funktionsvorbehalt) as these are seen as being in a particular relationship of trust and duty towards the government.

Consequently, the career progression of federal employees that are neither civil servants nor military personnel is restricted mostly to the group leadership level, which is still lower management with only a limited range of responsibilities. Hence, only individuals obtaining civil servant or military personnel status can progress into higher management positions, which are the focus of this paper. Consequently, it is the retirement and exit procedures for these two categories that will be discussed here.

(1) General retirement procedures

General retirement is mandatory for civil servants and officers when they reach a certain age. For civil servants this is currently 67.²⁰ For military personnel, the age limit depends on their role and rank within the German military. For officers with the ranks of colonel and above,

18 <https://www.gesetze-im-internet.de/bndg/index.html#BJNR029790990B-JNE006700377>

19 https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0169

20 This represents an increase from 65 years and has been introduced in 2012 (implementation in stages until 2029), based on § 51 Section 1 and 2 of the Law of the Federal Civil Service (Bundesbeamtengesetz, BBG), https://www.gesetze-im-internet.de/bbg_2009/_51.html

it is the age of 65.²¹ The calculation of the respective retirement pay is very complex and depends on whether or not the civil servants/officers have served a minimum number of years in order to reach the right to full pension pay. If this is the case, the retirement pay is slightly over 71% of the salary of the last rank that he/she has held for at least three years before retirement.²²

The general idea is that both high ranking civil servants and military officers within the BND will automatically retire when they reach the maximum age. There are no legal options to extend this time. However, there are some limited options to shorten this time if the individual opts to go to a part-time service position. This is possible if a civil servant reaches the age of 60.²³ This option is not open for military officers and so far, has also not been used by high-ranking civil servants within the BND.

(2) Voluntary exit from service

Any civil servant or officer working within the federal administration and military of Germany, including the BND, can at any point voluntarily decide to resign from his/her position.²⁴ In this case, he/she receives the pension payment occurred during the years that the individual was in service at the time when they reach the regular retirement age. Consequently, the earlier such a resignation occurs in the career of the individual, the smaller the pension payments will be. This is particularly the case if the respective individual has not yet reached the minimum years of service that allow for a full pension payment.

(3) Removal from service

German civil servants have a near total job guarantee until they reach retirement age. However, if these individuals commit particularly grave infractions, he or she can be removed from service.²⁵ Similar

21 According to § 45, Section 1, Law for Soldiers (Soldatengesetz, SG), https://www.gesetze-im-internet.de/sg/_45.html

22 The calculation of the pension pay is so complex that publicly available online tools have been developed allowing individuals to calculate their pension payment. See for example: http://www.vdata.de/vdata-rechner/av_beamte.jsp. This also adds an additional layer of transparency, as this calculation is not different for civil servants working for security agencies than it is for civil servants working in other parts of the federal government.

It is no less complicated for officers. Here an example of the formular that is used in these cases: <https://www.oeffentlichen-dienst.de/wissenswertes-fuer-beamtinnen-und-beamte/907-pension-berufssoldaten.html>

23 According to § 93 Section 3 BBG, if the rate of individuals of equal rank that opt for this part-time option does not exceed 25% within an organization.

24 According to § 8 of the Federal Social Security Law (Sozialgesetzbuch, SGB)

25 According to § 10 of the Federal Disciplinary Law (Bundesdisziplinargesetz). One

procedures apply for officers.²⁶

While this option has been used fairly regularly in the past, including for double agents planted within the BND,²⁷ fortunately, this did not involve high-ranking officials of the BND during the last two decades.²⁸

(4) Temporary retirement (einstweiliger Ruhestand)

Recognizing that, despite the general rule that civil servants and officers have near total job guarantee, some high-ranking positions within the administrative structure of the federal government require a particular relationship of trust between the government and the holder of such a position, temporary retirement in such cases is possible. This temporary retirement can be invoked either by the individual him/herself, which is usually the preferred political option, or imposed by the government without the consent of the individual. Normally, this affects civil servants in paygrade from B9 upwards in the federal government, including higher-ranking civil servants, such as deputy ministers (Staatssekretäre).²⁹

However, in the case of the BND, the ranks that qualify for temporary retirement are individuals with the paygrade B6 (head of department) upwards, including of course the president of the BND, which has the paygrade B9.³⁰ If the individual is sent into temporary retirement by the government, no detailed justification is necessary. Publicly, this is rarely commented on, and the formulation “disrupted trust” is regularly used to signal that the released individual did not default on his/her duties but that the temporary retirement was caused by a change in government. This temporary retirement takes effect immediately, at the latest however three months after the announcement.³¹

Retirement pay for such individuals is calculated in the same manner as it would if the individual would go into regular retirement. However, for the same time that he/she has served in the specific position

example would be if the action leads to a conviction of at least 12 months prison sentence, for a more detailed discussion, see: <https://www.kanzlei-hallermann.de/2020/12/wann-droht-beamten-die-entfernung-aus-dem-dienst/>

26 According to § 63 Military Disciplinary Regulation (Wehrdisziplinarordnung), https://www.gesetze-im-internet.de/wdo_2002/BJNR209310001.html

27 See for example, a BND double agent spying for the USA, which was removed in 2014, <https://www.tagesspiegel.de/politik/festnahme-wegen-spionagever-dacht-bnd-mitarbeiter-spionierte-im-nsa-ausschuss-fuer-usa/10152230.html>

28 The most infamous high-ranking case was Gabrielle Gast, who was section chief for GDR Analysis within the BND while working as a double agent of the East German intelligence service, STASI, see: <https://www.jstor.org/stable/26202150>

29 § 54, Section 1.1. Federal Law of Civil Service (BBG)

30 § 54, Section 1.3, BBG, the same applies to the other federal intelligence services the MAD and the BfV

31 § 56 BBG

from which he/she is released, a time-bound addition is granted to the pension pay. This temporary addition to the pension is paid at minimum for six months and at maximum for three years.³²

Temporary retirement has only been used for the heads of the three services (BND, MAD, BfV) so far and only in very few cases.³³

There is an option to recall the individual back into service (hence “temporary”), even within a different government authority at the same rank as before.³⁴ However, so far, it seems that this clause has never been used in the cases of temporary retirement of upper management personnel of the three federal intelligence services.

For military officers, the same procedures apply from the rank of Brigadier-General upwards,³⁵ which equates paygrade B6 for civil servants³⁶ and higher. Here again, there are no cases in which an officer serving within the BND was sent into temporary retirement or reactivated from temporary retirement.³⁷

32 <https://www.dbb.de/lexikon/themenartikel/p/politische-beamte.html> This means if the individual had served in the position from which he/she is released for 19 months, the additional pay will be granted for 19 months. However, if the individual had served in this position for more than three years, the additional pay ends automatically after three years.

33 The mechanism of temporary retirement was used to retire former BND president Schindler in 2016, see: <https://www.dw.com/de/bnd-chef-schindler-geht-zum-1-juli/a-19217330>, the BfV president Maaßen in 2018, https://www.zeit.de/politik/deutschland/2018-11/horst-seehofer-versetzt-hans-georg-maassen-in-einstweiligen-ruhestand?utm_referrer=https%3A%2F%2Fwww.google.com and MAD president Gramm in 2020, <https://www.faz.net/aktuell/politik/inland/einstweiliger-ruhestand-mad-praesident-gramm-wird-abgeloeest-16969594.html>. This instrument has been used sparingly before and after these cases by all federal governments when it comes to leading managers of the three federal intelligence services. The reason being that the government wants to avoid signaling mistrust in its intelligence community. Usually, after finishing their term as presidents of the BND, some progressed in their careers within the civil service, f.ex. former BND president Dr. Hanning became deputy minister of the interior, former BND president Dr. Geiger became deputy minister of justice. The most far-reaching career move was made by former BND president Kinkel, who served as Germany's foreign minister and vice-chancellor between 1992 and 1998.

34 According to § 30, Section 3 of the Status Law for Civil Servants (Beamtenstatusgesetz, BeamStG), https://www.gesetze-im-internet.de/beamstg/_30.html

35 § 50, Section 1 StG

36 <https://oeffentlicher-dienst-news.de/soldatenbesoldung-2017-verdienst-offiziere-unteroffiziere-soldaten-bundeswehr-beamtenbesoldung-tabelle-2018-zulagen/>

37 The president of the BND is always a civil servant. The highest military officer of the BND is in the rank of a vice-president of the BND to ensure civilian leadership over the service.

(5) Temporary retirement due to reorganization

In case of large-scale organizational revamping within the German federal government, including within one organization, civil servants can be sent into temporary retirement. In this case, all civil servants in paygrade B (meaning also levels lower than B6) can be affected. In such a case, the government is required to consider those that are under temporary retirement for recall if posts with their equivalent paygrade become available.³⁸

There is no such option for military officers. In fact, when the German military, the Bundeswehr was in a large-scale reform and reduction process following German unification, and during the last large-scale reform of the Bundeswehr in 2012, the government passed specific laws that provided specific, time-limited abilities to send soldiers and officers into temporary retirement.³⁹

In the case of the three federal intelligence services BND, MAD and BfV, this provision has not yet been used.

(6) Continuing duties for members of Germany's intelligence services after retirement or exit

All civil servants, regardless of whether they entered retirement, were removed or exited continue to fall under the obligation to not divulge confidential information concerning the work they were previously involved in during their service.⁴⁰ Similar provisions apply to retired or exited soldiers.⁴¹ There are no specific privileges for members of the German federal intelligence services after they retire or exit the services, including highest level managers.

(7) Work after retirement or exit

There is of course the option for retired civil servants and officers to obtain further work. However, for retired civil servants and officers, the additional income will be subtracted from their pension payments.⁴²

38 § 55 BBG,

39 1991: https://www.gesetze-im-internet.de/perssst_rkeg/PersStärkeG.pdf
2012: https://www.bgbl.de/xaver/bgbl/start.xav?start=//%5B@attr_id=%27bg-bl112s1583.pdf%27%5D#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl112s1583.pdf%27%5D_1634304996500

40 § 37, Section 1 BeamStG

41 § 14, Section 1, SG

42 For civil servants: https://www.abt2-t.tu-berlin.de/fileadmin/ref30/Themen_A-Z/Nebentaetigkeit_von_Professorinnen_und_Professoren/Anleitungen/Information_Nebentaetigkeiten_im_Ruhestand.pdf
For officers: § 56 Law for Care of Soldiers (Soldatenversorgungsgesetz SVG): https://www.gesetze-im-internet.de/svg/_53.html

After voluntary exit or removal from service, there are no limits on alternative income as these individuals do not receive pension payments until they reach the regular retirement age.

Placement training or support with finding new work are not available for civil servants of the BND at any level. Placement training and support is only available for those officers that have agreed to a time-limited contract with the German military.⁴³ Since such time-limited contracts are only available for lower officer ranks, these do not apply for upper management ranks of colonel and above.

Recommendations from a German perspective

In addition to the above-mentioned recommendations in the chapters on insights from Croatia and the UK, the following recommendations could be added from a German perspective:

- **Intelligence services should not be considered ultimately separate from other government authorities**

Considering intelligence services as ultimately separate from other government authorities reduces the amount of structural transparency that the government can provide in a democratic society. While many of the inner workings of the federal intelligence services of Germany are confidential, the fact that they function in the same manner as the rest of the administration of the federal government contributes to the transparency of the work of the services and helps to demystify these services from both positive or negative prejudices. Hence, it may be advisable that the law governing the intelligence service should focus on the mandate of the service, its special powers and internal and external control mechanisms, leaving provisions concerning the status and retirement/exit procedures of the members of the intelligence service up to laws and regulations governing all members of the government administration. This does not preclude that a limited number of specific provisions for members of the intelligence service from being included within those laws. However, these should be kept to the necessary minimum.⁴⁴

- **Retirement and exit procedures/conditions should be equal to other parts of the government**

Following from the understanding, that intelligence services should not be considered ultimately separate from other government authorities, retirement and exit procedures/conditions for members of the intelligence services should ideally also be the same as for

43 §7 SVG

44 Such as for example defining lower levels of civil servants that can be sent into temporary retirement (see above section 2.4.).

other members of the government. As demonstrated above, the federal government of Germany employs a rather wide range of various retirement and exit procedures to ensure that sufficient flexibility is achieved within the government administration that has as its backbone a professional, life-long employed civil servant and officer corps.⁴⁵

- **No special privileges for retired/exited personnel but ensure sufficient retirement payment**

While it may seem attractive to afford retired or exited members of the intelligence service special privileges, these may set them apart from other retired or exited civil servants or officers. This has the potential to undermine social cohesion among civil servants and officers as a whole. However, of course, civil servants and officers, whether they have worked in intelligence services or not, should be provided with pension payments that are comparable to their hierarchical status before retirement and should, even at lower hierarchical levels, allow them to finance their lives without the necessity to obtain further work. This is an important mechanism to avoid “frontloading” among civil servants, i.e. the susceptibility to bribery to ensure comfortable retirement. In addition, if retirees of intelligence services or other sensitive parts of the government administration have the need to obtain additional work after retirement, they may become easier targets for intelligence services of other countries. However, if a sufficient pension scheme is provided, any additional income, obtained after retirement should be subtracted from the pension payment, since these are financed by government budgets (i.e. taxes) to avoid unnecessary public spending.

- **Structural reforms may require specific legislation, but these should be time-limited**

As mentioned above, to implement two large scale reforms of the German military (Bundeswehr), the German government passed specific personnel adjustment laws. Crucially, these laws were time bound for the duration of the large-scale reform. Similarly, if significant structural reforms of a large size intelligence service are

45 The near absolute job guarantee for civil servants within the German government administration results into other, auxiliary advantages, such as the ability to obtain personal credits at a bank or being a preferred tenant for rented apartments, etc. This privileged position of civil servants and officers in Germany acts as an important safeguard against criminal behavior, such as for example corruption. Potential perpetrators must weigh short term benefits against the risk of losing life-long privileges that extend into retirement until death. For example, the families of retired civil servants receive compensation payments upon the death of the civil servant, including compensation for funeral costs, see: https://www.vbba.de/fileadmin/user_upload/www_vbba_de/pdf/senioren/merkb-laetter/Merkblatt_Sterbegeld.pdf

attempted, it may become necessary to regulate specific retirement and exit schemes. Therefore, if such legislation is passed, it should be designed specifically for this purpose and should clearly denote the aim of the reform as well as the timeframe in which it is going to be enacted. In this manner, structural continuity within the government administration is maintained during and following this reform.

- **Retain flexibility to adjust retirement/exit procedures over time**

Of course, as circumstances evolve, retirement and exit procedures may need to be adjusted. However, including these procedures for members of intelligence services in general laws concerning civil servants/officers of the government may potentially act as a deterrent against unlimited reform and restructuring procedures, which may be misused for political purposes.

Final remarks

David Watson

Exit strategies for senior managers whether in the private, public sector or intelligence and security services will always be challenging for the organisation involved. However, intelligence and security services must consider a range of additional complications of the exits. Apart from a potential damage to public confidence and loss of intellectual property for the organisation, intelligence and security services have the added complications of the managers previous access to state secrets, government policy and the effect of the exit on the morale of the agency. These factors could have a profound effect on the country if not handled correctly.

The best possible result would be for all parties to be satisfied with the result of the exit and the individual to leave feeling that they have left with dignity and the maintenance of their loyalty to the organisation. Whilst this is important for the individual concerned, it is also important for the morale and organisational health of the agency.

As mentioned above, consideration in any policy has to be given to the length of notice and what access a senior manager can maintain to information held within the agency whilst his exit is being finalised.

As illustrated in the three case studies, principal methodology for exit is usually some form of retirement or payment through redundancy. Respective schemes will be unique in every country and will usually be dependent on two factors, the countries' employment laws (especially with regard to redundancy and retirement/pension age) and the pension scheme allocated to the agency. Whilst specific legislation relating employment, pensions and exits for agency staff is favoured

in some countries, this can create problems when circumstances change as it requires new legislation. It also lacks flexibility. In a number of Euro/Atlantic countries, there is no specific legislation, and the principal mechanisms are covered by employment contract laws which are generic. This allows the agencies to have their own internal rules and procedures which can be changed (usually after consultation with staff).

It is difficult to make generalisations as to what will work best as an exit policy as in addition to the local employment law, it will also depend on the individual concerned and their willingness to exit the post. Quite often a mixture of policies may be necessary in order to achieve the objectives of the exit. The key is flexibility as not all circumstances will be the same. Reform to post soviet countries agencies have often stumbled because of the belief that staff policies should be enshrined within regulation and law (Ukraine is a good example). This has led to agencies reluctance to change as they feel that their rights and privileges may be diminished and detracts from the modernisation process.

So rather than considering further legislation, an option may be to strengthen the existing internal policies and pension schemes of the agencies. This may require some legislation, but it is best if it is light touch and concentrate on pensions schemes. More importantly, the internal policies of the agencies should be strengthened so they are in line with employment law but under the agencies control.



DCAF Geneva Headquarters

P.O.Box 1360
CH-1211 Geneva 1
Switzerland

✉ info@dcaf.ch

☎ +41 (0) 22 730 9400

www.dcaf.ch

🐦 [@DCAF_Geneva](https://twitter.com/DCAF_Geneva)