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# Civil Service Advice and Assistance

Report of the Expert Committee on Civil Service Advice  
and Assistance to the Government and Its Ministers

ENGLISH SUMMARY

JUNE 2004



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Advice and Assistance to the Government  
and Its Ministers

English Summary

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## **1. Introduction**

In January 2003 the Danish Parliament unanimously passed a resolution asking the government to set up an expert committee on the regulation and organization of ministerial advice and assistance in Denmark.

The background for the resolution was repeated criticism from parts of the opposition and the press for increased use of special advisers, often referred to as “spin doctors”, in the Danish civil service, and alleged misconduct towards the press in a number of cases.

To follow up on the Parliament resolution, the Minister of Finance in April 2003 set up the *Expert Committee on Civil Service Advice and Assistance to the Government and Its Ministers*.

By tradition, the relationship between the government and civil service in Denmark is partly regulated by norms that have developed in the interaction between ministers, civil servants and the parties represented in Parliament, and by “soft law”, stated in reports by expert committees that include prominent civil servants, independent experts from universities etc.

In this report the Committee has analyzed recent developments in the Danish civil service and assessed the need for a more explicit formulation of the regulation of three interrelated issues in regard to ministerial and departmental advice and assistance,

- Ministerial advice and assistance from the permanent civil service
- Ministerial advice and assistance from special advisers
- Civil service conduct towards the press, especially with regard to the principles of objectivity and non-discrimination

The committee has included in its considerations experiences from Norway, Sweden and the United Kingdom.

## **Civil Service Advice and Assistance**

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The Committee has had the following composition,

- Jens Peter Christensen, Professor, dr. jur., Aarhus University, School of Law (chairman)
- Linda Nielsen, Professor, dr. jur., Rector of the University of Copenhagen
- Jørgen Grønnegård Christensen, Professor, Aarhus University, Department of Political Science
- Esben Ørberg, Public Relations Manager, The Association of Danish Journalists
- Kaj-Henrik Ludolph, Chairman of the Association of Public Executives, The Association of Danish Lawyers and Economists
- Sten Frimodt Nielsen, Assistant Secretary of State, Legal Counsel, The Prime Minister's Office
- Ib Katzenelson, Deputy Permanent Secretary, Ministry of Economic and Business Affairs
- Jørgen Steen Sørensen, Deputy Permanent Secretary, Legal Department, Ministry of Justice
- Jacob Heinsen, Deputy Permanent Secretary, Ministry of Finance
- Kirsten Talevski, Head of Division, Parliamentary Commissioner for Civil and Military Administration in Denmark (Parliamentary Ombudsman)
- Rolf Ejlertsen, Director Public Relations, Confederation of Danish Industries

The Committee has been assisted by a Secretariat in the Ministry of Finance in cooperation with the Ministry of Justice. The Secretariat has had the following composition,

- Elisabeth Hvas, Head of Division, Ministry of Finance (leader of the Secretariat))
- Jens Kromann Kristensen, Special Consultant, Ministry of Finance (to October 20, 2003)
- Peter Stensgaard Mørch, Head of Section, Ministry of Finance
- Adam Lebech, Head of Section, Ministry of Finance (from October 20, 2003)
- Helle Hübertz Krogsøe, Head of Section, Ministry of Justice (to December 31, 2003)

- Ole Hasselgaard, Head of Division, Ministry of Justice (from January 1, 2004)
- Rikke Freil Laulund, Head of Section, Ministry of Justice (from January 1, 2004)

## **2. Recent developments in the Danish civil service**

The Expert Committee has carried out a thorough investigation into recent developments in the civil service advice and assistance to the government and its ministers, including the use of special advisers in the ministries, and the relationship between the government and the media. Furthermore, the Committee has compared these issues with experiences in Norway, Sweden and the United Kingdom. This section briefly summarizes the Committee's conclusions.

### **2.1. Ministers and the civil service**

On the basis of empirical investigations, the Committee has the general view that no major changes concerning advice and assistance from the permanent civil service to the government and its ministers have occurred in recent years.

Since the middle of the 20<sup>th</sup> century, a central trend has been an increasing significance of political-tactical advice from the permanent civil service to ministers in addition to the "classical" professional policy advice. To the extent that there have been changes to this trend in recent years, it is the Committee's conviction that the significance of integrated professional policy advice and political-tactical advice has increased. Most ministers demand such integrated advice from the civil service, and civil servants are generally both willing to and capable of delivering it.

The distinction between professional policy advice and political-tactical advice is not well defined and in practice often unclear. This is accentuated by the fact that ministers and civil servants generally emphasize the fact that these elements of advice generally cannot easily and should not be separated.

However, some defining elements of the two concepts can be extracted. *Political-tactical advice* primarily concerns strategic aspects related to the political process that precedes the adoption of the minister's policy initiatives, including negotiations in Parliament, in government or in the minister's party as well as with the opposition and external interest groups etc. An important aspect of the political-tactical advice may also be the minister's presentation of the initiatives in the media.

On the other hand, *professional policy advice* has more to do with the professional or technical aspects of issues within the minister's authority. This may concern technical issues or legal questions as well as economic analyses of the consequences of a particular policy. The vast proportion of advice and assistance provided by civil servants to a minister falls within this category.

The concept of policy advice and political advice will be used in this chapter as abbreviations of professional policy advice and political-tactical advice.

The permanent secretaries (*departementschefer*) have played a key role in the post war trend towards a more integrated policy and political advice from the permanent civil service. The Committee's investigations confirm that the permanent secretaries in 2004 are still the centre of both policy and political ministerial advice in Denmark. Political advice from permanent secretaries in particular concerns the minister's relations to Parliament, the media and interest organizations. A minority of the permanent secretaries also advise on the minister's relations to the party, while none of them advise on questions pertaining to the minister's constituency.

In Denmark, private secretaries (*ministersekretærer*) are usually relatively young permanent civil servants from the ministry. Typical tasks for the private secretaries have been relatively practical services to the minister, e.g., assisting with contacts to Parliament, coordinating briefings of the minister, assisting with press relations, controlling and updating the minister's schedule etc. This is still the case in 2004. Actual policy and political advice from private secretaries to ministers is relatively limited, although the advisory role varies considerably among the private secretaries.

Another significant variance between the ministries is the extent to which civil servants other than the permanent secretary have access to offering

advice directly to the minister. This, in particular, varies with regard to deputy permanent secretaries (*afdelingschefer*) and heads of division (*kontorchefer*) in the ministries. While these civil servants in all ministries give policy advice, and to some extent political advice, in written notes etc., the extent of their access to giving direct face-to-face advice to the minister varies considerably.

The Committee's investigations confirm a very high level of satisfaction among ministers concerning the advice and assistance offered by the permanent civil service. This includes both professional policy advice and political-tactical advice. As indicated by previous investigations, ministers are not, however, fully satisfied with the assistance provided in the speech drafting. Furthermore, the Committee presumes that the fact that ministers tend to recruit special advisers with media expertise indicates that the permanent civil service has not been able to fully meet expectations in this particular field of advice.

## **2.2. Special advisers**

The designation "special advisor" is used for civil servants employed according to the terms outlined in Report no. 1354/1998. The defining character of special advisors is, firstly, that their employment is tied to the minister's term in office. Secondly, special advisors are employed in private secretariats to the minister and cannot have executive powers in relation to civil servants employed outside the private secretariat.

Special advisers for the ministers were first defined as a separate category of employment in the ministries with Report no. 1354 from 1998. It is therefore not possible to precisely assess the extent to which ministers used special advisers before 1998. However, the use of special advisers has historically, as is the case today, been very limited in Denmark compared to other Western democracies. Throughout the 1980's and 1990's, there has been a very limited increase in the use of special advisers, and this trend has continued in recent years. In 2004, 14 of the government's 18 ministers employed a special adviser. No ministers have, due to a government decision, employed more than one single special adviser.

When recruited, almost none of the current special advisers had prior experience from earlier employment in the civil service. About half of the special advisers had a background as journalists at major national news-

papers or electronic news media. The other half can be subdivided into two further groups. One group of special advisers was recruited from positions as communication advisers in other political organizations or interest organizations, while the other group has a background as employees in the ministers' party organization.

The Committee notes that the current special advisers to a higher degree than earlier are recruited on the basis of professional competences, especially in communication, rather than their party-political background.

In this connection, another important tendency is that special advisers in 2004 are predominantly employed to handle press related functions and to a much lesser extent related to the ministers' party. Contrary to earlier, none of the current special advisers are in 2004 employed in actual political-tactical advisory functions.

However, the extent to which special advisers' communication advice spills over into more general political advice to the minister varies significantly. One group of special advisers is mainly occupied with tasks purely related to the press, including contacts with journalists, planning interviews with the minister, producing press releases, contributing to speech drafts and articles etc. This group of special advisers also typically offers advice to the minister on questions related to concrete press stories; however, the assistance is concentrated on questions of form and timing in relation to the press.

Another group of special advisers, probably a bit fewer, also take care of such functions, but they also to a large extent advise the minister on political-tactical questions. Advice on press relations is for this group not as sharply distinguished from substantial ministerial advice. These special advisers are typically "close to the minister", cooperate closely with the permanent secretary, participate in management meetings in the ministry and often also in meetings between the minister, leading civil servants or other politicians, negotiating partners etc. This group of special advisers therefore also typically has a broader foundation for handling press-related functions, including giving background information to the press on the substance in current matters, the minister's political intentions and the development of negotiations etc.

It is the Committee's overall assessment that the special advisers in 2004 are generally well integrated into the ministries and that relatively well defined frames and boundaries exist concerning their functions and cooperation with the permanent civil service.

This conclusion rests upon a number of elements. Most importantly, the guidelines recommended in Report no. 1354/1998 with regard to employment of special advisers seem to have made the roles of special advisers significantly less controversial. This is especially the case with the clarification concerning special advisers' close connection to the ministers and their term of office and with the recommendation that special advisers should be employed in private secretariats for the minister without authority to give instructions to civil servants employed outside the private secretariats.

It is, however, also the Committee's assessment that there is some ambiguity as to who is responsible for the actions of special advisers. It varies between special advisers whether they regard themselves as subject to the managerial responsibility of the permanent secretaries. In general, special advisers tend to believe this is the case to a lesser extent than permanent secretaries. In practice, the cooperation between special advisers and permanent secretaries, however, seems to function well and to be based on mutual respect and recognition of the necessity and value of relatively close cooperation.

There also seems to be some variation between the ministries with regard to the actual implementation of the guidelines concerning the power to give instructions to permanent civil servants. In particular, the extent to which special advisers can request notes etc. for the minister from permanent civil servants varies. In relation to the substantial contents of the notes etc., there is, however, no doubt that only the permanent departmental hierarchy can give instructions. This is, e.g., reflected by the fact that material from the ministry to the minister usually passes through the departmental system before it reaches the minister, also if it is produced at the request of the special adviser.

### **2.3. Government and the media**

The Danish media development in recent years has produced an increasing number of television and radio channels, and more news, current

affairs and debate programs have been aired on both new and existing channels. The consequence is more frequent inquiries to the ministries, resulting in increased time pressure on ministers and a rising demand for clear political statements.

At the same time political journalism has gradually changed its focus from the content and consequences of political initiatives to the political process and people behind the initiatives. This type of journalism is frequently built upon background conversations with politicians and their press staff.

A recent analysis of power and democracy in Denmark, commissioned by the Danish Parliament (*Magtudredningen*) points out that the media increasingly determine the conditions of political life. Politicians need to adapt to the demands from the media and adopt the same strategies as the media, if they want to set the agenda. At the same time the media have become more independent as a political actor. The current media ideal is to act as a “fourth political institution”, supplementing the legislative, executive and judiciary powers and acting as the citizens’ advocate vis-à-vis the political power elite.

The ministries have responded by professionalizing communication with the public, including the servicing of the press. More professional press employees have been hired, and in several ministries special units have been set up to service the press. At the same time, the ministries have become more proactive in contacts with the media, and they increasingly adapt their messages to the media’s news criteria.

Most ministries use “news exclusives” to some extent, that is, pieces of information from the ministries that are offered or leaked to a single news medium with the intention of giving the resulting news article or broadcast a better placement in the media and a more thorough coverage than it would otherwise have got, had the initiative been published as a press release to all media at the same time. The ministries also use other means of communication such as press briefings and interviews where the minister addresses select parts of the media.

The public debate on these issues has brought forward examples of information being withheld from journalists because it had been offered as a “news exclusive” to another journalist. There are also examples of jour-

nalists and media being victims of punitive measures from specific ministries after having written critical articles. Finally, some ministries have been criticized for discrimination of certain journalists and media. In light of the interviews with journalists and ministries and other information, the Committee believes, however, that such examples of selective press service are few and isolated.

The Committee has carried out a number of surveys and interviews with key actors in the ministries and the press. On this basis the Committee believes that the debate in recent years on the use of “spin doctors” in the ministries has given the impression of a more widespread phenomenon and a higher level of conflict between the ministries and the press than the data material supports. The professionalization of the press service in the ministries has resulted in a more strategic use of the media, but has also given the press easier access to information from the ministries.

All 14 special advisers currently employed in the departments (as of May 1, 2004) work with issues related to press service, communication and information. Most of the press employees in the ministries, however, are not employed as special advisers, but are permanent civil servants. Advice on the presentation of the minister’s policy in the media and public is handled by the special advisers and other press employees, but the permanent secretaries in the ministries often advise the minister in this area as part of the integrated professional and political-tactical advice.

## **2.4. Denmark, Norway, Sweden and the United Kingdom**

The Committee has also studied experiences in Norway, Sweden and the United Kingdom concerning relations between ministers, the permanent civil service and politically appointed advisers. The relevant experiences have contributed to the Committee’s considerations in relation to the Danish context.

The political systems of Norway, Sweden and the United Kingdom share a number of basic characteristics with the Danish system. In all four countries, ministerial advice and assistance are mainly based on a permanent and party-politically neutral civil service. Recruitment and appointments to positions in the civil service are based on the principle of selection by merit and not political affiliations.

There are also significant differences between the systems. The most significant difference between Denmark and the three other countries is that ministers in Norway and Sweden are assisted by politically appointed state secretaries and in the United Kingdom by junior ministers. State secretaries as well as junior minister often have executive powers in the ministry, while in Denmark the only politically appointed person with authority to give instructions is the minister.

The number of politically appointed civil servants (special advisers) is today significantly higher in Norway, Sweden and the United Kingdom than in Denmark. Whereas the number in the first three countries is between 59 and 139, there are, as mentioned, only a total of 14 special advisers in Denmark.

There are also significant differences in the public debate concerning politically appointed civil servants in the four countries. In Norway and Sweden it is thus considered a natural part of the democratic system that the government and its ministers are allowed to have politically appointed assistants. Conversely, this is in Denmark, and partly in the United Kingdom, considered problematic for the party-political neutrality and credibility of the permanent civil service.

The employment of politically appointed civil servants tends to lead to a partial transfer of certain political-tactical advisory functions from the permanent civil service. This is most clearly seen in Sweden and Norway, where state secretaries combine a role as central adviser to the minister with executive functions in the ministry. However, it seems to be a general tendency whenever the number of politically appointed advisers exceeds one or very few persons in the individual ministries.

Compared to the three other countries, the Danish system is characteristic in its highly integrated professional policy and political-tactical advice offered to ministers by the permanent civil service.

In recent years ministries in all four countries have put greater emphasis on servicing the press. Communication with the media and the public is increasingly integrated with the political-tactical advice to the minister, and the press units in the ministries have been professionalized and strengthened.

In Denmark and the United Kingdom there has also been a development towards the press service being handled by politically appointed special advisers. This has long been the case in Sweden, while permanent civil servants still primarily handle the press service in Norway.

There are distinct differences in the debate on the government press service in the four countries. In the United Kingdom and Denmark there have been extensive debates in the media on the use of “spin doctors”, attempts by the ministries to control the media agenda, selective press service and the like. In contrast, Norway and Sweden have hardly had any debate on these issues.

### **3. Advice and assistance from the permanent civil service**

The Committee has been asked to assess the need for a more explicit formulation of the regulation of ministerial advice and assistance from the permanent civil service.

The Committee concludes that in light of a report on the issue from the Ministry of Justice in 2001, the need for a more explicit formulation of the regulation is relatively limited. Taking into account the debate in recent years on the boundaries for advice and assistance from permanent civil servants, the existing regulation and the Committee’s analyses of the current state of affairs, the Committee has considered a number of issues, which will be briefly sketched.

#### **3.1. The requirements of professional standards, party-political neutrality, legality and obligation to speak the truth**

##### *Professional standards*

The Committee points to the fact that the advice and assistance from the permanent civil service should be in line with professional standards. This requirement of professional standards covers all forms of judgments and considerations based on professional insight into actual facts and relationships. General professionalism designates adherence to the professional

standards that are generally recognized within a given academic field. For example, civil servants who conduct economic analyses must adhere to recognized professional standards for such calculations.

In practice, the Committee admits, it can be difficult to establish clear and unambiguous boundaries between professional standards and political judgments. The decisive point is, however, whether the permanent civil servants in their professional advice are guided by what they professionally believe is right, and not what would be the more convenient result from the minister's point of view.

The Committee points out that permanent civil servants should not be used in the media etc. with the purpose of giving the impression that a political view is solely based on professional considerations, if the permanent civil servants are, in fact, expected to present a distorted picture of their professional considerations. Such use of the permanent civil servants would damage their professional credibility and party-political neutrality.

However, it is unproblematic for the permanent civil service to contribute to the formulation of the minister's wholly political views towards an issue, or to use professional reasons and arguments to support the minister's political view on an issue.

### *Party-political neutrality*

It is a basic principle in the Danish system of government that the civil service be party-politically neutral in its advice and assistance to the government and ministers and appears as such to the public, including the Danish Parliament.

The requirement of party-political neutrality first of all means that the individual civil servant should not let his or her own political opinions influence the advice and assistance to the minister, but should objectively and loyally ensure the best possible implementation of the minister's policy.

Secondly, the requirement implies that the permanent civil service should appear party-politically neutral since this supports the credibility surrounding their professional work and makes certain that future govern-

ments and ministers feel confident being advised by the same permanent civil service staff.

It should be added that the requirement of party-political neutrality does not exclude the civil servant from having political opinions as a private citizen and as such be a member of a political party and participate in the public debate.

### *Legality*

Advice and assistance from the permanent civil service should stay within the framework of existing law. Advice or assistance that presupposes that actions be taken in defiance of existing law must not be given.

### *Obligation to speak the truth*

Civil servants are subject to a general obligation to speak the truth. For this reason civil servants must not as part of their advice and assistance submit information, or assist the minister in submitting information, that is untrue. The same requirement applies to information that is not in itself untrue, but which would in the given context be misleading, for example, by suppressing important information.

The Committee points out that special caution should be observed in the press service in order to avoid submitting information that would in the given context be untrue or misleading. This follows from the higher pace of communication and the fact that the submission of information to journalists is often done verbally.

## **3.2. Advice and assistance concerning different functions of the minister**

In order for the civil service to contribute with advice and assistance to the minister there has to be a “case” in the ministry. This requirement implies that the advice and assistance of the civil service must relate to the minister’s function as a minister.

The minister takes care of several functions that are characterized by varying degrees of attachment to the minister’s function as a minister and

thus the area where the civil service can contribute with advice and assistance,

- The minister as administrative leader of the department
- The minister as a member of government
- The minister as a party politician
- The minister as a private individual

The minister's function as a minister generally includes the functions as administrative leader of the department and as a member of government. The civil service should generally refrain from advice and assistance that is not connected to these functions. This applies to, among other things, the minister's functions as a party politician and as a private individual.

In practice, the various functions can to some extent be overlapping. For this reason it can be difficult to define clear and unambiguous boundaries for advice and assistance from the permanent civil service.

The Committee is of the opinion that the permanent civil service in connection with the minister's functions as a member of government should abstain from advice and assistance to the minister and the government concerning questions such as citizen support for the government or strategic considerations on election campaigns.

When it comes to the functions as a party politician, the Committee believes that there can be situations with overlaps to the functions as administrative leader of the department or member of government, where the permanent civil service should contribute with advice and assistance. This is the case when the issue in question is related to subjects within the minister's administrative purview or to the minister's function in government. This applies, for instance, in cases where the minister chooses the party general assembly to launch a political initiative.

For the prime minister and other central ministers, e.g. party leaders, the requirement that an issue is related to the minister's administrative purview or function in government may not always be possible, since such ministers might in these matters in practice express the view of the government in general and as such require the advice and assistance of the permanent civil service.

When the issue in question falls within the minister's function as a minister, the permanent civil service can provide advice and assistance on both professional policy and political-tactical aspects of the issue. Political-tactical advice includes evaluations of expected attitudes towards the issue among various political parties and the public, as well as when and how the issue could most expediently be presented to the media, Parliament and the public.

Within the boundaries described above the civil service should objectively and loyally ensure the best possible implementation of the minister's policy.

### **3.3. Advice and assistance during election campaigns**

If Parliament elections are called because of a vote of no confidence, the government, according to the Constitution, becomes a caretaker government. This means that the minister can only do what is absolutely necessary to allow the government to function.

Since the latest revision of the Constitution in 1953, Parliament elections have not been called because of a vote of no confidence. However, a parliamentarian practice has evolved according to which the government, when an election has been called, observes a certain reticence in cases where important political decisions are made, even though it is not formally a caretaker government. This government reticence has not, however, applied to cases that must necessarily be expedited as part of the general function of government.

To the extent that the minister is still allowed to carry out his or her functions as leader of the department or member of government, the permanent civil service should contribute with advice and assistance to these functions. However, when elections are called, the principle of party-political neutrality assumes a special importance. For this reason the permanent civil service must convey extra caution to make certain that the advice and assistance both is and appears party-politically neutral.

The Committee recommends that in case of inquiries from the press, the permanent civil service should, more often than usual, refer the journalists to the minister when the inquiry concerns more than entirely factual information.

During the election campaign, the minister will to a large extent be occupied with issues that are not related to his or her function as a minister. The minister will, for instance, be oriented towards convincing voters that the government should stay in power, and ministers who run for Parliament will be involved in a personal election campaign. The permanent civil service should not advice and assist the minister in such cases.

The Committee recommends that the government and its ministers uphold the established parliamentarian practice according to which the civil service assistance in the period after the election is called should be limited to what could be characterized as practical issues, unless the issues cannot be postponed or the issues for some other reason must be carried out by the minister as leader of the department or member of government. This reflects an administrative and parliamentarian practice, which helps to maintain a “fair” balance between the government and the opposition during election campaigns. The principle of party-political neutrality in the civil service also supports this practice.

### **3.4. Advice and assistance during referenda**

The Committee is of the opinion that the limitations on civil service advice and assistance that exist during election campaigns generally do not apply in connection with referenda. The reason is that referenda are held on the basis of passed legislation, and as a general principle the civil service can contribute with advice and assistance in connection with the preparation and implementation of the government’s propositions.

Nevertheless, the Committee finds that the fact that the citizens are drawn into the legislative process through a referendum does raise certain issues concerning the role of permanent civil servants. This is the case because the issues of credibility and reusability that contribute to defining the boundaries for assistance from the civil service can have a special significance during referenda.

The Committee assesses that the political debate intensifies in the final weeks of the campaign for the referendum proposition, and the permanent civil service should therefore be particularly attentive to the need to be and appear party-politically neutral because of the issues of credibility and reusability. In this connection the permanent civil service should not participate in production of campaign materials or participation in meet-

ings with interest groups etc., which might in the public be perceived as party-political agitation in the campaign for the proposition.

### **3.5. Advice and assistance concerning brochures, reports etc.**

The popularization of political initiatives through the use of brochures, reports and the like aims at making the political arguments, attitudes and principles behind political initiatives visible. The popularization can be significant for the minister in establishing support for the bills in Parliament and in the population. It is a natural part of the purpose of the civil service to create the necessary support for the minister's proposals. For this reason it is an important task for the civil service to assist the minister in popularizing initiatives, e.g., by presenting the issue from the minister's political viewpoint, or assist in producing brochures, reports or similar popularization tasks.

In this connection it is important that the popularization of the subject matter conforms to professional standards in the field in question.

### **3.6. Civil service negotiations with the opposition and interest groups and participation in Parliament committees**

The majority of the permanent secretaries sometimes negotiate with the opposition or interest groups on behalf of the minister. The Committee finds that this does not in practice raise any doubt about the role and mandate of the permanent secretary. In these situations, the permanent secretary is seen as the mouthpiece for the minister and not as an individual political player. Also in cases where civil servants accompany the minister at committee meetings in Parliament, the Committee finds that uncertainty as to the party-political neutrality of the permanent civil servants does not arise.

The Committee points out that it is important to ensure that civil servants are not placed in situations where they act as politicians, and that there be no doubt that the civil servants act within the mandate they have been granted by the minister. The Committee finds, however, that the risk is not overwhelming simply because the civil servant negotiates with politicians and representatives of interest groups.

### **3.7. Civil service negotiations on behalf of the minister in the European Union**

The overall majority of permanent secretaries in varying degrees negotiate on behalf of the minister in European Union meetings. It is the Committee's impression that there is no doubt in practice about the permanent secretary's mandate. The Committee stresses that it is crucial during negotiations on behalf of the minister that it be perfectly clear that the civil servant acts according to the mandate from the minister, and the mandate of the minister.

## **4. Advice and assistance from special advisers**

The Committee has considered a number of questions concerning the employment of special advisers in the ministries, their functions, rules and boundaries for their work etc.

### **4.1. The use of special advisers in general**

It is the assessment of the Committee that there can be valid grounds for ministers to employ special advisers, and that the system with a relatively limited number of special advisers in addition to the permanent civil service in the ministries generally works in a satisfactory manner.

A precondition for successful integration of special advisers in the ministries is, to a large extent, that good cooperation is established between special advisers and the permanent civil servants, including in particular the permanent secretaries. If this cooperation does not function well, the risk of incoherent ministerial advice based on a weaker professional foundation increases. Furthermore, it may create uncertainty with regard to the managerial responsibilities in the ministries.

Important preconditions for effective cooperation between the special advisers and the permanent civil service include mutual respect, understanding each others' functions and close mutual coordination. Furthermore, well-defined boundaries for competences and functions for special advisers as well as for the permanent civil service are necessary.

## **4.2. The requirements of legality, obligation to speak the truth, professional standards and party-political neutrality**

The Committee is of the opinion that special advisers also in the future should be employed as civil servants on special terms in the ministries. As a consequence, special advisers are subject to the same requirements of legality, obligation to speak the truth and professional standards as apply to the work of permanent civil servants in the ministries. When giving advice and assistance to ministers, special advisers must thus observe existing legislation exactly like other civil servants, and they are obliged to speak the truth and to live up to the professional standards in the particular field.

Only the requirement of party-political neutrality is different for special advisers. As any other civil servant, special advisers are not allowed to let their personal political opinions influence their assistance to the minister. But the fact that special advisers are expected to leave the ministry (at the latest) with their minister means that the reusability consideration of the civil service is not relevant to special advisers. Furthermore, a relevant consideration when recruiting a special adviser may be a special acquaintance with the minister's party.

The Committee finds that some of the boundaries that apply for permanent civil servants should be drawn differently when it comes to special advisers. As discussed more elaborately below, this is especially the case when they assist the minister in relation to his or her party and in relation to parliamentary elections and referenda.

## **4.3. Number of special advisers**

At the current government's accession to office, the prime minister announced that each minister should employ maximum one special adviser. No formal rules restrict ministers from employing more.

The Committee finds that there are important arguments in favour of keeping a very limited number of special advisers per minister. It is the Committee's opinion that a greater number of special advisers in the ministries, especially if they are political advisers, could lead to a situation where special advisers become a unit of political-tactical advice that in an

inexpedient manner is decoupled from the rest of the ministry's policy advice and administrative procedures. A significant increase in the number of special advisers may consequently impede the ability of the permanent civil service to deliver integrated policy and political advice to the ministers, and the coherence of the advice and the implementation of policy could be weakened.

However, the Committee does not find that the number of special advisers should necessarily be limited to one for each minister. On the basis of an overall consideration, the Committee recommends that the number of special advisers per minister should continue to be very limited and should not exceed two or three. Employment of more than one special adviser for each minister should in the particular case normally be grounded in the fact that the special advisers are employed to take care of different functions for the minister. Examples of such functions are press advice, political advice and producing speech drafts.

#### **4.4. Placing special advisers into the ministerial organizations**

In the Committee's opinion, it is very important that employment of special advisers does not create uncertainty about managerial responsibilities in the ministries. The Committee therefore recommends that special advisers continue to be employed in the private secretariats of ministers and without powers to give instructions to permanent civil servants employed outside these private secretariats. These guidelines, which were implemented with Report no. 1354/1998, have in the opinion of the Committee contributed to the fact that special advisers in general are well integrated into the ministries and do not cause uncertainty with regard to the managerial responsibilities in the ministries.

In particular the guidelines for powers to give instructions are implemented differently in the ministries. The Committee finds it expedient that the guidelines leave room for flexible adjustments to the ministries' different procedures etc. However, the Committee finds reason to make clear that the lack of authority to give instructions, as a minimum, should imply that special advisers cannot give instructions to permanent civil servants employed outside private secretariats with regard to substantial aspects of notes, speech drafts and articles etc., that material produced in the ministry as a general rule should go to the minister via the usual de-

partmental hierarchy, and that special advisers cannot give permanent civil servants instructions with regard to prioritizing tasks, overtime etc.

It is furthermore the Committee's opinion that limits for special advisers' access to request civil servants to produce material for the minister should not be defined too narrowly.

The Committee finds that it may be well founded that special advisers are given some professional managerial responsibility in relation to permanent civil servants employed in private secretariats for the minister to deal with the same specific areas as the special adviser. Examples could be civil servants with press related tasks in the private secretariat. Such powers to give instructions should, however, be clearly limited in agreement with the permanent secretary, and they should not include personnel management in questions such as wage levels or issues concerning the careers of individual civil servants.

The Committee has in its investigations noted some uncertainty with regard to the position of the permanent secretaries in relation to the special advisers. In this connection, the Committee finds that the managerial responsibility for the employees of the ministries, which is normally delegated from ministers to permanent secretaries, should also concern special advisers. However, the Committee finds it unproblematic that special advisers, if the minister wishes so, are given some room to manoeuvre independently of permanent secretaries with regard to the advice and assistance they provide for the minister in fields of their competences, e.g., press relations.

In the opinion of the Committee, it is crucial for the ability of special advisers to function well in the ministries that they either have or quickly acquire a certain level of knowledge of the organization of the civil service, its political position and the basic rules of its work. The Committee finds reason to underline that it must be the responsibility of the permanent secretary to ensure that a special adviser is given the best possible basis for a successful integration in the ministry. It should thus be ensured that special advisers at the time of their employment are thoroughly introduced to the permanent civil service, the organization and procedures of the ministry etc. Furthermore, the Committee recommends that special advisers are ensured a systematic schooling in basic legal principles and the organization and principles of operation of the civil service. The

Committee finds that it is the responsibility of the ministries to ensure this, for instance in the form of written introduction material in combination with an introduction course.

#### **4.5. Limits to the functions of special advisers**

The Committee has considered whether, and if it is the case which, special boundaries should be defined for special advisers in relation to parliamentary elections, referenda, the minister's party and in relation to attending meetings with the minister in Parliament etc.

The Committee generally finds that the differences mentioned for special advisers when compared with permanent civil servants as far as party-political neutrality can give grounds for wider limits for the advice and assistance from special advisers. It can be difficult to distinguish situations in which the minister acts primarily in the capacity as minister from situations where the minister acts primarily as a party politician or a private person. However, the Committee finds that employment and payment of special advisers as civil servants should be grounded in the fact that their main tasks are related to the ministers' functions as minister.

The Committee does not find that special advisers should be precluded, like permanent civil servants, from assisting their ministers in relation to parliamentary elections. One major reason is that the reusability consideration, as mentioned above, is not relevant in relation to special advisers. The Committee, however, finds that special advisers should not be working in the ministries during the election campaign. Besides the consideration of securing a "fair" balance between government and opposition during the election campaign, there are a number of other considerations that support this view. Firstly, it is important to avoid the risk of drawing the permanent civil service into party-political functions during the campaign. Secondly, the special advisers should not be able to assist in their minister's campaign as publicly paid civil servants.

The Committee particularly emphasizes the consideration to ensure that the permanent civil service is not drawn into the minister's campaign due to special advisers' simultaneous work in the ministry and for their minister's campaign.

The Committee finds that the best way to deal with these considerations would be to determine the conditions of employment for special advisers so that their employment ends (at the latest) at the call of a parliamentary election. It should be included in future employment contracts for special advisers that they are discharged (immediately) when the elections are called. The discharge due to the call for elections should be on the same conditions that apply when special advisers are discharged due to their minister leaving office.

With the existing terms of employment, the current special advisers could continue in their positions during an election campaign. So far, specific boundaries for advice and assistance from special advisers in relation to election campaigns have not been defined. The Committee recommends that a solution is found to ensure that current special advisers will not function in the ministries during election campaigns.

Concerning referenda, the Committee finds that special advisers should be allowed, like permanent civil servants, to offer assistance to the government. In relation to the final phase before a referendum, where the campaigns may become more party-political, it is the opinion of the Committee that special advisers should be less restrained than permanent civil servants in their assistance to the minister and the government. It is important, however, to ensure that this does not lead to permanent civil servants being drawn into campaign-related activities.

In relation to the ministers' tasks in their party, the Committee finds that there should be wide limits for special advisers' advice and assistance. However, the main part of the tasks of special advisers should, as mentioned above, concentrate on issues related to the minister's functions as a minister.

For instance, the Committee finds no relevant principles to impede special advisers from attending meetings with the minister, such as meetings with the minister's party organization, party-political debates or a party's national congress. On the contrary, it may be a central part of a special adviser's functions to be a link between the minister's party and the ministry and to assist the minister in his or her relations to the party. Correspondingly, the Committee recommends fewer restrictions for special advisers' assistance to ministers in the production of draft speeches and articles etc. to be used in a party-political context.

The limit for the assistance of special advisers to ministers should in the opinion of the Committee be drawn at tasks that are purely related to the minister's role as party politician. This limit can and should not be drawn sharply, however.

The Committee has also considered whether special advisers should be allowed to attend closed consultations between their minister and parliamentary committees. On this question, the Committee recommends continuing the developed practice that it is up to the individual parliamentary committees and ministers to agree whether civil servants can accompany the minister at these consultations.

If a parliamentary committee agrees that civil servants can accompany the minister, it is recommended that the minister chooses which particular civil servants should attend. In the Committee's opinion, the civil servants' terms of employment (temporary civil servant/special adviser or permanent civil servant) do not constitute relevant criteria in this connection. The Committee finds reason to emphasize that special advisers are subject to the same restrictions as other civil servants with regard to professional secrecy, obligations to speak the truth and professional standards.

A relevant criterion would, in the opinion of the Committee, be whether the particular civil servant is expected to contribute to the minister's statements to the parliamentary committee if the minister needs this or in other ways provide assistance to the minister related to the concrete consultations (e.g., note taking). This criterion would in most cases lead to the exclusion of ministers' press officers, regardless of their terms of contract. In the assessment of the Committee, a consequence would be that most current special advisers would not have reasons to attend closed consultations in parliamentary committees.

On the question of whether special advisers may attend political meetings between the minister and politicians or other external parties, the Committee emphasizes that special advisers should be regarded as any other civil servants in the ministry. Thus, the Committee does not find that the terms of employment as special adviser justify exclusion from such meetings.

## **4.6. Conditions of appointment for special advisers**

The Committee recommends that a standard contract be developed and used in all future employments of special advisers in the ministries. The standard contract should specify that the employment terms follow the guidelines set out in this Report no. 1443/2004.

The Committee finds that it should continue to be a defining characteristic for special advisers that their employment be tied to the minister's term in office. It is thus recommended that the standard contract specifies that special advisers are given notice of discharge and immediately suspended at the latest when their minister leaves office. Furthermore, it should be specified that they also will be given notice and suspended at the latest at the call of a parliamentary election. It is recommended that discharge due to election or change of minister is agreed on the current terms with regard to discharge due to change of minister, that is, discharge with six months' notice and suspension of the special adviser for the entire period. Finally, it should be included in the contract that employment can be terminated on the terms in force according to general agreements for civil servants.

The Committee finds that the same rules concerning other paid occupation should apply for special advisers as well as for permanent civil servants. The general rules imply that civil servants can have other paid occupation if and to the extent that this is compatible with a conscientious fulfilment of their position in the ministry. Within the frames of these general rules, civil servants, including special advisers, are not in general prevented from doing paid work for a political party. On this background, the Committee sees no formal impediments to special advisers doing paid work for the minister's party unless it prevents the special adviser from fulfilling the job in the ministry conscientiously. The actual assessment is up to the minister in agreement with the permanent secretary.

A question in the public debate has been whether special rules of quarantine should apply to special advisers after they leave their position in the ministries. This could, for instance, mean limitations on access for special advisers to other political advisory positions for a period of time after working in the ministry. The Committee does not, however, find any

general public interests in such limitations, and it is therefore not recommended as a general principle.

The Committee has also considered the question of whether special professional secrecy obligations should apply to special advisers after they leave their position in the ministries. The Committee emphasizes that the same rules apply to special advisers as to all other civil servants. Secrecy obligations for civil servants also apply after the end of employment in a ministry. The Committee does not find that general public interests can justify that further secrecy obligations for special advisers are implemented as a general rule.

The Committee has considered whether there is a need for special rules of sanctions for special advisers. The Committee emphasizes that special advisers are subject to exactly the same potential sanctions as other civil servants in the ministries. On this background the Committee sees no need for more formal rules of sanctions for special advisers.

#### **4.7. Openness and transparency**

The Committee finds that openness and transparency in relation to the employment of special advisers in the ministries is of high importance. However, the Committee also emphasizes that special advisers are not public persons in the same way as elected politicians. On this background, the Committee finds that openness and transparency with regard to special advisers should in particular concern who is employed as special advisers to the ministers, what their functions are and what the terms of employment are.

The Committee recommends that the government publish an updated list of special advisers, e.g., on the web site of the Prime Minister's Office. This list should contain information about special advisers' names, place of employment, functions and information on the special advisers' relevant educational and occupational background.

The Committee furthermore recommends that it be indicated in the ministries' official phone directories and organizational charts if a civil servant is employed as a special adviser. Finally, it is recommended that the general rules concerning posting of vacancies should continue to apply also for the employment of special advisers.

## **4.8. Special complaints procedures concerning special advisers**

The Committee has considered whether there might be a need for establishing special complaints procedures to be used by permanent civil servants in case of conflicts, a special adviser's violation of boundaries concerning instructions etc. This could, e.g., be justified by an assumed reluctance to present complaints due to the special adviser's special relations to the minister. The Committee's investigations do not indicate a current need for such special procedures. Furthermore, it might contribute to an undermining of the managerial responsibility of the permanent secretary. The Committee therefore recommends that complaints over special advisers be raised to managers of the permanent civil service and ultimately the permanent secretary as would be the case for complaints about any other civil servant in the ministry.

## **4.9. The minister's responsibility**

The Committee has considered whether ministers may use the special terms of employment for special advisers to create a zone where the ministers have freedom from responsibility. This could theoretically happen if ministers push their special advisers before them in the media contact on difficult cases.

The Committee points to the fact that ministers have an obligation to make sure that incorrect or misleading information that may be brought to the public is corrected. This obligation is valid whether permanent civil servants or special advisers provide the incorrect or misleading information.

The Committee furthermore points out that ministers have the same legal responsibility in relation to their special advisers' actions, as is the case in relation to permanent civil servants. The Committee finds that this problem in most practical cases must find its solution in the ministers' political responsibility to Parliament.

## **4.10. Private advisers outside the ministries**

A minister can through his or her contact with citizens, organizations or other politicians receive advice on political questions, including questions concerning the minister's functions as minister. The Committee finds that nothing should impede a minister from close cooperation with one or more persons outside the ministry with regard to, e.g., advice on political questions or the minister's relations to the press. The minister will in such situations be bound by the same legal regulation that applies to the minister's work in general, including in the minister's relations to the media. Furthermore, material given to private advisers outside the ministry may lose its status as internal working documents.

It is the Committee's perception that private advisers outside the ministry can only provide a very limited part of the advice and assistance given to the minister. This is due, among other things, to the fact that private advisers cannot be physically placed and integrated in the ministerial organization, and this must to a very wide extent be considered as a precondition for delivering the needed policy and political advice. Furthermore, the general rules concerning secrecy limits the degree to which other staff besides civil servants employed in the ministries can assist and give advice on issues where parts of the information may be confidential.

# **5. Government and the media**

The Committee has been asked to assess the need for a more explicit formulation of the regulation of civil service conduct towards the press, especially with regard to the principles of objectivity and non-discrimination.

## **5.1. Objectivity and non-discrimination in the relationship with the press**

The general administrative principles of objectivity and non-discrimination also apply to civil service conduct towards the press. Among other things, the principles imply that material that has been handed out to one or more journalists generally cannot be refused to other journalists who ask for the same material.

Furthermore, ministries must not as a form of “punishment” refuse to hand out material to a particular journalist because the ministry thinks that a particular issue or the minister personally has received negative or unfair treatment by the journalist.

The Committee stresses that the ministries generally cannot decide which journalists the various media want to represent them. The access of certain journalists to information, to which they do not already have access as a result of existing law, can in special situations be limited if a well-grounded risk of abuse exists, e.g., that a journalist will publish the information before the date set by the ministry on valid grounds.

In cases where several media have requested the same material, the ministry should to the highest possible degree treat the press equally when it comes to the time that right of access to the information is given. This responsibility is grounded in the competition between the various media.

Ministers and special advisers are subject to the same administrative requirements of objectivity and non-discrimination as permanent civil servants. These requirements therefore have the same meaning no matter whether the minister himself or herself services the press, or whether special advisers or the permanent civil service is responsible for this activity.

## **5.2. The use of “news exclusives”**

The ministries have the right to use “news exclusives” if it is founded on valid grounds in the particular case. A valid ground for using news exclusive could be that a government initiative would get more attention and a more comprehensive consideration in the media.

When news exclusives are used, the ministries must observe the general administrative principles of objectivity and non-discrimination. The principle of non-discrimination implies, among other things, that a ministry that has given a news exclusive to a journalist must hand out the same information to other journalists if they request it.

Furthermore, if a journalist shows a particular interest in information that has been offered to another journalist for a news exclusive, the ministry should advise the journalists on the possibilities of obtaining the information.

The use of news exclusives is limited to some extent by self-regulatory forces in the interplay between ministries and the media. The ministries have an interest in not overplaying the use of media-strategic means such as news exclusives, since such behaviour in itself could result in media criticism.

The Committee insists that the media have a share in the responsibility for preventing that the use of news exclusives gets out of hand. This is the case because the media have influence on the extent to which news exclusives are used. Through journalist practice, supported, for example, by internal editorial guidelines, the media can ensure a critical attitude towards the use of sources.

Here, as in other respects, the media as the public watchdog play a key part in ensuring that the ministries observe the rules of conduct towards the press.

It is a general requirement that there are valid grounds for communicating information through the use of news exclusives. This implies that they cannot be used in connection with news stories that are not related to political initiatives or statements. Moreover, there are political initiatives that, because of their content and character, would merit such public interest that the argument about getting more comprehensive coverage would not carry great weight. Finally, there are political initiatives of such general public significance that the communication of information to the public should not come about as a news exclusive. This would, for instance, be the case in the event of a decision to hold a public referendum on a particular topic or the presentation of a major reform of the administrative structure.

If a ministry has a good reason to communicate an initiative to the public in the form of a news exclusive, the next question is what considerations can be used to determine which journalist or media should get the news exclusive. The Committee is of the opinion that it is well-founded to emphasize the scope and target population of the medium, if it is a national medium or is specialized in particular areas. It may also enter into the considerations when and how the news article would be carried in the medium.

Since it is a natural part of the general responsibility of the ministry to work for the implementation of the minister's policy, the Committee finds that the minister is allowed to emphasize a presumption of a positive or negative coverage in the medium in question, when deciding which medium the news exclusive should be given to.

It is, however, unacceptable if the ministry states as a condition for offering a news exclusive to a particular medium that the treatment of the subject matter be positive towards the ministry's position. Furthermore, the ministry must not refuse information to a medium or a particular journalist as a "punishment" for previous negative coverage of the particular minister or ministry.

The ministry must be able to explain the valid grounds that gave reason to the use of a news exclusive. In this connection the ministry should make a note of the interests that were emphasized when information was submitted for use in a news exclusive.

### **5.3. "Slicing" of news exclusives**

The Committee has noticed that the ministries sometimes break an initiative into several independent parts with the intention of offering the separate pieces of information as news exclusives to several media. This media technique is sometimes referred to as "slicing". A well-founded reason for doing this is to make sure that every single part of the initiative receives comprehensive coverage in the media instead of drowning in the general coverage of the full initiative.

When a ministry uses "slicing" in connection with the communication of political initiatives as news exclusives, the communication of parts of the initiative must not be offered in such a way that the information becomes misleading. When information is offered to the press this way, the ministries should inform the journalist that the information is only part of a larger initiative and should as such be seen in the context along with the other elements in the full initiative.

### **5.4. Press meetings, press briefings and interviews**

The ministries generally cannot decide which journalists a given medium should use to represent itself at press meetings, press briefings, interviews,

etc. However, there can be valid grounds for limiting which journalists or media are invited, for instance that a medium or a journalist has special knowledge within a subject area or a special interest in a particular topic.

The Committee finds that the minister has broad discretionary powers as to which interviews he or she wants to participate in. When considering whether to participate in a given interview with a particular journalist, the minister can emphasize whether he or she through personal knowledge has a special relationship of trust and confidentiality with the journalist.

## **5.5. The use of provisos on the time of publication**

The ministries sometimes use provisos on the time of publication of news stories. In such cases the press is given drafts of government bills, other government initiatives, speeches etc. before they are made public with the precondition that the content will not be communicated to the public ahead of a fixed deadline. Provisos on the time of publication are justified to the extent that they are desirable and useful within the framework of the limits set by the principle of non-discrimination.

Provisos with a legally binding requirement of confidentiality require that the conditions for confidentiality in the Public Administration Act be met. For this reason, the provisos that the ministries can use in practice are not legally binding.

Provisos, in any case, must be based on valid grounds. Valid grounds include considerations about allowing the media to get acquainted with the material and hence broader mention in the media of the initiative. Furthermore, the Committee believes that the media have a responsibility for ensuring appropriate use of provisos.

## **5.6. Special complaints system for the press**

The press may complain to the Ombudsman about alleged misconduct in their relationship with the ministry press service. In some cases, the general rules of complaint and supervision in government allow press service issues to be brought before superior administrative authorities. The Committee is of the opinion that in light of these complaints systems, no further system of complaint for the press is needed.

## **5.7. Party-political neutrality in the press service**

As mentioned, the same regulation of press service applies to ministers, special advisers and permanent civil servants. The considerations concerning party-political neutrality can, however, set up boundaries for the form of expression etc. that permanent civil servants in the opinion of the Committee should use in contacts with the press. The Committee believes that the permanent civil service should not appear personally involved in the issue in question. A similar limitation does not apply to ministers and special advisers.