Working time reforms in times of crisis

Carole Lang, Stefan Clauwaert and Isabelle Schömann

Working Paper 2013.04
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european trade union institute
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Introduction

On the ground of responding to the economic crisis, labour law reforms have been adopted in various EU Member States in recent years. These have often led to labour law standards being downgraded as a way of introducing greater flexibility into the labour market, with encouragement from the European Commission.

However, as the crisis continues into its sixth year without signs of abatement, questions have arisen on the effectiveness of such reforms to resolve the financial and economic crisis in the long term.

During the Macroeconomic Dialogue¹ in March 2013, the European Trade Union Confederation highlighted the fact that austerity policies were a failure: ‘This double strategy of austerity is not working. Fiscal austerity, together with wage austerity, has pushed the European economy into a double dip recession and is directly responsible for the fact that unemployment is rising to intolerably high levels. The ETUC calls upon European leaders to change course and to trade in austerity for a policy that focuses on investment, jobs and growth’.²

In addition, concern has been raised over the years about the fact that those ‘anti-crisis measures’ are blatantly ignoring fundamental social rights.³

On September 14, 2011, former ILO Director-General Juan Somavia stated in an address to the European Parliament that ‘Respect for fundamental principles and rights at work is non-negotiable: not even in times of crisis when questions of fairness abound. This is particularly important in countries having to adopt austerity measures. We cannot use the crisis as an excuse to disregard internationally agreed labour standards’.

In lack of any response from policymakers to such strong criticism, the newly elected ILO Director-General Guy Ryder, in the Report following the ILO’s 9th European Regional Meeting in Oslo in April 2013, had to re-address

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1. For more information on the Macroeconomic Dialogue, see http://ec.europa.eu/economy_finance/eu/med/index_en.htm.
this issue, showing that countries are still introducing measures violating international fundamental rights, using the crisis as an excuse: ‘It appears that the application of international labour standards has been somewhat inconsistent during the crisis. The recovery measures taken by governments have in some cases given rise to concerns about their impact on international labour standards. Indeed, there is a risk that current responses to the crisis will lose sight of and reverse the effective realisation of fundamental workers’ rights and the application of international labour standards more generally. Yet, international labour standards provide a common normative framework for policy coherence that can steer the direction of recovery from the crisis’.4

The economic and financial crisis and its co-related effects on national labour law reforms have been a concern for the ETUI for several years now and continue to be a critical issue needing to be addressed.

The ETUI published a Working Paper in 2012 on *The crisis and national labour law reforms: a mapping exercise* which listed the labour law reforms in various EU Member States either triggered by the crisis or introduced using the crisis as an excuse.5

This ETUI Working Paper highlighted the fact that working time is one of the main areas where labour law changes have been introduced.

Working time is defined by Directive 2003/88/EC, Article 2, as ‘any period during which the worker is working, at the employer’s disposal and carrying out his activity or duties, in accordance with national laws and/or practice’. This definition is considered to be an autonomous concept of European Union law, meaning that Member States are not allowed to apply any other definition of working time in their legislation (see e.g. ECJ, Jaeger, 9 September 2003, C-151/02).

The issue of working time is of particular importance because of its treatment as a key adjustment mechanism applied in the labour market reforms, predominantly to satisfy employers’ needs for cost reductions and greater flexibility. This can be observed both at national level and at European level in the latest attempts to revise Directive 2003/88/EC concerning certain aspects of the organisation of working time. However, in December 2012, negotiations between the social partners stalled when the Executive Committee of the ETUC noted that the ‘final offer’ from the employers was not sufficiently balanced,

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and consequently made it impossible to continue the negotiations as such.\textsuperscript{7} In order to render the labour market more flexible to adapt to fluctuations in demand due to the crisis, one of the measures considered as essential by the employers was to allow them to manage working time more easily and freely\textsuperscript{8}.

Therefore, the aim of most national reforms was to introduce greater flexibility into their working time legislation. Looking deeper into the measures adopted in the Member States, three primary ways of introducing flexible working time can be identified:

1. Allowing employers to extend working time duration (by extending maximum working time and making changes to overtime and time-off provisions)
2. Conversely, allowing employers to shorten working time duration
3. Allowing employers to accommodate the allocation of working hours according to their needs

Based on those three aspects, this Working Paper focuses on the latest reforms introduced since early 2012. More precisely it will try to demonstrate how each of these areas were – and still are – affected by national reforms used as a means to resolve the economic and financial crisis. In adopting such a time horizon it extends and complements the analysis of pre-2012 anti-crisis measures published in the earlier ETUI Working Paper \textit{The crisis and national labour law reforms: a mapping exercise} which dealt with anti-crisis measures on working time taken before February 2012.

In doing so, the main trends and tendencies regarding working time arrangements are highlighted using a country by country analysis, whereby Section 1 focuses on measures to “work more” by extending working time duration (e.g. increasing the maximum amount of weekly or annual working time, increasing the amount of overtime), Section 2 conversely on measures to “work less” (e.g. short-time work programmes) and Section 3 on ensuring a variable allocation of working time (e.g. extending reference periods).

The analysis of the different patterns of working time interventions at national level, presented further in this study, reveals four distinct groups of Member States:

\textbf{Member States that are under the scrutiny of European and international institutions and organisations (mainly the Troika)}

Ireland, Greece, Portugal and – more recently – Cyprus belong to this category. They have all concluded a respective Memorandum of Understanding with the European Union, the International Monetary Fund and the European Central

\textsuperscript{7} For further information on that topic, see ETUC website on http://www.etuc.org/r/675.

Bank and are thus being pushed to implement major reforms to their national legislation. These measures are often highly controversial, and sometimes even considered as not conforming to the national constitution by national constitutional courts (Portugal)\(^9\) or to international and European conventions and charters (e.g. Decisions on the merits about Greece, following collective complaints to the European Committee on Social Rights on Greek compliance with the Revised European Social Charter)\(^{10}\).

As a consequence, these Member States are mentioned quite frequently in this report.

**Nordic Member States**

Very little information is available regarding Nordic Member States (Denmark, Sweden and Finland). This can be explained partly through the important role played by social partners and social negotiations to frame the labour market, meaning that labour reforms are mainly dealt with by this means rather than using legislative procedures.

**Eastern European Member States**

This group covers the Czech Republic, Hungary, Lithuania, Latvia, Estonia, Poland, Romania, Slovenia, Slovakia and Bulgaria – all of them countries known for already having quite flexible employment legislation. Even if some recent deep-reaching labour law reforms have been enacted, they have not always contributed to bringing their legislation more into line with the EU Directives.

**The ‘Old Europe’**

With the Nordic Member States having their own category, the remaining EU-15 Member States present a quite diverse picture.

Belgium is recovering from the institutional crisis of 2010-2011 and is now catching up, adopting reforms similar to those adopted earlier by other Member States.

Whereas some studies and statistics\(^{11}\) claim that Germany, already considered as an example to follow when dealing with the crisis, has overcome the crisis, some of its neighbours are still struggling with record unemployment rates (Spain, Italy, and France).

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In any case, flexible working time arrangements seem to be a very popular mechanism for most governments and their use is still promoted as an alleged solution to mitigate the adverse effects of the crisis. The beneficial sides of flexible working time arrangements have often been put forward to advocate their merits, especially when introduced at the request of employees, mainly in order to reconcile work and family life, and not imposed on them by employers.

However, in recent years, flexible working time measures have frequently been adopted to the detriment of employees, with their employers having the choice of making them work longer hours or reducing their working time to accommodate the needs of the business and without taking into consideration the negative impacts it could have on employees’ working and living conditions, such as lower compensation, higher stress levels and increasing levels of health complaints\textsuperscript{12}.

\textsuperscript{12} On this issue, see ETUI (2012) Paying the price for putting in the hours, Hesamag 5, Spring-summer 2012.
1. Extending working time duration – working more

Several options are available when extending working time duration. Whereas some Member States have chosen to increase maximum working time, others have decided to develop and extend the use of overtime or to modify the legislation regarding time-off.

1.1 Increasing the maximum limit

The easiest way to extend working time duration is to increase the maximum working time allowed by law, on either an annual or weekly basis.

Member States under the control of the Troika have regularly adopted new provisions extending maximum working time, thereby allowing employers to require their employees to work more.

On November 6, 2012, the Greek government submitted the third package of austerity measures to the Parliament for approval. Approved by a narrow majority, it contains new modifications to the working time legislation, focusing on shop employees. The previous specific regulation establishing a 40-hour five-day week limit has now been abolished, meaning that shop workers are now subject to the general rule of a six-day working week. The obligatory daily rest period has been reduced to 11 continuous hours instead of 12 in every 24 hours. Though this brings Greek legislation into line with EU legislation, it represents a step backwards for Greek workers. In the light of the particular Greek context, where the unemployment rate is the highest in the EU (27.2% in January 2013)\(^\text{13}\), the relevance of such measures allowing employers to make their employees work more instead of hiring new manpower is questionable.

The public sector is not spared and is now also being hit by working time reforms allegedly designed to save public money in order to reduce the impact of the crisis.

On January 14, 2013, the Irish government and trade unions started discussions on pay and working conditions in the public sector. One of the

\(^{13}\) Eurostat data available on http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-30042013-BP/EN/3-30042013-BP-EN.PDF.
proposals was to increase working time without proportionate pay increases. This targets in particular full-time civil servants who work less than 40 hours a week (34 hours in some local authorities), whose working time could increase by 4 hours per fortnight. Therefore civil servants would be facing a dilemma: if they do not want to risk losses of earnings, they will have to work more without any additional compensation.

On May 3, 2013, the Portuguese government announced that it had reached an agreement with the Troika on its new package of austerity measures to meet the budgetary targets after several stringency measures were rejected by the Constitutional Court. Prime Minister Pedro Passos Coelho’s new austerity programme includes longer weekly working hours for civil servants, up from 35 to 40 hours.

The Memorandum of Understanding concluded between Cyprus and the Troika in November 2012 also foresees changes to working time in the public sector in order to make it more flexible, initially by reducing costs related to overtime. This first set of measures is expected to be implemented by the end of 2013 or early 2014.

Many Eastern European Member States have also chosen to extend maximum working time, although already having quite accommodating working time legislation and long weekly hours. Even so, proposals are on the table in certain Member States to increase working time duration.

In 2012, the Polish Minister of Labour and Social Policy presented draft amendments to the Labour Code. Those were discussed in the Tripartite Committee in several meetings held in 2012 and 2013. The main idea of these amendments is to introduce a new – more flexible – definition of daily working time. As such, it would be possible to start work twice a day within individual daily working time without the need to pay overtime or to introduce different work starting hours. The draft law also foresees the modification of provisions relating to ‘disrupted’ working time, allowing employers to call workers back to work if needed during the same working day. Currently in the majority of cases this can only be done when set forth in a company collective agreement. The proposed change implies that the ‘disrupted’ working time may be introduced on the basis of higher-level agreement. Another proposal that would make it possible to lengthen the duration of a working day is to introduce an unpaid break longer than 60 minutes. That would however only be possible with the worker’s individual consent. There are no limits to the duration of such a break or to the period for which it is adopted.

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Such a fragmented working day can be very damaging to workers’ health and family life, as they would need to remain much longer at the disposal of their employer, unable to enjoy long consecutive rest periods if they are required to return to work more than once a day, in an often unpredictable manner.

In Lithuania, the situation between trade unions and the government has been tense since the government announced on June 12, 2012 that it was going to introduce a bill amending the Labour Code, ignoring trade union objections. The changes the government wants to introduce are considerable and call into question fundamental issues such as workers’ health and safety. Despite the fact that Lithuania was in line with the EU-27 average number of actual weekly working hours for full-time employees in 2011 (39.8)\(^{16}\), the government would like to increase the maximum work week from 48 to 78 hours (though with the average work week over the year remaining at 48 hours) and the maximum work day from 8 to 13 hours.

Some provisions are however under the scrutiny of international bodies such as the ILO for not respecting international standards. For instance, the ILO Committee of Experts on the Application of Conventions and Recommendations made the following statement regarding the application of Articles 2 to 5 and 6(1) of the Hours of Work (Industry) Convention, 1919 (No. 1) about daily hours of work and unequal distribution of weekly hours of work in Romania in a report prepared for the 102nd ILO Conference in June 2013.\(^{17}\)

“The Committee recalled that, in its observation of 2011, it pointed out that the adoption of Act No. 40/2011 of 31 March 2011 amending the Labour Code did not reply to the comments made in its direct request of 2008 regarding the application of these provisions of the Convention. These comments were concerned in particular with section 115 of the Labour Code (former section 112), which allows daily hours of work to be increased to 12 hours and regarding which the Committee emphasised that the daily limit of eight hours established by the Convention may only be exceeded in the specific cases referred to in Articles 3 to 6 of the Convention. The Committee also referred to section 113(2) (former section 110(2)) of the Labour Code which, combined with the national collective agreement, allows the unequal distribution of weekly hours of work, increasing daily working time to a maximum of ten hours on certain days. The Committee drew the Government’s attention to the fact that Article 2(b) of the Convention only authorises the unequal distribution of weekly hours of work if daily working time does not exceed nine hours.”\(^{18}\)

The economic and financial crisis that started around 2008 has fuelled the debate on working time duration.

Before 2008, the tendency was more in favour of working time reductions, with trade unions managing to convince a number of EU countries to reduce weekly working hours as a way of creating new jobs\textsuperscript{19}.

However, in a political and economic context unfavourable to trade unions, employers as well as a number of governments have been contesting the effectiveness of such working time reductions and have been pushing for working time extensions without compensation, claiming that it is necessary to increase working time in order to remain competitive vis-à-vis non-EU states not subject to the same working time restrictions. Such arguments give productivity and competitiveness precedence over workers’ health, safety and well-being and can be seen as impeding job creation. Working time is seen as a health and safety issue, and long working hours are considered to have negative implications for workers’ health and well-being\textsuperscript{20}. In addition, reducing working time improves workers’ control over their lives, giving them more opportunities to engage in non-work activities enhancing quality of life and responding to current concerns about reconciling work and family life\textsuperscript{21}.

1.2 Overtime

Since the beginning of the crisis, overtime has become a frequent candidate for extending options and giving employers greater flexibility to adapt to fluctuations in demand.

On January 31, 2013, Belgium opted for an increase in its overtime limit\textsuperscript{22}. Imitating other European Member States with a delay due to the institutional crisis it had to resolve first, Belgian employers and trade unions agreed on overtime limits automatically rising from 65 to 76 hours per quarter and 91 a year. The existing procedure for exceeding these 91 hours will become more flexible. A single meeting at sectoral or company level will suffice, and the sectors have until October 31, 2013 to organise it. After this deadline, the meeting will take place at company level. Workers will receive, as is already the case today, a list of overtime hours in conjunction with their monthly wage slips, and they will be able to decide between remuneration (150 or 200\% ) or time-off, unless a collective agreement has already defined it.

In Poland, the idea discussed in the Tripartite Committee meeting on February 27, 2013 was to reduce overtime pay. This is seen as a very important change, not only in theory but also for the concrete changes and detriments it would impose on workers’ incomes. Overtime premiums of 80\% in case

\textsuperscript{19} See for example the Aubry Laws in France in 1998 and 2000 which brought the statutory weekly working time from 39 down to 35 hours.

\textsuperscript{20} On this issue, see ETUI (2012) Paying the price for putting in the hours, Hesamag 5, Spring-Summer 2012.

\textsuperscript{21} See also Holman, D. (2013) Job types and job quality in Europe [to be published in Human Relations].

\textsuperscript{22} Belgium: employers and unions agree on flexible working time arrangement, Planet Labor, Article number 7259, 04.04.2013.
of overtime on night shifts, Sunday and public holidays not scheduled as working days (currently 100%), and 30% for overtime performed on any other day (currently 50%) are to be paid. Here again, the burden is placed on the workers as they are being asked to work more if needed, but will be paid less than before.

Slovakia’s contrasting position needs to be highlighted here. Following the April 2012 elections, Robert Fico was re-elected Prime Minister with an absolute majority, enabling him to submit proposals in July 2012 for more than 90 changes to the Labour Code negotiated with social partners. Among them was a proposal for new rules decreasing the number of overtime hours an employer could request.

The draft law was approved by the government on August 22, 2012 and Parliament began discussions on the amendments in September 2012. They were adopted on October, 25 and came into effect on January 1, 2013, meaning that a number of the important changes in force since September 2011 have now been retracted or abolished. With regard to overtime, under Article 97/7 of the Labour Code an employee was allowed to request to work overtime for up to a maximum of 150 hours within a calendar year. But it was also foreseen that if agreed in a collective agreement, an employee could work overtime for up to 250 hours within a calendar year (Article 97/12). The latter provision has now been deleted and an employee may be requested to work overtime only for up to a maximum of 150 hours within a calendar year.

However, Slovakia is under the scrutiny of the ILO Committee of Experts on the application of Conventions and Recommendations which addressed certain issues about overtime in Slovakia in its report for the 102nd ILO Conference in June 2013. The Committee was concerned about the amendments to the Labour Code which were approved by Act No. 257 of 13 July 2011 and entered into force on September 1, 2011 and more precisely about section 97(10) of the Labour Code which, as amended, increases the maximum limit of authorised overtime work to 400 hours per year (550 hours for managers). In its reply, the Government argued that, as regards the maximum annual limit of 400 hours of overtime for employees, this limit represents an average of approximately eight hours of overtime per week (i.e. 400 hours divided by 52 weeks) which, even if added to the statutory 40–hour week, still does not exceed the 48-hour weekly limit prescribed by the Convention. The Government added that, pursuant to section 97(5) of the Labour Code, an employer may only require overtime in cases of temporary and urgent increases in work demand or when public interest is concerned. However, the Committee observed that section 97(10) of the amended Labour Code does not require that the 400-hour annual limit of overtime be divided into 52 equal weekly periods and, therefore, there is nothing in the Code to prevent the possibility of employees being asked to perform excessive overtime hours during certain periods of the year.

The Committee therefore concluded that section 97(10) of the Labour Code authorises overtime within limits that go well beyond those contemplated in the Convention and potentially pose serious problems to workers’ health and well-being.24

The Committee also addressed irregularities regarding overtime in Romanian legislation. Romania is being reminded that it has to ‘ensure that overtime is paid at a rate at least 25 per cent higher than the normal rate, even in cases where the worker is granted compensatory rest. In addition, section 120(2) of the Labour Code (former section 117) does not provide a restrictive list of the situations in which overtime may be worked, except for cases of force majeure or work that needs to be done urgently. The Committee therefore also recalled that, except for the two above-mentioned cases, Article 6(1)(b) of the Hours of Work (Industry) Convention 1919 (No.1) only authorises overtime work to enable the employer to deal with exceptional cases of pressure of work’25.

Overtime remains a significant issue in working time discussions across Europe, as it is regarded by many employers as a vital element in achieving flexibility and on the other hand by many employees as an important source of income. It is also often used as a way to circumvent the maximum weekly working time limit.

However, it remains a very irregular source of income for employees, as they are required to work overtime according to the needs of the business and to fluctuations in demand and cannot therefore rely on it as regular and foreseeable income. Moreover, as it is required that overtime work be paid at a higher rate, certain Member States are now trying to reduce this increase to a minimum. As far as health and safety are concerned, the issue of working overtime gives cause for concern as it contributes to psychosocial risks and stress at work, with employers pressuring their employees to work longer hours.

1.3 Free time

In addition to the extensive possibilities of requiring employees to work overtime, another trend observed and still developing to make workers work more and longer hours is to cut public holidays and annual leave and to ask employees to work on days or at times usually considered as non-working time (Sundays, public holidays, nights).

Such measures are equally questionable as they often contravene a worker’s right to rest periods and are therefore detrimental to health and safety.

On the other hand, it should be noted that working on Sundays, public holidays or at night remains a sensitive issue, and frequent proposals and changes are made to keep its prevalence to a minimum.

Several Eastern European Member States have recently adopted provisions legislating on working on a day-off, trying to offer greater guarantees to workers.

As such, the **Czech Republic** offers a shining example of this debate that raises the issue of workers’ interests. In the wake of the 2012 Christmas holiday period, trade unions put forward proposals for legislation to reduce shop opening hours during public holidays. Shop owners argue that many workers are more interested in the bonuses usually paid for working on a public holiday than in taking time off. But one has to bear in mind that, given the current economic context, workers often feel that they do not have the opportunity to refuse to work more in order to make ends meet at the end of the month and unions are concerned that shop managers are pressuring employees to work on days generally regarded as public or bank holidays.

In **Hungary**, the new bill which entered into force on July 1, 2012, defines the requirements for working on Sundays and public holidays. It is possible only within the framework of activities serving the public interest or which are objectively necessary for the proper functioning of a company. It is also possible when work is multi-shift, for on-call work or for part-time jobs performed exclusively on Saturdays and Sundays. This new law also provides wage supplements for workers having to work at such times. Employees obliged to work on Sundays as part of their normal working time (excluding part-time employees working solely on Saturdays and Sundays) shall be entitled to a 50 per cent wage supplement. Employees obliged to work on bank holidays as part of their normal working time shall be entitled to a 100 per cent wage supplement. Employees working in alternating shifts between 18.00 and 06:00 shall be entitled to a 30 per cent wage supplement. In the case of night work, employees shall be entitled to a 15 per cent wage supplement\(^{26}\).

In **Poland**, the Civic Platform (a liberal-conservative political party) submitted a draft amendment to the Labour Code regarding work on Sundays on May 14, 2013. Article 15110 of the Labour Code specifies situations where work on Sundays is permissible. A very broad range of issues are provided for (e.g. activities involving production continuity, necessary maintenance and repair work, transport and communications, municipal undertakings, etc.). However, the draft suggests broadening the scope of activities permissible on Sunday with the justification that labour law has to be more flexible to increase the competitiveness of the Polish labour market\(^{27}\).

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Conversely, on May 24, 2013, a group of deputies from various political parties presented another draft amendment aimed at prohibiting work in commercial undertakings on Sundays.

Here again, there are opposing views, with one side claiming that such a measure would help improve the country’s economic situation and prevent an increase in unemployment and redundancies; and the other side trying to defend workers’ interest, as working on Sundays could be detrimental to their health and family lives.

On the other hand, governments are quite prepared to accept cuts in annual leave or to abolish public or bank holidays, thereby depriving workers of essential rest periods without compensation.

In January 2012, the Council of Ministers of Portugal decided to cancel four holidays, namely ‘Corpus Christi’ (60 days after Easter Sunday), 15 August, 5 October and 1 December. The government will also allow businesses to close over long weekends – when public holidays are on a Tuesday or a Thursday. Unlike the first drafts which foresaw the implementation of this measure for 2012, this will now come into force in 2013. When the company closes, its workers will either have to take a day off or accept working more to compensate the day off. The company will be required to determine the conditions with the employees in advance.

In Lithuania, another proposal made by the government on June 12, 2012, despite trade union opposition was to reduce annual leave from 28 to 20 days. However, as stated on the EURES website – the European Job Mobility Portal – ‘the minimum duration of annual leave remains at twenty-eight calendar days’.

In passing the Public Finance Balance Act in May 2012, the Slovenian government decided that 2 January will no longer be a paid work-free holiday.

Conversely, when Austrian Minister for Employment and Social Affairs Rudolf Hundstorfer explained at the end of March 2013 that he wanted more Austrian employees to be entitled to a 6th week of paid annual leave, he faced criticism that such a measure would drive labour costs up and productivity and flexibility down. As a consequence, this idea was sacrificed on the altar of flexibility. The objective now is to introduce greater working time flexibility through abolishing days-off, not the opposite, regardless of the adverse effects this could have on workers.

These recent developments contributing to the lengthening of the duration of working time fuel the debate about whether it is relevant to ask workers to

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30. Austria: 6th week of annual leave at the center of national debate, Article number 7417, 28.03.2013.
work more when unemployment is at such a high level, with increasingly more people looking for a job.

Working more is very problematic in a shrinking labour market. For everyone to be able to work longer hours there must not be a lack of work. When working more is reserved to those who already have a job, this is the exact opposite of the concept of work sharing and social integration, with the unequal distribution of work leading to social exclusion.

Whether extending working time or applying work sharing notably by using short-time working schemes, the constant focus on increased productivity is having devastating effects on working patterns and conditions.
2. Shortening working time duration – working less

Lengthening working time duration is a solution that has been adopted by many Member States, for the most part in Eastern Europe. This can be explained by the fact that many companies were attracted to relocate to these Member States with their cheaper manpower and more flexible labour legislation. By contrast, the ‘old Europe’ and Nordic Member States seem to be increasingly promoting the use of short-time working schemes in the face of economic downturns, with such a mechanism appearing a reliable solution for companies.

Short-time working programmes are public schemes intended to preserve jobs at companies temporarily experiencing low demand. They encourage work-sharing, while also providing income-support to workers whose hours are reduced due to a shortened work-week or temporary lay-offs. Short-time working schemes were therefore of major interest during the global economic crisis. Most governments in Member States with existing schemes took specific measures in response to the crisis to promote their use, while several others established new ones.

Germany, one of the Member States with a long tradition of short-time working, promoted its use during the recent crisis by extending and developing short-time working schemes.

Figures show that in 2009, on average some 1.1 million people were working short-time. This was the highest level – measured in absolute numbers and share of the workforce – since the beginning of the 1990s, when short-time working was used to reduce the structural consequences of German re-unification. The use of short-time working during the earlier 2002-2003 recession was much lower than during the recent economic crisis.\(^\text{31}\)

Germany has the reputation of being the leading Member State when it comes to dealing with the crisis, to such an extent that in March 2012 the Institute for Employment Research (IAB) released data showing that measures used to resolve the crisis are no longer needed to stabilise the German labour market.\(^\text{32}\)


The IAB data shows that the number of short-time workers is declining. Short-time work peaked in May 2009, when nearly 1.5 million short-time workers were registered at the Federal Employment Agency. By contrast, in 2011 an average 150,000 employees were registered for this scheme, a considerable drop.

However, numbers are on the rise again (expected to triple in 2013), with the result that new measures came into force on January 1, 2013. Among these, short-time working has been extended from 6 months up to one year, with the measure set to remain in force until December 31, 2013.

As many Member States introduced or developed short-time working programmes at the beginning of the crisis, the main trend observed now is the amending of programmes already in place, converting their temporary nature into a regular tool in employment legislation.

Looking at Austria, anti-crisis measures were already in place in 2009 and 2010 and amendments to the Short-time Working Act came into force on January 1, 2013 designed to make it easier for employers to have recourse to short-time working schemes: employers’ social contributions will be due after the 5th month of short-time working instead of the 7th as was formerly the case; subsidies for training are added to the short-time working measures, while the obligation to gain the consent of the works council is removed in order to render the procedure less complicated and time-consuming. The statutory obligation for employers to negotiate a company agreement on short-time working with the social partners is maintained.

In Sweden, similar crisis agreements (krisavtal) were negotiated in a number of manufacturing companies during the 2008 crisis. Based on these agreements, the Swedish Ministry of Finance presented a bill on State support for businesses introducing ‘reduced working time’ (korttidsarbete) on December 17, 2012. The idea was that the employer, employees and the State jointly shoulder the system’s cost. 3 levels of working time cuts are foreseen:

1. For a 20% working time cut, the company would maintain 1% of the salary, the State would pay 7% of lost income and employees would, in the end, suffer a 12% pay cut;
2. For a 40% working time cut, the company would maintain 11% of the salary, the State would pay 13% and employees would suffer a 16% pay cut;
3. For a 60% working time cut, the company would maintain 20% of the salary, the State would pay 20% and employees would suffer a 20% pay cut.

State support would last for 6-12 months with the option of extending it for a further 12 months. The system would only apply in the event of an ‘extreme
economic downturn’, e.g. activity going down by 3% or more. However, the report
drawn up by the Ministry of Finance claims that entitlement conditions were met
in 1990 or 2009 but not today. This bill is supported by the Swedish trade union
Unionen as it contributes to safeguarding jobs and is sufficiently secure, with
implementation dependent on tripartite agreement. However, this mechanism is
far from being entirely perfect: it does not mention the issue of the impact these
pay cuts will have on social security contributions or on the level of sickness,
occupational disease or parental benefits and provides no support for training.

In France, the adoption of a new short-time working mechanism was no easy
task. France initially chose to promote overtime work by adopting the so-called
‘TEPA’ law in 2007\textsuperscript{33}, based on the counter-cyclical concept of ‘working more
to earn more’. This policy was abandoned in 2012 when the new left-wing
government took up office. The law adopted by the French Parliament in May
2013 is the result of a national cross-industry agreement adopted by social
partners on January 11, 2013. However, it was not signed by all trade unions
and had to face a wealth of criticism, with strikes denouncing social regression.
The possibility of concluding so-called ‘employment guarantee agreements’ is
now enshrined in French legislation. In the event of severe economic difficulties,
it is possible for companies to temporarily adjust working time and pay. In
return, employers have to maintain employment throughout the duration of the
agreement. Recourse to this system is supervised: the agreement has to be signed
by a union majority (i.e. one or several union organisation(s) having secured at
least 50% of votes at union elections); it cannot last for more than two years; and
it cannot lower salaries/remuneration below 1.2 times the minimum wage. Once
the agreement is signed, employees refusing to consent to the agreement can
be laid off on individual economic grounds, meaning that the company will not
be subject to mass redundancy regulations even if numbers match the criteria.
Therefore, even if the purpose is to safeguard jobs and prevent employees from
being dismissed, this mechanism is however quite unfavourable to employees.

Slovenia also amended its short-time working scheme by introducing in
March 2013 a new option for an employer to order an employee to stay at home
until further notice for business reasons for a maximum period of 6 months in
a calendar year. During this period, the employee is entitled to compensation
set at 80% of his salary and has to undertake training during that time.

Short-time working has been an emblematic scheme for coping with the crisis
since 2008. It has been seen as a protection against job losses in times of
crisis, helping companies faced with downturns not to massively dismiss their
workforces.

As a consequence, recourse to such a mechanism has been highly encouraged.
Indeed, it has been said that it is mainly this scheme that helped Member
States such as Germany not to sink further into recession.

However, this can be a double-edged sword. Short time working schemes, despite all the benefits they are given credit for, also have well-known drawbacks. Addressing short-time work, Gérard Cornilleau, a French economist, says ‘C’est moins du partage du travail que du partage du chômage’, i.e. the focus is more on unemployment sharing than on work-sharing. 34 And indeed, the French translation for short-time work is chômage partiel which means partial unemployment, thereby conveying a negative connotation.

Indeed, this scheme is unable to find a solution to the problems of the unemployed and of young workers willing to join the labour market. Neither will it lead to job creation, nor is it going to revolutionise employment policy. Indeed, as underlined by Jean-Yves Boulin and Gilbert Cette35, this mechanism ‘may actually increase labour market segmentation, since short-time working schemes are generally backed by unemployment insurance funds, meaning that the money used for protecting insiders will not be available for active labour market policies’. In addition, this mechanism can only be sustained when used to deal with a cyclical shock and not a structural shock.. Short-time working is not the right panacea when it only serves to postpone a structural problem maturing, heightening the risk to workers’ employability when a company’s operations are no longer in tune with market needs. Hence the question as to whether Member States such as Germany, which are claiming that the worst of the crisis is behind them and are nevertheless extending short-time working schemes, are justified in doing so.

Moreover, short-time working has direct short-term negative effects for workers as it reduces their purchasing power and as they have to contribute to the effort by bearing part of the cost of short-time working.

Which strategy is best – working more by developing overtime or reducing working time via short-time working?

In their paper36, Jean-Yves Boulin and Gilbert Cette compare France – which has been promoting the use of overtime for several years – and Germany, known for its extensive use of short-time working schemes. Their answer is inconclusive: even if the German strategy seems to have been effective with few job losses, ‘would the German choice be socially sustainable in the case of longer and repetitive downturns?’ On the other hand, they point out that ‘the French strategy – framed by the slogan ‘work more for more money’ – which prevented the negotiation of work-sharing agreements until the recent national agreement of last January is potentially dangerous due to its unemployment and social exclusion consequences’. Therefore, the question remains open: between two evils, which one to choose?

36. Ibid.
3. Variable allocation of working time

Here again, workers are being asked to participate in the effort and to be more adaptable to changes, with companies claiming that, during the crisis, they have had to switch from economic downturns to slow recoveries and thus have to be prepared to adapt swiftly to these ongoing changes.

As a result, greater flexibility has been introduced in the allocation of working time, enabling employers to unilaterally modify their employees’ work schedules.

A popular measure often taken since the beginning of the crisis concerns the extension of reference periods for calculating working time.

A definition of a reference period can be found on the Eurofound website which considers it as ‘a period of time, set by legislation or by agreement, over which weekly working time can be averaged. The aim of this is to provide a greater degree of flexibility in the organisation of working time, allowing employers to vary weekly working time, as long as average working time over the set reference period does not exceed the set limit. Reference periods are cited by the working time Directive (Directive 2003/88/EC) as a way of introducing more flexibility into the organisation of working time. Under the Directive, a reference period of not more than four months may be used to average out weekly working time of up to 48 hours a week, which can be extended to six months by derogation for certain types of worker, listed under Article 17.3 of the directive. Further, the Directive gives Member States the option of allowing, for objective or technical reasons, or reasons concerning the organisation of work, collective agreements or agreements concluded between the two sides of industry to set reference periods of up to 12 months’.

Member States have used this possibility of derogations in an extensive way and sometimes only for a limited period. They are now trying to extend the application of those ‘anti-crisis’ measures.

In Belgium, this issue is not settled yet as the country has some catching up to do after the institutional crisis which lasted until December 2011. On January 31, 2013, the social partners gathered within the Group of Ten - the cross-industry bargaining body – agreed on a joint answer to the government’s

request for proposals for modernising labour law. One of the agreement’s key measures is the introduction of annual working time. However, this agreement still needs to be approved by unions. If they cannot agree, it will be up to the government to decide, thereby circumventing social partners’ prerogatives. Currently, weekly working time (usually 38 hours) has to be respected over a one-semester reference period. That being said, the reference period is already annual in several sectors, e.g. non-ferrous metals, steel, mechanical and electrical construction, manufacturing, oil and fuel, furniture and wood processing, agricultural and horticultural technical construction, transportation, logistics, insurance, security and surveillance. The joint opinion of the Group of 10 plans to facilitate recourse to annual working time for full-time and part-time workers via a simpler procedure. From now on, after the conclusion of negotiations at sectoral or company level, working time regulations will automatically be adjusted.

In Poland, derogations to the reference periods were already in place before, and the aim is now to maintain these. Whereas under the Labour Code the reference period for calculating working time was set at three months, the 2009 Anti-Crisis Act extended it to 12 months. Employers proposed to make the 12 months the rule and repeal the three-month period laid down in the Labour Code. Discussions with the Tripartite Committee in February 27, 2013, came up with the proposal that the reference period for calculating working time be set at 12 months to help enterprises cope with seasonality, decreasing orders and temporary financial difficulties. On June 13, 2013, the Act on the Amendment to the Labour Code was adopted, with Article 129 of the Labour Code being amended to introduce the possibility to establish reference periods of up to 12 months. This is expected to lead to the reduction of costs related to overtime and on-call time. Under Article 150 of the Labour Code, in order to introduce an extended working time calculation period, employers have to conclude an agreement with company-level employee representatives and send a copy of the concluded agreement to the regional labour inspectorate. In case there are no trade union/employee representatives at the enterprise or they disagree with employer’s proposal, the employer may nonetheless introduce the extended working time calculation period provided the regional labour inspectorate is informed within 5 days.

Slovakia again stands out, having decided to restrict possibilities to resort to extended reference periods. As already mentioned before, as from 1 January, 2013, some of the important changes in force since September 2011 have now been retracted or abolished. An employer may now – either by collective agreement or after reaching agreement with employee representatives - distribute working time for individual weeks for a period longer than four months and at most for a period of 12 months, if the work involves activities requiring different patterns of work at different times of the year. The agreement may not be substituted by a decision of the employer (new wording of Article 87/2 of the Labour Code). Hence, if there are no employee representatives and thus no consent, the employer may not unilaterally introduce any uneven distribution of working time. Previously, under the changes introduced in 2011, an employer could, after agreement with the employee representatives
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or, in their absence, with the employee, distribute working time for individual weeks for a period longer than four months and at most for a period of 12 months when the work involved activities requiring different patterns of work at different times of the year.

**Austria** seems willing to upgrade working time flexibility, with the country’s Minister for Economic Affairs giving his support to making working time regulations more flexible in January 2013. The two major Austrian employer organisations have already called for an increase in the reference period for calculating overtime pay. In the same vein, Austria’s Federal Minister for the Economy, Family and Youth, Reinhold Mitterlehner, has sparked a debate on working time flexibility, demanding more flexible working hours and an extension of the reference period for averaging working time to two years. However, the Labour Minister strongly opposes these demands, as do the unions who want shorter working hours and better-paid overtime.38

Apart from this extension of reference periods enabling employers to request workers to accommodate their working schedules according to company needs, employers are also increasingly being given the possibility of changing the distribution of working time as they wish.

According to the new bill which entered into force on July 1, 2012 in **Hungary**, an employer may now change scheduled working hours due to unforeseen circumstances four days before the change, whereas under the existing framework it was seven days.

In **Lithuania**, a further proposal made by the government on June 12, 2012 despite trade union opposition is to allow employers to post work schedules 1 week before they come into force instead of 2 weeks currently.

In February 2012, the **Spanish** Government approved a labour reform which entered into force immediately as a Royal Decree Law. After being discussed and amended in the Parliament, the definitive version of the reform was approved as Law 3/2012, coming into force on July 8).

This reform provides for greater flexibility with respect to working hours, especially regarding the possibility for an employer to distribute working hours in quite a free manner. If no agreement is reached on the flexible allocation of working hours throughout the year, the employer is now entitled to allocate up to 10 (instead of 5) per cent of annual working hours on a flexible basis. With annual working hours at approximately 1690 in 201139, this means that a company can flexibly allocate 169 hours over the year.

Shift-workers are well aware of the adverse effects of working irregular hours. However, a variable allocation of working time can also have detrimental consequences on workers’ lives, as they have irregular working patterns and have to adapt between periods when they are asked to perform overtime and periods when there is not enough work.
Conclusion

In publishing its Working Paper on *The crisis and national labour law reforms: a mapping exercise* at the beginning of 2012, the ETUI started a monitoring exercise of which this thematic report on working time forms part.

Working time constitutes a sensitive issue, as best evidenced by the long-lasting process to revise the European Working Time Directive. The idea of revising the Directive was launched in 2008, though the social partners were not consulted until 2010. Following a difficult round of negotiations between the social partners culminating in a dead-end in December 2012, this issue remains unresolved.

When trying to tackle the subject of working time, other areas are directly involved: workers’ health, safety and well-being, and workers’ living conditions and incomes. However, this report reveals that unfortunately the impacts these reforms are having on workers are often swept aside in favour of greater competitiveness and productivity.

The previous ETUI Working Paper concluded that ‘after allowing further flexibilisation of working time it might prove difficult to turn the clock back in future, even though these measures are often intended to be only temporary’. The findings in this report confirm and even exacerbate this conclusion. Some of those temporary measures adopted as derogations to the applicable law are being extended or even permanently adopted, making it even more difficult to revert to more favourable working time legislation; derogations are becoming the norm. With these reforms originally introduced as a means to get out of the crisis, their extension or permanent adoption should be questioned, as most of available evidence shows that many of these reforms were not helpful and were unable to mitigate the crisis.

Hence, the paper also confirms the concept that most of the reforms adopted by EU Member States during the crisis leveraged the crisis as a – false – excuse to legitimate the introduction of legislation detrimental to workers.
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