Collective bargaining on working time
Recent European experiences

edited by
Maarten Keune and Béla Galgóczi
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European Trade Union Institute for Research, Education and Health and Safety (ETUI-REHS)
Since 1996, the ETUI has published a Yearbook on collective bargaining developments in Western Europe. In 2000 the title was changed to *Collective bargaining in Europe*, to embrace also the Eastern European countries. Again in order better to meet the needs of its readers, beginning with this issue the series focuses less on the overall collective bargaining developments in the European countries, but will rather concentrate on one topical subject in each issue, taking a comparative view throughout Europe.

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Brussels, 2006
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D-2006-10574-05
ISBN: 2-87452-014-4

The ETUI is financially supported by the European Commission.
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8 Collective bargaining on working time: recent European experiences
1. Collective bargaining and working time in Europe: an overview

Maarten Keune

1.1. Introduction

The regulation of working time has historically been a central concern for trade unions. From their very inception, they aimed to improve working time regulation, through political pressure to achieve legislative reforms, and through collective bargaining with employers and their organisations. The early objectives included a reduction of the length of the working day and week, the right to paid holidays, a reduction of night work and others. Working time has remained on the agenda ever since, although the specific issues at stake have changed. In the 1990s and early 2000s, much of the working time debate concerned labour’s goal of working time reduction, the interest of employers in various types of working time flexibility and the so-called work/life balance. In addition, some elements of the pension reform debate – in particular early retirement and the pension age – can be added to this list. Working time is also a thorny issue at the European level, as demonstrated by the ongoing controversies concerning the revision of the Working Time Directive.

In recent years the working time debate has changed. In a political and economic context unfavourable to trade unions, employers as well as a number of governments have been pushing for working time extensions without offering compensation. Working time statistics show indeed that the trend of previous years towards working time reduction has been reversed in a number of European countries. Trade unions are trying to defend the achievements of previous years but are more successful in some countries than in others. What is evident is that around Europe the working time issue has become a major source of disagreement and conflict.

This volume provides an overview of recent developments in the debate and disputes over working time in Europe, discussing both changes over time and differences between countries. The focus is on collective bargaining on working time issues, but also the broader political and economic context in which this bargaining is taking place, as well as relevant legislative changes will be discussed. Also, bargaining about working time provides valuable insights into the role played by collective bargaining at the national, sectoral and company levels, as well as the interaction between legislation and collective agreements, and recent changes in this respect. The remainder of this volume consists of 21 country reports covering most EU member states, as well as two candi-
date countries. These reports highlight the most important recent developments in collective bargaining in the individual countries. The present chapter summarises the main findings and trends in these 21 countries, and places them in a European context. First, we will briefly discuss the changing context of collective bargaining in Europe (section 1.2). Then we will discuss the main working time issues and the respective positions of unions, employers and governments (section 1.3). Section 1.4 discusses the state-led or bargaining-based character or changes in working time regulation, while section 1.5 analyses recent changes in working time regulations and practices. Section 1.6 discusses implications for collective agreements and collective bargaining processes.

1.2. Changing context for collective bargaining in Europe

In most of Europe, the context in which unions seek to achieve their goals through collective bargaining has developed unfavourably in the last few years. This is the combined effect of a number of factors, some related to the state of the economy and the labour market, and others related more to the political context in which bargaining takes place. The mix of these factors differs by country and affects unions and collective bargaining in distinct ways.

As far as the state of the economy is concerned, the context for collective bargaining in Europe has been one of low economic growth. In the period 2002–2005, the economy of the EU-25 grew by 1.5% per year. However, major diversity can be observed across Europe (Figure 1.1). Growth has been close to stagnation in Germany, Italy, the Netherlands and Portugal, but France, Denmark, Belgium and Austria have also performed poorly. There has been high growth above all in the European Union’s new member states (NMS) from Central and Eastern Europe, as well as in candidates Bulgaria and Romania. Of the EU-15, only Ireland and Greece have performed similarly to this group.

Figure 1.1: Accumulated GDP growth, 2002-2005 (%)

Source: Eurostat.

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As regards the labour market, unemployment in the EU-25 has remained high and has increased somewhat in recent years, from 8.7% in 2002 to 9% in 2004 (Figure 1.2). Again, major differences occur across the continent. High unemployment can be observed first of all in several of the new member states (the three Baltic countries, Poland and Slovakia) and candidate Bulgaria, but also in some of the largest EU members (Germany, France, Spain). Unemployment is lowest in Norway, Ireland, the Netherlands, the UK and Austria. No NMS belongs to the best performers on this indicator: the strong economic growth in the NMS has largely been jobless growth.

Figure 1.2: Unemployment in Europe 2002-2004 (%)

Note: Data refer to unemployed persons as a percentage of the labour force, age group 15–74.
Source: Eurostat.

Economic growth and unemployment are important variables conditioning collective bargaining processes and some countries, noticeably Germany but also France, are under pressure on both these variables. However, other factors, more related to Europe’s political economy and to the ‘social dimension’ of the EU and its members, are of importance here as well. Three major challenges confront this social dimension, including collective bargaining systems and practices (Waddington 2005: 519):

- globalisation, that is, the liberalisation of trade in goods and services, integration and expansion of capital markets, high levels of transnational company mergers, acquisitions and foreign investment, and consequent ‘regime shopping’ by employers;

- continued demands for deregulation and privatisation from neo-liberal politicians and economists, as well as growing numbers of employers;
strengthening calls from employers for decentralisation of industrial relations and collective bargaining.

One way or another, these factors have weakened the bargaining position of trade unions or strengthened that of the employers. This is further exacerbated by the slow but generalised decline in trade union membership in Europe (Ebbinghaus 2004; European Commission 2004a). This decline is especially strong in the new member states: whereas union density in the EU declined from 32.6% to 26.4% between 1995 and 2001, in the EU-15 union density decreased from 31.0% to 27.3% and in the EU-10 from 42.7% to 20.4% (European Commission 2004a: 18).

Finally, the recent enlargement of the EU in May 2004 has played an important role. It is often argued that this enlargement acts as a sort of intra-European intensifier of the globalisation effect and as an incentive for employers to relocate their productive activities from the EU-15 countries to the new member states, where wages are much lower; others question this argument for various reasons (for a discussion of this issue, see Galgóczi et al. 2005). Irrespective of the merits of the arguments, there is a heated public debate on relocation and its potential effects on employment, and employers increasingly use the threat of relocation to strengthen their demands for concessions in collective bargaining (Keune 2005).

1.3. Working time: issues and positions

The present debate on working time addresses three major issues: (i) the length of the working week (or year), (ii) various types of working time flexibility and non-standard employment contracts), and (iii) pension regulations concerning the length of working life (that is, the pension age) and early retirement regulations. This chapter will deal mainly with the first two and below will outline the controversies to which these two issues are subject. Because of space limits here pension reform will not be discussed. This is not to say that it is not an important issue; indeed, as shown by the country reports, in a number of countries – including Austria, Belgium, Denmark, Finland, Greece and Switzerland – the pension issue plays a key role in bargaining on working time.

1.3.1. Length of the working week

The length of the working week is presently at the heart of the working time controversy. In recent decades, in many of the EU-15 countries working time reduction, a historical trade union demand, re-entered the trade union agenda, starting in the 1980s. Many of the EU-15 unions have had a 35-hour working week as one of their key demands. On several occasions unions have been joined in their cause
by leftist governments or political parties. In the NMS, working time reduction has been on the union agenda for a somewhat shorter period, appearing only during the 1990s. Also, working time reductions have been less central to the unions’ demands in the NMS than in the EU-15. One reason for this is low wages: many workers are actually interested in working longer if this leads to higher income.\(^1\)

Still, despite the fact that very few workers in the Czech Republic would prefer more leisure time to higher wages, ČMKOS, the largest trade union confederation in the Czech Republic, asked unions representing private sector workers to put forward demands for a reduction of weekly working hours to 37.5 without a reduction in wages (Fassman and Čornejová, in this volume).

The trade union arguments for working time reductions are threefold:

1. Working time is considered to be a health and safety issue, and long working hours are considered to have negative implications for workers’ health and well-being.

2. Especially since unemployment rose precipitously in the 1980s–1990s, trade unions see working time reduction as a means of job creation. A reduction in working time, it is argued, will lead to further hiring by way of compensation. Only in countries like Norway, where unemployment has remained low, working time reduction has not been on the agenda as an employment-creation strategy (Lismoen, in this volume).

3. A reduction in working time is argued to improve workers’ control over their lives and to give them more opportunities to engage in non-work activities, which enhance the quality of life. In recent years this has been one of the issues discussed under the heading of the work/life balance.

Most employers have never been enthusiastic about working time reduction. At the same time, many employers until recently were willing to exchange working time reductions for concessions in their own interest, in particular increased working time flexibility. In the last couple of years there has been a change in this attitude. Within the context outlined above, in most European countries employers are increasingly rejecting working time reductions and demanding working time extensions without offering (full) compensation, which amounts to an effective decrease in hourly wages (see the country reports in this volume; also Visser 2005). And this is not only the case in countries with shorter working weeks but also, for example, in Switzerland, which already has among the longest working weeks in Europe (Ackermann, in this volume). They argue that such extensions

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\(^1\) Survey data suggest this may be the case for 50% of employees in the Central European NMS, compared to only 14% in the Scandinavian countries, 25% in Germany and 28% in the UK (CPB/SCP 2005, Appendix table B2.1).
are imperative in the face of the increased global and European competition and threaten relocation if no concessions are made.

Where governments are concerned, the situation is extremely variegated. Left-of-centre governments have been more in line with union objectives than right-of-centre ones. For example, the Socialist-Green government that won the elections in France in 1997 pushed strongly for a 35-hour working week, but when the Right came to power in 2002 it made several legislative changes to limit the impact of the legislation adopted by the previous government and to ‘pave the way for a possible return to the 40-hour system’ (Dufour, in this volume).

However, no clear relation can be assumed between the ‘colour’ of the government and its working time policy. Some left-of-centre governments are ambivalent on the issue or simply reject working time reduction for the sake of competitiveness. For example, in Italy, in 1997 the left-of-centre Prodi government, under pressure from one of its more radical coalition members, tabled draft legislation to reduce statutory working time to 35 hours; however, the same government majority failed to approve this draft because of internal differences on the issue (D’Aloia et al., in this volume). The Labour government in the UK favours opt-outs from the EU Working Time Directive, and in this way continues to keep open the possibility of long working hours (above 48 hours), following business rather than trade union arguments (Exell, in this volume). Also in Hungary, the Socialist coalition government joins the employers in emphasising that working time should not be reduced at present because the global competitiveness of the Hungarian economy must be strengthened (Borbély, in this volume). Conversely, in Poland the centre-right Akcja Wyborcza Solidarność government pushed working time reductions in the early 2000s (Stelina, in this volume).

1.3.2. Working time flexibility

The controversies on the length of the working week are intrinsically linked to the question of working time flexibility and, as indicated above, for some time exchanging working time reductions for increased working time flexibility was the trend in a number of European countries. The question of working time flexibility is more diverse and complex, spanning issues like the flexible scheduling of working time according to the changing needs of the enterprise or organisation; the use of time banks; permitted hours of overtime and overtime compensation; various types of leave; weekend work; and the use of non-standard employment contracts.

Increased working time flexibility has long been called for by employers as part of their demand for more labour market flexibility. They demand broader possibilities to flexibly schedule working time within ever-increasing reference periods, higher limits on the number of hours of overtime they can require of their emplo-
ees without compensation, the abolition of restrictions on weekend work, the possibility to sequence temporary contracts, and so on. In addition, in countries where national and sectoral collective bargaining is important in the regulation of working conditions, employers are increasingly calling for the decentralisation of bargaining to company level or for the possibility of opening or opt-out clauses from higher-level agreements, to allow for company-specific working time policies and solutions. They have received ample support in their cause from neo-liberal economists and politicians, as well as from international organisations like the OECD and the World Bank. In their view, increased working time flexibility would increase the employer's control over labour and allow employers to modernise work organisation and to utilise labour when most convenient. Again, this is claimed to be imperative to strengthen productivity and competitiveness, while it is expected to improve growth and employment creation. Also, the European Commission stresses the need for increased working time flexibility to strengthen enterprise adaptability, although it also calls for worker-friendly types of flexibility to improve the work/life balance (for example, parental leave) or to allow particular groups (for example, older workers) to participate in the labour market (European Commission 2005). Also, the Commission is calling for increased flexibility to be accompanied by increased security for workers, even if it remains rather vague on what such security should entail (European Commission 2004b, 2003).

While trade unions largely reject working time extensions, for a variety of reasons they do not simply reject or oppose working time flexibility. One reason is that many unions accept that, within limits, companies do require a certain flexibility to deal with ups and downs in demand and to strengthen competitiveness. This argument has gained such weight across the board that it is hard to resist. Also, many unions consider that there are not only 'negative', employer-oriented types of flexibility – where control over working time is handed over to the employer – but also 'positive', employee-oriented types of flexibility, which increase workers' control over working time. It is argued that in today's economy, in contrast to the Fordist, male-breadwinner model of some decades ago, workers have much more heterogeneous working time needs and preferences, and 'positive' types of working time flexibility may allow them to better combine work and non-work activities, and facilitate female labour market participation or the participation of older workers (cf. the contributions in Messenger 2004).

Responding to such heterogeneity would be important not only to improve the work/life balance of workers and the employment chances of certain groups, but also to strengthen the link between workers' needs and preferences on the one hand and trade union policies on the other. This is an important area in which, in a period of declining trade union membership, trade unions can show their value to their (potential) members. Hence, unions are often willing not only to discuss
the exchange of increased ‘negative’ flexibility for working time reduction, but also for ‘positive’ types of flexibility, arguing that flexibility can be to the benefit of both employers and workers. For example, in Austria,

the trade unions’ current bargaining policy is to agree upon more working time flexibility only in exchange for more innovative working time models which take into account the employee’s entire working life, thus including provisions on time off for retraining, childcare and nursing commitments, sabbatical leave or partial pension schemes (Pernicka and Adam, in this volume).

Still, there is no unified trade union point of view on working time flexibility as illustrated by the situation in Portugal, where the two major unions differ on the issue. The CGTP-IN sees flexibility primarily as a negative factor in working life and, in explicit opposition to it, aims to reduce working time (35 hours, more holidays) and to increase workers’ control over working time organisation; the UGT, in contrast, aims for more effective reconciliation between work and private life by striving for ‘collective agreements and legislation that allow a more adequate organisation of working time and new forms of work organisation’, and sees gender equality as an area in which flexibility offers an opportunity for positive changes (Naumann, in this volume). In Greece, the trade union position towards measures to increase flexibility on the labour market is unequivocally hostile (Christofi, in this volume).

Furthermore, governments have in recent years generally favoured increased working time flexibility, following the employers’ and unions’ lines on this, the specific weight given to the issue depending on the particular country and moment. In the NMS, government positions have been influenced by the requirements of EU accession and the discourse of the European Employment Strategy, which they shadowed for several years before becoming members (Keune 2003). The EES also promotes both employer-oriented and employee-oriented types of flexibility, among other things with the objective of increasing female labour market participation (McCann 2004).

1.4. Changing working time regulations: state-led or bargaining-based?

Working time regulations have changed substantially in recent years. These changes concern both the regulatory environment within which collective bargaining takes place and the provisions in collective agreements. The weight of collective bargaining and of the social partners in producing these changes differs strongly across countries, however, with innovations in some being more state-led and in others more bargaining-based or negotiated. This is first of all a reflection of the differences between national industrial relations systems and their respec-
tive working time regimes (Anxo and O’Reilly 2002). In most countries where coverage of collective bargaining is low and national-level social dialogue is in general weak, innovation in working time regulations has largely come from state-led legislative changes, which modify the regulatory context for largely individual employment contracts. This has been the case in most of the NMS and the UK. In the latter, for example, ‘the net impact of bargaining has been modest. … Trade unions are concluding good deals but they only affect a minority of the workforce’ (Exell, in this volume). In the NMS, two other factors further strengthen the state-led and legislative character of change. One was the focus on the adaptation of legislation to the EU acquis communautaire in the years before accession. The other is the fact that collective bargaining in the NMS is often more exclusively focused on wages, while the organization of working time is more often considered a management prerogative, as long as it stays within the terms of the law. Collective agreements often simply repeat labour legislation on working time issues.

This is not to say that unions and employers’ organisations play no role at all in these countries and that reforms have not had negotiated elements. Unions and employers play a part through the limited collective bargaining that does go on, as in the UK, as well as, in a number of cases, through national-level agreements, even if these are not part of a strong social dialogue system. For example, the so-called ‘Euro-amendment’ of the Labour Code effective as of January 2001 in the Czech Republic, which had a major impact on working time regulations, was based on a broad societal dialogue which included the social partners (Fassman and Čornejová, in this volume). In Poland, it was due to an agreement reached between the OPZZ trade union and the employers’ organisations in spring 2002 that a bill amending working time provisions in the Labour Code was presented to the Parliament (Stelina, in this volume). In this agreement, in exchange for trade union concessions allowing an increase in working time flexibility, the employers undertook to limit ‘pseudo self-employment’ and to maintain regular employment relationships. Finally, in Slovenia, trade unions and employers have been participating in a meaningful social dialogue, giving them a say in the modification of labour legislation, even though at present social dialogue is under attack.

However, also in some of the countries where collective bargaining coverage is extensive, its role in regulating working time has been limited because unions and employers could not manage to agree on changes in working time regulations through autonomous agreements. As a result, the state stepped in. This has been the case in Greece and Portugal. In Greece, ‘given the divergent views on the working time question held by employers and trade unions and the absence of any agreement on this matter, recent developments in this area have been the result, largely, of government initiative’ (Christofi, in this volume), while in Portugal, ‘since as early as the 1990s, the inability of the social partners to reach
compromises on the revision of collective agreements transferred the responsibility for change to the government’ (Naumann, in this volume).

In other countries, the role of the state and of bargaining has been more balanced. The main example here is the move towards the 35-hour week in France. In two rounds of legislative changes (the laws Aubry I and II in 1998 and 2000), the Socialist–Green government sought to institutionalise the 35-hour working week. However, it left it to the unions and employers to effectuate the respective working time reductions through collective agreements, allowing them to decide on the level of bargaining and the pay arrangements accompanying this reduction, as well as recognising many forms of working time flexibility which could be drawn upon in collective agreements (Dufour, in this volume). Also in Norway, in some areas, including working time flexibility, regulation takes place through an interplay between collective bargaining and legislation (Lisnoen, in this volume).

In Austria, Belgium, Denmark, Finland, Germany, Italy and Spain, collective bargaining has been more central to the regulation of working time. In Belgium and Finland such bargaining takes place mainly at the inter-sectoral level, together with the government, and is aimed to a large extent at legislative innovation. In the other countries, however, industry- and increasingly also company-level bargaining dominates. This does not mean that the parties to such bargaining agree. Indeed, increasing tensions between unions and employers are reported in almost all these countries, stemming first of all from the fact that employers are more and more calling for working time extensions, combined with increased flexibility (see the respective country reports; Visser 2005). In some cases, notably Italy, trade unions use collective agreements to limit the impact of legislative changes (D’Aloia et al., in this volume).

Switzerland is a special case in that the trade unions have tried on two occasions to modify working time legislation through a referendum (Ackermann, in this volume). The goal of these referenda, which took place in 1988 and 2002, was the introduction of a shorter working week. However, on both occasions the trade union proposals were rejected with clear majorities. From the side of the population and the workers working time has not been considered a priority issue in Switzerland, except for some sectors where working hours are well above the average. There, through collective bargaining, some small successes have been achieved, bringing working hours closer to those in the rest of the economy (Ackermann, in this volume).

Finally, the changing of working time regulations also has a European dimension. In particular the transposition of the Working Time Directive and the recent debate on modification of the Directive have played a role, in particular in countries with limited working time legislation (UK, Denmark) and in the NMS as part of the transposition of the *acquis communautaire*. 

Maarten Keune
1.5. Changing working time outcomes

1.5.1 Working hours

As far as working hours is concerned, in a longer term perspective a trend towards working time reduction can be observed; at the same time, in many cases this trend has come to an end or has been reversed in recent years. These developments are the result of both changing regulations and changing use of these regulations. The dominant trend, however, cannot simply be generalised across countries; major differences also occur across sectors (Marginson and Sisson 2004, chapter 10; Marginson et al. 2003). To illustrate these points, let us consider some examples.

In the mid-1980s, the German unions began their fight for a 35-hour working week, which was finally implemented five years later in the metalworking and printing industries. Since 1998, collectively agreed weekly working hours in the western part of Germany have remained stable at 37.4 hours, while in the eastern part they have been slowly declining, from 39.5 hours in 1995 to 38.9 in 2004 (Bispinck, in this volume). However, in recent years a number examples have pointed towards a reversal of the trend towards reduction. In 2003, IG Metall attempted to achieve a working time reduction in the metalworking industry in the eastern part of Germany from 38 to 35 hours, to match the agreement for the western part. This initiative, including the related strike, failed dramatically because of internal conflict within the union, combined with growing unity and resolve among employers (Thelen and Kume 2006). Also, the 2004 agreement for the metalworking and electrical industry included possibilities to extend working time for part of the employees. Moreover, starting in 2004, a number of company cases of concession bargaining, including Siemens and DaimlerChrysler, included an increase in working time. Finally, the effective setting of working time is increasingly being decentralised to company level, both through increasing availability and use of opening and opt-out clauses and through employers abandoning their organisations to rid themselves of the obligations of sectoral agreements and to have the option of negotiating working time extensions.

In France, the Aubry laws of 1998 and 2000 led to the negotiation of over 200 industry agreements and several tens of thousands of company agreements regulating working time reductions (Dufour, in this volume). Between 1999 and 2002, the average working week for full-time employees in companies employing 10 or more people dropped from 38 to 35.6 hours (ibid.). However, the right-wing government that took office after the 2002 elections then adopted a number of measures which paved the way for a possible return to the 40-hour week through, for example, increased possibilities for overtime.
In most of the NMS the statutory working week was reduced in the years 1999–2002 to 40 hours. However, in the last couple of years, further reduction of the statutory working week has gone off the agenda. In some countries, working time reduction was achieved in collective agreements. Most noticeably, in the Czech Republic, a shortening of weekly working time without reduction of wages was agreed in 94% of company collective agreements in 2004 and the agreed average weekly working time was 38 hours, while 76.5% of company collective agreements extended statutory annual leave by one week (Fassman and Čornejová, in this volume). At the same time, labour legislation permits employers to include compulsory overtime of up to 150 hours a year in wage settlements, which effectively provides an option to extend working time.

In Portugal, the Socialist Labour Ministry introduced changes to labour legislation, including working time reduction, in 1997; in 2003, after the victory of the centre-right coalition in the 2002 elections, modifications to the Labour Code reduced the existing limitations on working time extension (Naumann, in this volume).

However, some cases are not in line with this general trend. For example, in Italy, working time negotiated through collective bargaining has remained substantially unchanged since the mid-1990s (D’Aloia et al., in this volume). Also, in Austria and Finland, while employer pressure for working time extension is mounting, for the moment the unions are managing to resist. In the UK, the trade unions, through collective agreements, have managed to reduce the number of people working more than 48 hours per week from 3.9 million in 2001 to 3.6 million in 2004 (Exell, in this volume). In Spain, an overall reduction of average annual working time was agreed in collective agreements in the period 2001–2004 as a result of the fact that every year a working time reduction is agreed in over a quarter of all collective agreements (Otaegui Fernández and Gutiérrez Quintana, in this volume). In Switzerland, no changes to statutory working time have been made in recent decades. However, in some sectors collective agreements include working time reductions: in cleaning services in German-speaking Switzerland, as of 1 January 2005, weekly working hours were reduced from 44 to 42 hours per week; in the cleaning service sector in French-speaking Switzerland (also from 1 January 2005), working hours were reduced to 43 hours per week; in the ancillary building trade, Canton of Geneva, there was a reduction of one hour for certain trades; and in metalworking there was a reduction from 40.5 to 40 hours (Ackermann, in this volume).

However, effective working time depends not only on the prevailing regulations but also on the use of such regulations. Indeed, almost everywhere actual working time is above the norms stipulated in collective agreements or labour legislation as a result of company collective agreements or individual contracts that
undercut the standards of legislation or higher-level agreements; because of the use of overtime; or through other mechanisms. For example, in Germany,

even if it is true that in some individual cases the parties to the collective agreement have been able to prevent the untramelled use of opt-outs … it is nevertheless hard to avoid the growing impression that collectively agreed working time is becoming little more than a reference figure for calculating (collectively agreed) pay (Bispinck, in this volume).

This point becomes more obvious if we consider data on the actual average working week. Major differences in weekly working time prevail across Europe (Figure 1.3). Average weekly working hours for full-time employment in 2005 for the EU-25 amounted to 41.9 hours. Working time was below 41 hours in six countries (Lithuania, Denmark, Finland, the Netherlands, Ireland and France), while it was over 43 hours in three countries (the UK, Poland and Greece). In Greece, usual weekly working hours even exceed 44 hours, partly because of the very high percentage of self-employed (over 40% of the employed). Of the eight countries with working hours above the average, five are new member states. However, the other five new member states, as well as candidates Romania and Bulgaria, are clearly below the average. Hence, the popular perception that in the new member states long working hours are used as a competitive strategy is not entirely correct. Indeed, working hours in Germany, for example, are longer than those in five new members and the two candidates.

Figure 1.3: Average weekly working hours, full-time employment, 2005 (Q2)

Note: AT=2003.
Source: Eurostat.

If we then consider the changes in hours worked per week over time, we see that indeed there is a shift from working time reduction towards working time extension (Figure 1.4). In the period 1998–2002, in virtually all European countries,
working time was decreasing, and in six of them by more than 1 hour. The most noticeable reductions – that is, over 2 hours per week – were achieved in Lithuania, the Czech Republic and France (with its 35-hour working week policy). In only three countries was working time extended in this period, and these extensions were minor. However, between 2002 and 2005, working time was extended in 12 countries, while also the average for the EU-25 went up. These extensions are not related to the business cycle since economic growth was much more robust in the first than in the second period. Most noticeably, with the abandonment of the 35-hour policy, working time went up in France by 2 hours per week, undoing almost completely the working time reduction achieved in 1998–2002. In 13 out of 27 countries working time was still reduced, but in most cases these reductions were negligible and smaller than the reductions in the earlier period; only in one case did they exceed one hour per week. Hence, a clear trend from working time reduction towards working time extension can be observed.

Figure 1.4: Change in average hours worked per week, full-time employment, 1998-2002 and 2002-2005 (hours)

Notes:

Source: Eurostat.
1.5.2. Working time flexibility

Where outcomes concerning working time flexibility are concerned, in every country in Europe flexible working time arrangements are at the centre of the bargaining agenda and of legislative reforms. Working time flexibility concerns a number of different areas: the regulation of overtime, including the maximum amount of, reasons for and compensation for overtime; the flexible scheduling of working time within prolonged time frames; the maximum hours allowed per day and week and work in different types of shifts; the use of time banks or time accounts; weekend work; flexi-time arrangements; and the use of different types of flexible contracts (temporary, part-time, temp agency, on-call, zero-hours, and so on). In addition, in the countries where this is relevant, decentralisation of the regulation of working time issues, from the national or sectoral level to the company level, can be considered a means of flexibilisation.

There is little doubt that there has been a steady increase in employer-oriented types of working time flexibility, even though the precise configuration of flexibility measures differs across countries and sectors. Because of the large empirical diversity it is beyond the scope of this chapter to provide a detailed picture of the regulations. However, the country reports clearly show that over the past decade, in most cases, time frames for the scheduling of working time have been extended, the use of flexible contracts made easier, overtime limits extended, compensation for overtime limited, and so on. As an illustration, Figures 1.5 and 1.6 provide data on the incidence of temporary and part-time contracts. On average, both increased for the EU-25 in the period 2001–2005: temporary contracts from 10.9% to 12.0% and part-time contracts from 16.4% to 18.5%.

Figure 1.5: Percentage of employed with temporary contracts, 2001-2005

Source: Eurostat.
Indeed, according to many commentators, employer-oriented working time flexibility is very extensive. Possibly the most striking remark in this respect comes from the president of the Confederation of German Employers' Associations, Dieter Hundt. He is quoted as saying that ‘anyone who says that collective agreements are an obstacle to companies adapting working time precisely to meet their requirements is either being malicious or does not know anything about collective agreements’ (Handelsblatt 20.4.2000, quoted in Bispinck, in this volume).

In addition, in a number of cases, employer-oriented flexibility is further increased by the use of certain unregulated and sometimes quite extreme types of flexibility. This includes, for example, the use of ‘pseudo self-employment’ or ‘dependent self-employment’, where workers are formally self-employed but in practice dependent on one single employer and integrated into the work organisation of the employing organisation (Perulli 2003; Muehlberger 2002). This puts them out of the scope of the normal regulatory framework, including working time regulations, and strengthens the employer’s control over the time of the worker. Also, it may deprive workers of overtime payments. The same problems occur with work in the informal sector or other irregular types of work.

Where employee-oriented types of flexibility are concerned, the picture is less clear and indeed inconclusive. The issue is increasingly part of the working time discourse, in which improving the work/life balance is becoming more and more prominent. Measures discussed under this heading include working time accounts, certain types of leave related to family circumstances, home working, voluntary part-time employment, and flexi-time schedules allowing for flexible entry and exit hours. Such schemes, it is argued, strengthen workers’ control over their time and allow them to adjust work and non-work activities when needed. And where in previous decades employer-oriented working time flexibility was often

Figure 1.6: Percentage of employed with part-time contracts, 2001-2005

Source: Eurostat.
exchanged for working time reductions, today more often the professed goal is simultaneously to increase both employer- and employee-oriented flexibility.

In a number of the country reports an increase in employee-oriented types of flexibility, achieved through collective bargaining, is reported. For example, in the UK, a modest increase in the availability of work/life balance measures – as well as in their take-up – was recorded between 2001 and 2004 (Exell, in this volume). Also, as already mentioned, the use of part-time contracts has been on the increase. However, one should be careful to simply assume that the existence of such schemes indeed strengthens workers' control over their time. It is their practical application which in the end determines whether these schemes are indeed employee-oriented or not. This is illustrated by the example of Germany, where working time accounts have become a major instrument of flexibilisation. However, while such accounts are often presented as employee-oriented schemes, only 20% of workers can effectively decide when to deposit or withdraw time from their accounts (Bispinck, in this volume). Similarly, although part-time employment is on the increase, taking up part-time employment is not always a positive choice for the individual and a substantial proportion of it is involuntary (Buddelmeyer et al. 2004; Anxo and O'Reilly 2002).

1.6. Implications for collective agreements and collective bargaining processes

A number of implications for the characteristics of collective agreements and collective bargaining processes can be derived from the analysis of collective bargaining on working time. One is that collective agreements have become more complex, containing often quite extensive regulations on more and more working time issues. Another is that collective agreements have become instruments of flexibilisation, and that this concerns first of all employer-oriented flexibility. Developments concerning employee-oriented flexibility are much less conclusive. The extensive regulation of working time flexibility through collective agreements is a result of the unions’ aim of ensuring that flexibilisation is a regulated process, setting clear rules and limits, and a negotiated and controlled process in which workers and their representatives participate in the design and implementation of flexible schemes. Of course, this is more the case in countries where collective agreement coverage is high and where collective bargaining has had a primary role in regulating working time, although on a number of occasions labour legislation explicitly gives workers and their representatives a role in the flexibilisation of working time. Still, in countries with low collective agreement coverage the negotiated and controlled character of flexibilisation is clearly more limited.
As already discussed, collective bargaining on working time has also become more and more decentralised to the company level in the countries where previously national or sectoral agreements prevailed. This in itself is a type of flexibilisation of working time regulations, allowing more and more for company-specific solutions. To a large extent, recent processes of decentralisation can still be characterised as organised decentralisation, that is, the delegation of certain bargaining issues to regulation at the company level within a binding framework set by multi-employer settlements (Traxler 1995, 2003). The multi-employer agreements here determine the room for manoeuvre within which working time flexibility can be negotiated at the company level. In Germany, increasingly opening and opt-out clauses allow actors at company level to deviate from sectoral agreements and to arrive at company-specific agreements concerning working time and other issues (Seifert and Massa-Wirth 2005; Bispinck, in this volume; Haipeter and Lehndorff 2005). Similar processes can be observed in Denmark, Austria, Italy, Spain or Belgium (see the country reports in this volume; Visser 2005; Marginson et al. 2003).

However, the organised character of such decentralisation towards the company level is increasingly coming under pressure. For example, in Denmark in recent years central collective agreements have extended the reference periods for the flexible organisation of working time partially because of bottom-up pressures, that is, to reflect the reality of company-level ‘closet agreements’, informal company agreements in which employees and their representatives have agreed on increased working time flexibility (Jørgensen, in this volume). Also, organised decentralisation in Denmark seems to be going beyond the company level towards individualisation of working time regulations within the context of company-level framework agreements: ‘In the future, the local partners will still have to agree on a framework, but the actual organisation within this framework will be agreed directly with individual employees or groups of employees (Jørgensen, in this volume).’ Another issue is the increased use of opt-out and hardship clauses. Although these are allowed by sectoral agreements, they do weaken the power of the sectorally agreed frameworks by expressly undercutting them, even though this happens in specific and agreed circumstances (Marginson and Sisson 2004, chapter 7). Additionally, particularly in Germany, the possible defection of employers from multi-employer bargaining to avoid sectoral agreements remains on the agenda.

Finally, developments concerning working time demonstrate the more general point that trade unions have difficulties achieving their objectives through collective bargaining under the present economic and political circumstances. Collective bargaining was for a long time a means for trade unions to achieve working time reductions, possibly in exchange for increased flexibility. Recently, however, collective bargaining has increasingly been used to defend earlier achievements and,
sometimes, to negotiate concessions, including working time extensions. Indeed, the position of trade unions in collective bargaining on the length of the working week is becoming less offensive and more defensive. At the same time, as discussed above, there are a number of exceptions to this trends. Also, where working time flexibility is concerned, unions are trying to regain the initiative, pushing for new forms of flexibility that respond to workers’ demands and preferences. At the moment, there would seem to be more space for unions to achieve improvements on the issue of worker-oriented flexibility. As a result, a trade-off between employer- and worker-oriented flexibility might become the new deal between unions and employers. However, working time reduction remains an objective of unions around Europe and when the context for collective bargaining changes it is likely to regain some of the prominence it had in past decades.

References


2. Collective bargaining and working time in Austria

_Susanne Pernicka and Georg Adam_

2.1. Statutory regulations on working time

Before discussing collective bargaining on working time, we would first like to present a general outline of the regulatory framework on working time in Austria. As in other industrialised countries, legislators and social partners in Austria have laid down extensive regulations which impose restrictions on the parties to an individual contract of employment as regards working hours. The aim of such regulations is to protect employees against excessive demands from the employer which are injurious to their health. In this respect, law on working time can rightly be qualified as part of law on employee protection. Over recent decades, however, this aspect has been joined by other objectives: in particular, labour market-related factors and general economic considerations underlie the development of most of the country’s working time regulations (Traxler et al. 2000, p. 53f).

Rules on working hours are mainly laid down in the Working Time Act (Arbeitszeitgesetz, AZG) and the Act on Rest Periods (Arbeitsruhegesetz, ARG). Aside from these central provisions, there is a series of important rules on the matter laid down in the applicable collective agreements and works agreements. Such collectively agreed rules have gained in significance in recent years, since the legislator has increasingly begun to grant the parties to collective agreements and works agreements the right to derogate from the (mostly) rigid statutory restrictions. In this way, more scope for the parties to the individual contract of employment to arrange working hours has opened up. Thus, the purpose is to allow greater flexibility so that the specific circumstances in particular branches and establishments can be accommodated while still basically observing the core objectives of the legislation on working time.

These regulations, however, apply only to the private sector. Working conditions in the public sector (that is, all activities of Federal, regional (Land) and local government and also other corporations or institutions under public law), are governed by separate legislation and a number of decrees. It is a general characteristic of the public sector in Austria that almost all its employees are excluded from the right to conclude collective agreements. According to the law, the terms of employment for public sector employees are unilaterally determined by the responsible authorities. De facto, however, informal negotiations between the authorities and the relevant trade unions take place. The agreements resulting from these negotiations are then ratified by the authorities. However, the working
time regulations for the employees in the public sector laid down in federal and regional (Länder) law and decrees have generally proved rigid over recent decades, at least with respect to the average normal weekly working time which still is 40 hours (in comparison with about 38.5 hours in the private sector). This is because the employees in the public sector, in general, enjoy substantially better overall protection in terms of labour law in comparison with private sector employees, such that an exchange of shorter working time (the unions’ agenda) for more flexible working time schedules (as preferred by the employers) as occurred during the 1980s and 1990s in the private sector could not take place.

Some important legislative innovations have been made in recent years, however. In July 2003, the parliament passed an amendment to the Shop Opening Hours Act that liberalised Austria’s relatively restrictive opening hours regulations. Certain clauses even entitled the governors of the regions (Bundesländer) to overrule the Act’s general provisions, including the possibility of abolishing the general ban on Sunday and holiday opening (Adam 2003c). The enactment of the new Shop Opening Hours Act can be seen as a political success for Austria's Minister of Economic and Labour Affairs, Martin Bartenstein of the conservative People’s Party (ÖVP), who had repeatedly sought in vain to amend the, from his point of view, restrictive shop opening hours regulations for many years (Pernicka 2001b). The social partners and the ÖVP’s coalition partner, the populist Freedom Party (FPÖ), had strictly opposed any deregulation of existing shop opening time legislation until then. However, in spring 2003, both parties in the Austrian cabinet reached an agreement on the issue. Owing to the extension of shop opening hours, in 2004 the collective agreement covering employees in the retail sector was also adjusted to allow for more flexible working hours arrangements and higher bonus payments for evening work (Adam 2004d).

The details of the legislative modification are as follows: Since 1 August 2003, retailers have been entitled to open for 66 hours per week within an extended standard framework period, namely between 05.00 and 21.00 on weekdays and between 05.00 and 18.00 on Saturdays. Moreover, the amendment gives the governors of each of the nine regions the right to either restrict the new standard framework period for opening hours, or to extend the maximum shop opening hours from 66 to a maximum of 72 per week. This is done by way of decree, in response to local consumer and tourist requirements. Before enacting the decree, the relevant statutory representative bodies of employees and employers, namely the chambers, are to be consulted (Adam 2003c).

Another legislative innovation concerns the previous ban on women’s night work, dealt with by the Austrian parliament in 2002 (Adam 2002b). Until July 2001, there existed a general ban on women’s night work in Austria, although there were a number of exceptions and exemptions. Austria’s legal regulation on the issue was
declared permissible up to the end of 2001 under the terms of an EU derogation (Austria had joined in 1995). However, Austria had until the end of 2001 to reform its regulations on night-time employment in a gender-neutral manner (Pernicka 2001a). After the general ban was abolished in 2001, the Austrian parliament adopted new legislation on night work in July 2002. The new law, regulating night work in a gender-neutral manner, provides reduced protection for female employees in comparison with the former legislation and was therefore criticised by the trade unions.

The details of the new regulations are as follows: employees – regardless of gender – are considered to be night workers if they work at least three hours between 22.00 and 05.00 on at least 48 nights per year. In general, the average daily working time for night workers is limited to eight hours. In the event of working time extensions due to stand-by duties, the employer has to grant additional time off for rest. Furthermore, the new legislation provides a legal right to periodical medical check-ups free of charge for night working employees. Moreover, in case of a threat to the employee's health, or of indispensable obligations concerning children up to the age of 12 years, the night worker is entitled to move to a daytime job provided that this is feasible for the company. Thus, Austria's legal provisions on night work regulation now meet the requirements of Community Law in terms of gender neutrality on the one hand and workers' protection on the other. However, they do not provide better standards than laid down in the relevant EU law and provide reduced protection for female employees in comparison with the former legislation, a point criticised by employees' organisations. In this respect, the government has adopted in its legislation the position of the Austrian Chamber of the Economy (Wirtschaftskammer Österreichs, WKÖ) rather than that of the Austrian Trade Union Federation (Österreichischer Gewerkschaftsbund, ÖGB), since the former has always warned that tightening up the night work restrictions for both women and men would increase costs for business (Adam 2002b).

2.2. Collective bargaining on working time

The generally binding regulations as laid down in both the AZG and the ARG allow – within clearly defined upper and lower limits – for the social partners to agree upon rules that go beyond the substantial provisions of national law. It is an unusual feature of Austrian labour law that bargaining rights are granted almost exclusively to employees' and employers' organisations above company level. This means that neither company unions nor works councils are authorised to conclude collective agreements. The same holds true of individual employers who (with a few exceptions specified by law) are likewise excluded. Otherwise, Austria's system of collective bargaining since the 1950s has been characterised by an ongoing process of phased decentralisation (meaning that bargaining subsequently
shifted from the national, central level to the sectoral level). As a consequence (as indicated above), almost all collective agreements are negotiated at multi-employer sectoral level. Collective agreements at national, regional or enterprise level are very rare and do not play a major role with respect to working time issues.

The signatory parties to collective agreements may – within certain limits – agree upon more flexible working hours schemes compared with the basic rules laid down in the law. In principle, the law creates possibilities for the two sides of industry to collectively agree upon deviant regulations (exceeding the basic rules) concerning working time (including overtime), night work, work on Sundays, breaks and daily/weekly rest periods. For all these working time issues which fall within the scope of collective bargaining, national law sets substantial limits beyond which agreements may not go.

Due to the principle of ‘organised decentralisation’ which has shaped Austria’s bargaining system since the 1980s, the law also provides for the possibility of negotiating company-level agreements on working time issues. In order to adjust working time regulations to specific demands and circumstances not only in particular branches of industry but also at single-company level, the law has empowered the two sides of industry also at company level to derogate from the mostly rigid statutory basic rules. Such working time provisions laid down in works agreements are mostly based on sectoral collective agreements which contain delegation (‘opening’) clauses leaving detailed working time regulations to management and works councils at company level. Thereby, the management and the works council are entitled to conclude a works agreement which may rule on certain aspects of working time flexibility, such as averaging and flexitime schemes, some (pay-related) aspects of overtime and more flexible scheduled breaks schemes. Like collective agreements, also works agreements are bound to substantial legal restrictions beyond which there is no scope for bargaining.

The social partners have long agreed that there is a direct and causal nexus between labour flexibility and the employment situation. In line with this, particular clauses in collective agreements providing for flexibility on working time have always been negotiated in the context of employment-related collective bargaining. The aim here is to stimulate both demand for labour and company competitiveness. In this context, the main trade union goal in bargaining on working time has been a reduction of the working week. As the unions have argued, cuts in working time tend to increase demand for labour.

On the other hand, the employers’ organisations have always called for more flexibility of working time regulations. According to the employers, more working time flexibility tends to improve business performance through cost reduction, which may happen in two different ways: first, flexible working time, in particular
when it comes to working time schemes based on long reference periods, results in more efficient machine utilisation; second, it may reduce a company’s need for expensive overtime work.

This configuration of interests has favoured so-called ‘win-win strategies’, which meet the interests of all parties. The compromise originally reached by the two sides of industry is a certain type of sectoral collective agreement that combines provisions for both a reduction in working time (that is, a working week shorter than the statutory normal working time of 40 hours) and more flexible working time arrangements. Thus, from the mid-1980s onwards, a series of such collective agreements were concluded. This process was more or less completed by the early 1990s, when more than 50% of all employees were covered by agreements on shorter working time. In the remaining sectors without such agreements, the unions, in general, have proved too weak to enforce working time reductions. An amendment to the AZG (which creates an entitlement to long-term ‘bandwidth’ schemes relating to reference periods of up to one year) made in 1997 (Adam 2003b) has hardly paved the way for such agreements in the remaining sectors, whereas several already existing agreements on working time reduction have been amended and elaborated in response to the new AZG regulations.

Recently the working time compromise has come under pressure, however. Collective bargaining in autumn 2004 was overshadowed by an intense working time debate, as business demanded a further relaxation of the collectively agreed working time regulations for competitive reasons (Adam 2004a). According to these demands, new working time schemes should be implemented which would allow a more uneven distribution of working hours within longer reference periods. This business initiative was launched in the context of a long-standing debate on supposed competitive pressures from globalisation and, in particular, EU enlargement (Adam 2004b). Both the Chamber of the Economy (Wirtschaftskammer Österreich) and, more emphatically, the Federation of Austrian Industry (Industriellenvereinigung) have argued that only substantial improvements in terms of working time flexibilisation would provide almost equal competitive conditions for Austria’s businesses by international standards, in particular with respect to the new Member States (which are close to Austria geographically).

The employers’ proposals would have resulted in net working time extensions and net income losses due to cuts in overtime pay. This is because such arrangements would not only grant the employer the possibility to use its workers more flexibly, but also to save on overtime payments, since extra working hours exceeding the ‘normal’ working day or week would not count as overtime (and would thus not be compensated for by bonuses or additional time off). Therefore the unions firmly rejected these demands – and eventually won. The trade unions’ current
bargaining policy is to agree upon more flexibility as regards working time only in exchange for more innovative working time models which take into account the employee’s entire working life, thus including provisions on time off for retraining, childcare and nursing commitments, sabbatical leave or partial pension schemes. However, it must be noted that the employers’ attempt to extend working time reflects a significant change of the balance of power between the two sides of industry in recent years.

One of the most important issues in relation to working time regulation by collective agreement is the IT sector that has developed a special need for flexible working time arrangements that – according to law – could be met only on the basis of a collective agreement. When the first specific collective agreement for Austria’s IT sector was concluded in October 2000 the IT branch was still experiencing a period of economic growth and labour shortages. Hence, apart from realising extended working time and wage flexibility, the collective agreement was regarded by the negotiators as setting a pattern for collective agreements in other dynamic economic branches. However, in 2001 the average wage drift in the IT sector was almost 38% (GPA 2003) and in some areas of activity, the flexibility demands of both employers and employees seemed to go far beyond the system of collective bargaining. Self-employed work and new forms of employment – for example, free service contracts (freie Dienstverträge) – were utilised to provide for a maximum of working time and wage flexibility (Pernicka and Traxler 2003).

In general, the present IT collective agreement, which came into force in January 2004, lays down regulations on flexible working time, providing for flexi-time and including measures such as annualisation, daily flexibility and irregular distribution of working time over the year and beyond:

• The annualisation of working time is provided for by the ‘bandwidth model’ (Breitbandmodell), whereby an average weekly working time of 38.5 hours and a normal daily working time of nine hours must be maintained over a 12-month reference period. Within this bandwidth, working hours may be distributed flexibly and the maximum weekly working time may be extended up to 45 hours.

• Normal daily working time may be extended to 10 hours if weekly working time is regularly distributed over four consecutive days, flexi-time is applied or the ‘flexi-time account model’ (Gleitzeitkontomodell) is applied.

• ‘Flexi-time account model’: within a 12-month period, a surplus of four times the normal working week of 38.5 hours (154 hours) or a negative balance of up to 50% of the normal working week can be credited to a time account. The reference date for the 12-month period is the date of the employee’s joining the company. When the surplus exceeds 154 hours, the employee is entitled to demand payment of the excess hours or the employer may decide to pay them.
In either case, excess working time must be reimbursed with a payment premi-
um of 65%. Holders of ‘all-inclusive contracts’ – that is, receiving lump-sum
overtime payments – are also entitled to keep a time account, whereby the
agreed monthly overtime will be converted into normal working hours and
deducted from the time account.

- For shift-workers, normal weekly working time may be extended up to 50
  hours, whereby normal working time must not exceed 12 hours.

- Hours of overtime work must be reimbursed with a payment premium of 100%
  if the overtime takes place between 8 p.m. and 6 a.m. or on Sundays and pub-
  lic holidays. Otherwise, overtime is reimbursed with a 50% payment premium.

These working time arrangements are seen by both employers’ and employees’
representatives as reflecting the specific requirements and needs of the IT branch
in that they take account of the irregular distribution of working time.

Another novelty in recent years concerns the first collective agreements for one of
the most flexible groups in the labour market: in 2002, trade unions managed to
conclude the first-ever collective agreement for the group of about 30,000 tempo-
rary agency workers (Pernicka 2002).

### 2.3. Pensions

During 2003 and 2004, Austria’s industrial relations were shaped by the govern-
ment’s initiative to introduce a far-reaching pensions reform. The reform was
designed to reduce future expenditure on pension benefits, especially for
(younger) employees in the private sector. Aside from these cuts in public pen-
sions, the government planned the abolition of the early retirement scheme and
cutbacks in the invalidity pension scheme. Despite a series of major strike actions
organised by the Austrian Trade Union Federation (Österreichischer
Gewerkschaftsbund), the parliament endorsed a slightly modified pensions reform
in 2003 and a pensions harmonisation in 2004 with the votes of the conservative
People’s Party (Österreichische Volkspartei) and the populist Freedom Party
(Freiheitliche Partei Österreichs) only (Adam 2004c). Regarding working time over
the life cycle, this reform means that in the future all insured people will have to
work for a longer time, but will – in most cases – receive smaller pension bene-
fits.

The ÖVP–FPÖ government justified the introduction of such a far-reaching pen-
sions reform on the grounds of the considerable pressure on the state budget and
unfavourable demographic developments. Although dramatic demographic sce-
narios predicting a 1:1 ratio between active workers and retired people in the long
run were withdrawn by most experts, ‘neo-liberal’ thinking questioning the present
welfare state, along with an active marketing strategy by private insurance companies, has exerted a lasting influence on public opinion (Adam 2003a). As a consequence, the statutory pensions scheme was widely regarded as no longer being secure, which facilitated the introduction of the pensions reform by the government.

In 2003, the statutory part-time work scheme for older employees was amended (Traxler 2001, Adam 2004d). The aim of introducing this form of progressive retirement, which was introduced in 2000, was to keep older employees in the active labour force by offering them the opportunity to reduce their weekly working hours, while receiving some compensation for the lost pay and not damaging their social insurance entitlement (Adam 2004d). Moreover, the possibility of flexible distribution of older workers’ work over the period of part-time employment was linked to the employment of an additional worker by the employer, to cover the working time released by the worker participating in the scheme (Adam 2002a). However, since the number of employees who participated in the scheme rapidly grew and the costs of the measure exceeded all expectations, the government back-pedalled on the issue only three years after it had come into effect. While the Ministry of the Economy and Labour initially calculated that some 1,000 older employees would make use of the new opportunity to work part-time, in 2002 the number of scheme beneficiaries had reached a total of more than 23,000. Its costs had run to more than EUR 300 million during the year (ibid).

The details of the legislative amendment are as follows:

1. In accordance with the 2000 reform of the pensions system, the age from which employees are entitled to enter the part-time scheme was raised to 51.5 for women and 56.5 for men (instead of 50 and 55 respectively).

2. The possibility of flexible distribution of work over the period of part-time employment was abolished. This, in particular, aimed to rule out arrangements under which employees continued to work on a full-time basis for a certain period, such that they accumulated compensatory time off that enabled them to enter de facto retirement earlier.

3. According to an earlier version of the Act, employers had been obliged to employ additional workers to fill the working time freed up by those employees participating in the scheme. That obligation was abolished in July 2000. In 2003, it was reintroduced because the employment-creation effect of the scheme had proved very limited without this obligation.

4. Since 2003, employees have been entitled to participate in the scheme only if they work continuously on a full-time basis for at least six months. This restriction aimed to prevent employers from abusing the scheme by recruiting employees on a full-time basis for the sole purpose of channelling them quick-
ly into the part-time scheme in order to receive the subsidies for participation in it (Adam 2002a).

2.4. Flexible employment

In Austria, as in all other European countries, the majority of workers are still employed under a full-time, open-ended, so-called standard employment contract. According to the latest available data, 76% of the total labour force are engaged under a full-time open-ended contract. However, while 89% of the total male workforce work under a standard employment arrangement, only 59% of the female workforce do so (Statistik Austria 2005). At the same time, an increasing proportion of employment can no longer be characterised as standard. Overall, approximately 25% of the total workforce and 30% of all dependent employees are involved in so-called atypical employment relationships. The expansion of these forms of work is mainly due to changes in the demand for labour, such as prolonged opening hours in commerce or outsourcing strategies by management. Hence, part-time work has grown constantly in recent years and already accounted for 17.6% of the total number of employees in 2002 (see Annex). Since part-time work is more common in the service sector than in industry, it is primarily performed by women. The spread of temporary agency work has been rather limited so far, accounting for only 1.3% of all employees. The number of hours standard employment contract holders usually work has remained relatively constant over recent years in Austria. Their usual hours worked per week average 40, whereas part-time employees work 22 hours on average per week. For some years now, new forms of employment, such as free-service contracts and works contracts have played an increasing role in Austria. According to the Microcensus of Statistik Austria (2005), in 2004 2.2% of the total labour force was engaged under one of these contracts.
### Annex

#### Types of contract

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Men</td>
<td>Women</td>
<td>Total</td>
</tr>
<tr>
<td>% employed on full-time open-ended contract(^1)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>% employed on fixed-term contract(^2)</td>
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<td>7.0</td>
<td>9.3</td>
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<tr>
<td>% employed on part-time contract(^3)</td>
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<td>17.6</td>
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<td>% employed working through temp agency(^4)</td>
<td>1.6</td>
<td>-</td>
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<tr>
<td>% self-employed (excluding agricultural sector)(^5)</td>
<td>8.5</td>
<td>-</td>
<td>-</td>
<td>8.6</td>
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#### Working hours

<table>
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<tr>
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<th>2002</th>
<th>2003</th>
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</tr>
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<tbody>
<tr>
<td>Statutory maximum working week (hours)(^6)</td>
<td>40</td>
<td>40</td>
<td>40</td>
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</tr>
</tbody>
</table>

---

1. As share of the total labour force, i.e. 2004: 3.7 million persons. Source: Statistik Austria.
3. Source: Statistik Austria.
5. Ibid.
<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Men</td>
<td>Women</td>
<td>Total</td>
</tr>
<tr>
<td>Statutory maximum working day (hours)</td>
<td>8–10</td>
<td>8–10</td>
<td>8–10</td>
<td>8–10</td>
</tr>
<tr>
<td>Average collectively agreed normal weekly hours</td>
<td>38.5–39</td>
<td>38.5–39</td>
<td>38.5–39</td>
<td>38.5–39</td>
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<tr>
<td>IT sector</td>
<td>45</td>
<td>45</td>
<td>45</td>
<td>45</td>
</tr>
<tr>
<td>Usual hours worked per week, full-time employees</td>
<td>40.1</td>
<td>40.2</td>
<td>39.9</td>
<td>40.0</td>
</tr>
<tr>
<td>Statutory maximum hours of overtime per year</td>
<td>320</td>
<td>320</td>
<td>320</td>
<td>320</td>
</tr>
</tbody>
</table>

7 Source: Arbeitszeitgesetz. A more flexible arrangement of normal working hours is, however, possible as follows: In order to arrange a longer weekly or daily rest period, the parties to the individual contract of employment may agree on a regular reduction of normal working hours on particular days, with the shortfall being made up by distributing it over the other days of the week subject to observance of a maximum normal working day of nine hours. In order to absorb ‘bridging days’, i.e. working days intervening between two non-working days and likewise take them off work, the parties to the contract of employment may extend normal working hours to 10 hours on individual days within a seven-week reference period.

8 Source: Estimate on the basis of the most important collective agreements.

9 Source: Collective agreement for employees in the information technology sector.


12 Normal working hours may be exceeded through the use of overtime only by five hours a week (with an extra 60 hours for use within a given year), subject to upper limits of 50 and 10 hours for weekly and daily working hours respectively (Traxler et al. 2000, p. 55). The above figure results from multiplying 52 weeks by five (hours a week) and adding 60 (hours).
<table>
<thead>
<tr>
<th></th>
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<th>Women</th>
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<th>Women</th>
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<th>Men</th>
<th>Women</th>
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<th>Men</th>
<th>Women</th>
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<td>Agreed overtime IT sector(^{13})</td>
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<td>154</td>
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<td>154</td>
<td>154</td>
<td>154</td>
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<tr>
<td><strong>Annual leave</strong></td>
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<td></td>
<td></td>
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<td>Statutory minimum annual paid leave</td>
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<td>30</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>30</td>
</tr>
<tr>
<td>(days)(^{14})</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Average collectively agreed</td>
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<td>30</td>
<td>30</td>
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<tr>
<td>annual paid leave (days)</td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

\(^{13}\) Source: Collective agreement for employees in the information technology sector.

\(^{14}\) Source: Urlaubsgesetz. The 30 days statutory minimum annual paid leave include Saturdays, which are considered as working days in Austria.
Bibliography


3. Bargaining on working time in Belgium

*Sandra Rosvelds*

3.1. Introduction

In Belgium negotiations on working time are basically focused on two main areas: working time on a daily, weekly and annual basis, and working time over the whole career. In practical terms this involves discussions on:

(1) labour legislation on overtime;

(2) whether or not to promote time credit schemes;

(3) making schemes such as bridging pensions, “Canada Dry” and half-time and full-time time credit schemes less attractive for older workers, to encourage them to stay in work for longer.

This article will concentrate on the negotiations on overtime. The end-of-career debate is still ongoing and the outcome unclear. The debate about time credits is increasingly becoming a question of whether or not to limit the duration of entitlements and the number of those entitled. Many sectors have concluded agreements in recent years to extend time credits from the statutory minimum of 1 year to the maximum of 5 years allowed for any sectoral agreement. The scheme is currently under discussion.

3.2. Working time in a national and international context

Working time has been the subject of discussion in Belgium for some years now and was still on the agenda in the most recent bargaining rounds (multi-sectoral and sectoral). The thrust of the discussions has changed completely, however. During the 1998-2001 economic boom the talk was mainly of reducing working hours, and this was put into practice in various ways. The working week was reduced across the board to 38 hours (from 1 January 2003), and various sectoral agreements reduced it still further to 36 hours a week.

Since then the subject of a collective reduction in working hours has disappeared from the social agenda altogether and has been replaced by the employers' demand for greater flexibility and more overtime, preferably without involving the unions as they are now. According to the employers' organisations the volume of overtime allowed is too small, the procedures permitting departures from the limits on working time are too protective, and the cost of the flexibility allowed is too high, while the rewards are not sufficiently attractive for the workers. They conveniently forget to mention the wide range of collectively agreed working time
arrangements which already allow work to be organised very flexibly (various shift systems, night work, bridging shifts for weekends and holidays, temporary unemployment and the existing legislation on overtime).

In any event, attack has apparently been the best form of defence, since the multisectoral agreement negotiated by the social partners in December 2004 contains a specific chapter on overtime. Even though the agreement itself was, in the end, not approved by the social partners, the points on which agreement was reached have been adopted by the government and have been put into practice anyway.

3.3. Collective bargaining on working time

First and foremost we should point out that working time is never negotiated in isolation in Belgium. Working time was one of the many areas discussed in the multisectoral negotiations, the outcome of which was thus a trade-off between the overall package of demands of the employers and that of the workers.

Months before the negotiations officially started the trade unions were bombarded with all sorts of “extreme” demands from the employers (working longer hours for the same pay, reintroducing the 40-hour week, 175 hours of overtime per year, scrapping the bridging pension). This was universally regarded as downright provocation, and also had an immediate and serious impact on the discussions, which were difficult to get moving precisely because of the employers’ tough stance. The unions’ position in all this was crystal clear: we would not accept any step backwards on employment issues. It was therefore out of the question to negotiate scrapping acquired rights such as automatic indexation and time credit systems. More overtime might be discussed provided that the employers dropped their demand to reduce the trade unions’ involvement in company-level negotiations on overtime. Up to now the employers have been required to reach agreement with the unions, including at company level, on specific issues to do with working overtime, so that the unions can then check whether the conditions justifying an extension of overtime are actually met. They are also involved in negotiating the form that compensation should take: either payment for the overtime, or time off in lieu. Finally, they also determine the period within which the time off must be taken, in order to avoid annualising the overtime. This negotiated flexibility is now clearly a thorn in the employers’ side.

3.4. Outcome of the negotiations

The final agreement on overtime has two elements:

1. It is proposed to amend the 1971 Labour Act so that for the first 65 hours of annual overtime, worked because of an exceptional increase in the volume of
work or because of unforeseen circumstances, workers can choose whether to take time off in lieu or to be paid. It is also intended to make it a statutory requirement for workers to be able to choose between time off or payment for the following 65 hours' overtime as well.

2. However, a new feature is that a strict procedure must be followed for increasing the annual overtime to 130 hours in this way. The procedure has yet to be laid down by collective agreement, but it is designed to ensure that sectoral negotiators decide at which level (sector or company) discussions on overtime should be held.

At the same time the federal government has taken steps to make overtime more attractive for both employers and workers, with less tax now payable on the first 65 hours of overtime, for instance. The ‘benefit’ of this is shared equally between employers (overtime is cheaper) and workers (overtime is better paid). A budget of EUR 85 million has been earmarked for this.

The unions thus went along with the employers’ demands for more overtime up to a certain point, but insisted that agreements on this must be reached in consultation with the unions at either sectoral or company level. It is up to the sectors to decide which of these two levels applies.

Many sectors have not waited for the multi-sectoral collective agreement and have already concluded agreements on overtime.

- In the non-ferrous metal industry payment for overtime is linked to an information procedure at company level. If no agreement is reached, only time off in lieu can be taken for the second 65 hours of overtime. For employees in this sector it has been agreed to leave it entirely up to them to choose whether or not their overtime is paid.

- In the upholstery and woodworking sector the first 65 hours of overtime are either paid at 120% of the hourly wage or taken as time off in lieu, but at 100%. From the 66th hour of overtime time off in lieu is the only option.

- In the bodywork and precious metals sector the number of hours of overtime is limited to 65 and cannot be increased to 130.

- In the metals industry the number of hours of overtime can be increased to 130, but this happens at company level and is linked to a requirement to provide information.

Only time will tell what impact these measures really have on the labour market. It will take a number of years before we see whether the amount of overtime worked under these arrangements has increased or not. The collective agreements may also regularise existing practices, certainly in the construction industry.
4. Collective bargaining and working time: Bulgaria

Lyuben Tomev, Nadezhda Daskalova and Tatiana Michailova

4.1. Introduction: socio-economic background

The macroeconomic stability achieved in recent years was maintained in 2004. GDP growth continued and is reported to have reached its 1989 level of 5.6%. GDP per capita is EUR 2,497.5, still the lowest of all new member states and candidate countries.

Inflation in 2004 was higher than in previous years, at 6%. Currency (EUR 6.5 billion) and fiscal (EUR 2.4 billion) reserves remained stable. National debt as a proportion of GDP (about 40%) continued to improve and can be deemed favourable according to the Maastricht criteria. Direct foreign investments in 2004 exceeded EUR 2 billion, a record for the transition period.

As in previous years, the most problematic economic indicators were the current account deficit, which exceeded 6% of GDP, and the foreign trade deficit, which was close to EUR 3.5 billion.

Macroeconomic stability did not lead to higher living standards, however, and Bulgaria still ranks last among the new EU member and candidate countries as far as wages are concerned: the average wage in December 2004 was about EUR 160 a month, with nominal growth of 7.4% on December 2003, while net real wage growth (excluding taxes and social security contributions) was barely 2%. The average real wage is still about 40% of its 1989 level. Growth of the minimum wage is 4.9%. The army of ‘working poor’ continues to grow.

In the area of social partnership the tendency to narrow the range of problems discussed and for the government to act unilaterally without consulting the social partners has also been maintained.

The recognition of another trade union and two employer organisations as representative at the end of 2004 in circumstances of a lack of transparency and an absence of convincing arguments has led to divisions in the national tripartite bodies.

Sectoral dialogue continues to be problematic, largely due to the insufficiently clarified and underdeveloped structure and the employers’ attitude: they continue to insist on Labour Code amendments that would seriously undermine workers’ rights.
4.2. Working time developments

Under the Labour Code:

- The working week is five days and normal working time is 40 hours.
- Normal daily working time is 8 hours.

In 2004 the Labour Code was amended as far as working time, rest periods and leave are concerned for the purpose of harmonising Bulgarian legislation with the EU working time directives D/93/104/EC and D/2000/34/EC in the following areas:

- For those engaging in supplementary employment, total working time of both main and additional employment cannot exceed 48 hours (for those under 18, 40 hours).
- The length of an extended working day cannot exceed 10 hours and for employees on reduced hours, 1 hour beyond their reduced working time.
- In the case of shift work, the maximum length of a work shift in an aggregate working time calculation is 12 hours and the length of the working week 56 hours – for employees on reduced hours, 1 hour beyond their reduced working time.
- In the case of aggregate working time uninterrupted weekly rest time cannot be less than 36 hours.

A number of surveys (including ILO surveys) testify to the fact that the Bulgarian labour market is characterised by relatively high labour law flexibility and very limited job security. This limited security manifests itself, among other things, in low wages, delayed or unpaid wages for months or even years, and low social benefits. Any further liberalisation of labour legislation, as the employers are demanding, would be unacceptable in the absence of adequate social protection. Moreover, the limited social security is an impediment to greater flexibility in respect of working time, part-time or temporary employment, and reconciling work and family obligations: as a rule, these forms of employment are not attractive in Bulgaria because of the low pay and low living standards.

Bulgaria lags significantly behind in respect of European practice regarding working time flexibility. Data from the NSI Labour Force Survey show that employment is largely still governed by permanent, full-time, open-ended contracts. Despite the growth in the number of part-time workers this form of employment is still unpopular, with the exception of the grey economy for which no reliable data are available. Analysis of collective agreements shows that working time flexibility is still not subject to negotiations between the social partners.
The Labour Code outlines different possibilities for concluding both permanent and temporary contracts under specific conditions. Employers do not like the fact that fixed-term contracts for jobs that are not seasonal, temporary or short-lived can be concluded only exceptionally, thus putting a constraint to their practices of employing workers on a continuous chain of fixed-term contracts that enable employers to dismiss them quickly, easily, cheaply and whenever convenient, thus keeping them in a kind of serfdom. This has nothing to do with flexibility. What is more, employers may appeal to 23 grounds on which to initiate termination of employment.

The Labour Code provides opportunities for part-time employment, longer working time without payment in case of production need, with compensatory time off later on, overtime of up to 150 hours, an unregulated working day and aggregate calculation of working time. The latter enables better work organisation and flexibility but it is still not being used, despite the insistence of the trade unions. Thus the employer can order 120 hours of prolonged working time plus 150 hours of overtime plus (in certain cases extended by 100 hours) or a total of 370 hours of overtime a year, subject to compensation in the form of time off, leave or payment. According to our calculations, that means 46.25 working days (based on an 8-hour working day), or 2.2 months of overtime.

While expressing their firm support for the introduction of flexible employment, including flexible working time, the trade unions are demanding that certain conditions be met:

- Flexibility, but combined with adherence to the law and regulations, and not defined solely in terms of the employer’s ‘right’ to unilaterally impose flexible rules of his own design.

- Negotiated flexibility. Labour law liberalisation and labour market deregulation should be accompanied by a strengthening of the role of social dialogue and collective bargaining in accordance with the experience of EU countries. That will also make it possible to protect both business interests in flexibility and competitiveness and worker interests in security and in overcoming to some degree differentiation in employment terms, loss of social security and social fragmentation.

- Flexibility which respects workers’ rights and provides the conditions necessary to overcome social exclusion.

4.3. Collective bargaining on working time

At national level the trade unions, the employers and the government have agreed a number of labour law amendments related to working time. With the amend-
ments of the Labour Code in 2001 and 2004 sufficient legal grounds were created to allow employers to introduce longer working time or part-time work. The possibility of resorting to aggregate calculation of working time through the reduction or increase of the working day, though limited to a four-month period, provides employers with a supplementary organisational resource and enables them to apply flexible working time regimes.

During discussions on the Labour Code amendments the trade unions accepted the employer organisations’ demand for more working time flexibility. They understood that in the current insecure and dynamic business environment employers should be able to determine working time in line with the needs of production.

In 2003 the Confederation of Independent Trade Unions of Bulgaria (CITUB) raised the issue of gradual reduction of the working week from 40 to 35 hours without loss of wages through the provision of tax and social security incentives to employers. This would have several positive effects:

- a higher hourly rate of pay;
- less overtime;
- new job creation;
- more opportunities to use flexible forms of employment.

The employers’ organisations opposed this demand, calling it untimely and irrational and likely to reduce enterprise competitiveness. The government concurred.

Currently, some employer organisations – for example, the Union of Employers in Bulgaria – continue to insist on liberalisation of the Labour Code in the area of overtime and on more freedom in the conclusion of fixed-term employment contracts.

The trade union position regarding overtime is unwavering. If more flexible terms of overtime are introduced, they should be compensated by higher pay and recognised in the calculation of length of service. Moreover, hourly rates of pay should be laid down by law.

Length of working time, its organisation, the beginning and end of the working day, shifts and rest time are regulated at enterprise level in internal company regulations which, according to the Labour Code, should be developed with the participation of the trade unions, which would make it possible to incorporate the provisions negotiated in collective agreements.

Working time, rest periods and leave are treated in a separate section of collective agreements at all levels. The general conditions governing the introduction of longer hours and part-time work in compliance with the Labour Code are negotiated at sectoral level, as is the length of additional paid annual leave, and they are
applicable to all lower levels of bargaining. In accordance with current collective bargaining practice, more favourable terms can be negotiated at lower levels than those provided in sectoral collective agreements.

4.4. Results of collective bargaining

Analysis of the 70 sectoral collective agreements currently in force shows that most do not contain specific parameters related to the increase or reduction of working time and overtime or the introduction of flexible work regimes. In most cases, the agreed parameters are within the framework prescribed by the law. Bargaining in this area is decentralised at enterprise level and collective agreements at that level may contain additional provisions related to the introduction of flexible working time.

Concrete results of negotiations at sectoral level:

• Commitment to sign agreements with the trade unions in enterprises, or to seek the consent of the trade unions in the case of part-time work (branch collective agreements in the food industry, paper production and light industry).

• Obligation on the part of the employer to provide the unions with information on overtime – according to the Labour Code, this information is to be submitted to the respective government control bodies (all sectoral collective agreements – the collective agreement in the defence industry also requires the unions' agreement in writing for overtime above the level laid down by law).

• Union monitoring of overtime and reporting (branch collective agreement in the garment and knitwear industry).

• Reduction of overtime to 120 hours (150 hours is the maximum allowed by the Labour Code) (sectoral collective agreement in the energy sector).

• Paid annual leave above that provided in the Labour Code (at least 20 days) (most sectoral collective agreements, except for metal workers, miners and commercial workers). This can be considered a very substantial achievement on the part of the trade unions. (Tables 4.1 and 4.2)

• Additional paid leave for work under flexible working time arrangements (at least 5 days, according to the Labour Code) – provisions are in place in almost all sectoral and branch collective agreements (except for the metal industry and trade); for example, in transport 7 days, in secondary education and construction 6 days.

• Additional paid leave for nursing mothers – 5 extra days in the brewing collective agreement (Labour Code provides for 2 days); 2 extra days for single parents (in secondary education), 1 extra day a month for parents with children younger than 10 years (in construction).
• For disabled persons who have lost over 50% of their working capacity: the collective agreement in the energy sector includes 10 extra days; forestry and wood processing 8 extra days; the paper industry 8 extra days.

• Additional leave for trade union activities. (Table 4.3)

Table 4.1: Agreements reached on additional annual paid leave in some sectoral collective agreements (the Labour Code provides for a minimum of 20 days)

<table>
<thead>
<tr>
<th>Sector</th>
<th>Agreement reached (additional working days)</th>
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<tbody>
<tr>
<td>Education</td>
<td>8 days</td>
</tr>
<tr>
<td>Energy</td>
<td>Length of service/additional leave:</td>
</tr>
<tr>
<td></td>
<td>5 to 10 years – 1 day</td>
</tr>
<tr>
<td></td>
<td>11 to 15 years – 2 days</td>
</tr>
<tr>
<td></td>
<td>16 to 20 years – 3 days</td>
</tr>
<tr>
<td></td>
<td>&gt; 20 years – 4 days</td>
</tr>
<tr>
<td>Health care</td>
<td>Length of service/additional leave:</td>
</tr>
<tr>
<td></td>
<td>10 to 15 years – 1 day</td>
</tr>
<tr>
<td></td>
<td>&gt; 15 years – 2 days</td>
</tr>
<tr>
<td>Construction</td>
<td>2 days</td>
</tr>
</tbody>
</table>

Table 4.2: Agreements reached on additional annual paid leave for hazardous and specific working conditions in some sectoral collective agreements (the Labour Code provides for at least 5 days)

<table>
<thead>
<tr>
<th>Sector</th>
<th>Agreement reached (additional working days)</th>
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</thead>
<tbody>
<tr>
<td>Energy</td>
<td>10 to 25 days, depending on assessment of working conditions</td>
</tr>
<tr>
<td>Construction</td>
<td>For working in hazardous working conditions – a minimum of 6 days</td>
</tr>
<tr>
<td></td>
<td>For working in specific working conditions – a minimum of 9 days</td>
</tr>
<tr>
<td>Transport</td>
<td>No less than 12 days</td>
</tr>
<tr>
<td>Health care</td>
<td>From 6 to 22 days, depending on professional category and occupation</td>
</tr>
</tbody>
</table>
Table 4.3: Agreements reached on additional annual paid leave for trade union activities in some sectoral collective agreements (the Labour Code provides for a minimum of 25 hours annually)

<table>
<thead>
<tr>
<th>Sector</th>
<th>Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td>60 hours annually for trade union activists</td>
</tr>
<tr>
<td></td>
<td>4 days for trade union members for participation in trade union activities</td>
</tr>
<tr>
<td>Education</td>
<td>128 hours annually for elected leaders</td>
</tr>
<tr>
<td></td>
<td>80 hours annually for representatives of regional bodies</td>
</tr>
<tr>
<td>Transport</td>
<td>120 hours annually for trade union leaders</td>
</tr>
<tr>
<td></td>
<td>For trade union members paid leave for participation in trade union activities</td>
</tr>
</tbody>
</table>

The major problem affecting sectoral collective bargaining is the lack of development or even – at sectoral level (for example, agriculture) – absence of employers’ organisations. The fragmentation and low membership of employers’ organisations is a barrier to effective bipartite dialogue. There is a representation deficit in the protection of employees’ interests, many of whom are not covered by a collective agreement at sectoral level (62%).

4.5. Collective bargaining and the labour market

Despite improvements in some aspects of the labour market in Bulgaria in 2003-2004 (Table 4.4) it is still characterised by a combination of relatively high unemployment and low employment rates. The average annual data from the Labour Force Survey reveal that the employment rate in 2004 was 43.7%, an increase of 1.3% on 2003. The unemployment rate was 12%, down from 13.7% in 2003 (a fall of 49,000). The number of unemployed persons, including also those discouraged from seeking work (392,600 in 2004), is still considerable.

The improvement in labour market indicators is basically due to the introduction of the mandatory registration of employment contracts, which had an impact on employment in the grey economy, and the introduction of two programmes for temporary employment: ‘From social welfare to employment’ and ‘Assistance upon retirement’. However, a number of challenges remain. About a quarter of all registered unemployed are young people below the age of 24; the long-term unemployed make up nearly 60% of the total, over 40% of the unemployed have been registered as such for over two years, and over 70% have a low level of education and skills.
Although foreign direct investment has grown, permanent effective employment has not changed significantly. In the majority of cases foreign investment in the privatisation of Bulgarian enterprises has led to mass lay-offs. In NAP 2004 the focus was again on temporary employment targeting the unskilled or low skilled unemployed. There is no will to instigate proactive measures with a clear focus, involving lifelong learning and the acquisition of skills which meet the demands of the labour market at both national and enterprise level. This only widens the gap between economic needs (also in the context of EU accession) and the quality of the workforce.

Table 4.4: Labour market indicators

<table>
<thead>
<tr>
<th>Indicators</th>
<th>2003</th>
<th>2004</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Activity rate (%)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>49.2</td>
<td>49.7</td>
<td>0.5</td>
</tr>
<tr>
<td>Men</td>
<td>54.5</td>
<td>55.3</td>
<td>0.8</td>
</tr>
<tr>
<td>Women</td>
<td>44.2</td>
<td>44.6</td>
<td>0.4</td>
</tr>
<tr>
<td><strong>Employment rate (%)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>42.4</td>
<td>43.7</td>
<td>1.3</td>
</tr>
<tr>
<td>Men</td>
<td>46.8</td>
<td>48.4</td>
<td>1.6</td>
</tr>
<tr>
<td>Women</td>
<td>38.4</td>
<td>39.5</td>
<td>1.1</td>
</tr>
<tr>
<td><strong>Unemployment rate (%)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>13.7</td>
<td>12.0</td>
<td>-1.7</td>
</tr>
<tr>
<td>Men</td>
<td>14.1</td>
<td>12.5</td>
<td>-1.6</td>
</tr>
<tr>
<td>Women</td>
<td>13.2</td>
<td>11.5</td>
<td>-1.7</td>
</tr>
<tr>
<td>Young people up to 24</td>
<td>28.2</td>
<td>25.8</td>
<td>-2.4</td>
</tr>
<tr>
<td><strong>Relative share of long-term unemployed (%)</strong></td>
<td>65.4</td>
<td>59.3</td>
<td>-6.1</td>
</tr>
<tr>
<td>Discouraged from seeking work ('000)</td>
<td>434.5</td>
<td>392.6</td>
<td>-41.9</td>
</tr>
</tbody>
</table>


The Labour Force Survey and other NSI information sources for 2001-2004 show that working time is in accordance with legal standards. There are no special arrangements for flexible working time to help reconcile working and family life. Early retirement schemes are used only by certain multinational companies and involve significant staff reductions. Although the retirement age has increased by 5 years since the beginning of the transition (to 60 for women and 65 for men by 2009), the employers are demanding a further increase in the retirement age to 67 years.
Table 4.5: Basic characteristics of working time (WT)

<table>
<thead>
<tr>
<th>Length</th>
<th>Employment and WT</th>
<th>Overtime and paid leave**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daily WT per employee*</td>
<td>Part-time employees (relative share in total employed):</td>
<td>Overtime per employee:</td>
</tr>
<tr>
<td>2002: 7.8 hours</td>
<td>2002: 1.6%</td>
<td>2002: 1.05 hours monthly</td>
</tr>
<tr>
<td>2003: 7.8 hours</td>
<td>2003: 1.4%</td>
<td>2003: 1.45 hours monthly</td>
</tr>
<tr>
<td>2004: 8 hours</td>
<td>2004: 1.5%</td>
<td>2004: 1.47 hours monthly</td>
</tr>
<tr>
<td>Monthly days per employee:</td>
<td>Female:</td>
<td>Paid leave per employee:</td>
</tr>
<tr>
<td>2002: 18.4 days</td>
<td>2002: 2.2%</td>
<td>2002: 21.39 days annually</td>
</tr>
<tr>
<td>2003: 18.4 days</td>
<td>2003: 1.8%</td>
<td>2003: 21.32 days annually</td>
</tr>
<tr>
<td>2004: 18.6 days</td>
<td>2004: 2.0%</td>
<td>2004: 20.86 days annually</td>
</tr>
<tr>
<td>Usual WT per week:</td>
<td>Usual WT per week of part-time employees:</td>
<td>Sick leave per employee:</td>
</tr>
<tr>
<td>2002: 40.9 hours</td>
<td>2002: 20.8 hours</td>
<td>2002: 8.95 days annually</td>
</tr>
<tr>
<td>2003: 40.9 hours</td>
<td>2003: 20.0 hours</td>
<td>2003: 8.82 days annually</td>
</tr>
<tr>
<td>2004: 41.1 hours</td>
<td>2004: 20.7 hours</td>
<td>2004: 8.76 days annually</td>
</tr>
<tr>
<td>Female:</td>
<td>Female:</td>
<td>Unpaid leave per employee:</td>
</tr>
<tr>
<td>2002: 40.7 hours</td>
<td>2002: 20.3 hours</td>
<td>2002: 3.55 days annually</td>
</tr>
<tr>
<td>2003: 40.7 hours</td>
<td>2003: 19.7 hours</td>
<td>2003: 4.28 days annually</td>
</tr>
<tr>
<td>2004: 40.6 hours</td>
<td>2004: 20.7 hours</td>
<td>2004: 3.92 hours</td>
</tr>
<tr>
<td>Male:</td>
<td>Male:</td>
<td>Idle time per employee:</td>
</tr>
<tr>
<td>2002: 41.2 hours</td>
<td>2002: 21.6 hours</td>
<td>2002: 0.42 days annually</td>
</tr>
<tr>
<td>2003: 41.1 hours</td>
<td>2003: 20.6 hours</td>
<td>2003: 0.36 days annually</td>
</tr>
<tr>
<td>2004: 41.4 hours</td>
<td>2004: 20.9 hours</td>
<td>2004: 0.27 days annually</td>
</tr>
<tr>
<td>Annual WT per employee:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2002: 1746 hours</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2003: 1739 hours</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2004: 1744 hours</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes:
* All data are per employee on employment or other contracts (excluding those on maternity leave).
** Forecast for 2004.

The data reveal that no substantial changes have occurred in recent years as regards average length of working time, whether daily, weekly, monthly or annually (Table 4.5). The relative share of part-time employees has fallen and this is primarily due to the growth in the number of full-time workers hired under the ‘Social welfare to employment’ programme of the MLSP. This programme has provided subsidised employment in public works to around 100,000 people for various periods of time (up to one year), paid at the level of the minimum wage.

Overtime has not changed substantially either. One should not forget, however, that this conclusion is based only on official information on paid overtime. According to expert estimates, the actual level of overtime in some branches of the private sector (for example, textiles and clothing) is many times higher, reaching 20% to 30% of normal working hours: in the majority of cases it is disguised as piece work and ‘urgent orders’. The level of paid leave is a little above the established legal minimum of 20 days a year, although the average amount of unused paid leave grew by nearly half a day per employee.

The total maximum annual working time of employees grew by over 27 million days, due to increased employment, but this has not brought with it significant changes on the structural level. (Table 4.6).

Table 4.6: Annual working time basis of employees (’000 days; %)

<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>%</th>
<th>2003</th>
<th>%</th>
<th>2004</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Days worked</td>
<td>412 908</td>
<td>86.2</td>
<td>440 470</td>
<td>86.4</td>
<td>459 161</td>
<td>86.9</td>
</tr>
<tr>
<td>Paid leave</td>
<td>41 496</td>
<td>8.6</td>
<td>42 551</td>
<td>8.3</td>
<td>429 14</td>
<td>8.1</td>
</tr>
<tr>
<td>Sick leave</td>
<td>17 292</td>
<td>3.6</td>
<td>17 598</td>
<td>3.5</td>
<td>18 011</td>
<td>3.4</td>
</tr>
<tr>
<td>Unpaid leave</td>
<td>6 648</td>
<td>1.4</td>
<td>8 542</td>
<td>1.7</td>
<td>8 066</td>
<td>1.5</td>
</tr>
<tr>
<td>Idle time</td>
<td>756</td>
<td>0.2</td>
<td>717</td>
<td>0.1</td>
<td>550</td>
<td>0.1</td>
</tr>
<tr>
<td>Total maximum AWT</td>
<td>479 100</td>
<td>100.0</td>
<td>509 878</td>
<td>100.0</td>
<td>528 702</td>
<td>100</td>
</tr>
<tr>
<td>AWT per employee (days)</td>
<td>257</td>
<td>–</td>
<td>255</td>
<td>–</td>
<td>257</td>
<td></td>
</tr>
</tbody>
</table>

Source: NSI, Quarterly Survey of Employees and Working Time. Data for 2004 are preliminary.
The relative share of part-time employees fell from 3.0% in 2001 to 2.1% in 2003, increasing to 2.4% in the first half of 2004, almost entirely due to the growth in the number of people working full-time under the MLSP programme ‘From social welfare to employment’. The relative share of women working part-time is growing (by 3.4% in 2001 and 2.8% in 2004).

Three quarters of persons working part-time do so because they do not have enough work or cannot find a full-time job. For only 5% of employees is this a personal choice connected to ‘training in an educational establishment’ or ‘family reasons’. This suggests that in the case of Bulgaria a reduction in working hours is a compulsory decision imposed from outside – by the employer and the economic situation – rather than a free choice.

In June 2004 NSI conducted a one-off survey of the labour market among enterprises in the processing industry, the retail trade and the service sector, as part of the EU harmonisation programme on business and consumer monitoring. The findings of the survey only confirmed the conclusions drawn so far with respect to the working time of Bulgarian employees.

Employees predominantly work full-time:
- in the processing industry – 99.7%;
- in the retail trade – 95.5%;
- in the service sector – 96.8%.

Permanent employment far exceeds temporary employment:
- in industry – 94.1%;
- in the retail trade – 99.1%;
- in the service sector – 93%.

The overall trend is for longer working time, and especially overtime, mainly at the request of the employers.

4.6. Conclusion

We can draw the following conclusions on the flexibility and security of employment in Bulgaria:

---

1 The same trend is observed for employees on employment contracts: see Table 3.
2 See www.nsi.bg.
• There is a comparatively high level of flexibility in terms of labour legislation and the possibility for employers to implement selective human resource policies, as confirmed by the actions of a number of privatised and restructured enterprises, which have undertaken mass lay-offs or partial staff reductions.

• Security of employment and social protection are comparatively low: neither the public nor the private sector guarantee sufficient good quality working places (wage levels unrelated to productivity, irregular payment of wages and partial social security coverage).

• Low labour market flexibility is however characteristic in terms of working time. Absence of legislative and collectively agreed incentives in relation to flexible working time schemes which satisfy both employers and employees. Change will come only if there is an improvement in job security and social protection – higher wage rates, social insurance covering each hour worked, and so on.

• Inefficiency and narrow scope of active labour market policies, including education and lifelong learning schemes characterise the Bulgarian labour market. Secondary labour market measures and subsidised employment continue to dominate.

• The introduction of such important flexible employment instruments as lifelong learning, individual ‘saving accounts’ for training and education, lifelong working time accounts, is in the initial stage.

In this context, the trade unions continue to insist on full consideration of the Lisbon Strategy and the European Employment Strategy, as well as:

• a more active stance on the part of the labour market institutions;

• strengthening of the principles of social partnership in the management of funds and employment projects;

• establishment of conditions for the creation of quality jobs through modernisation of work organisation and improvement of the social security and taxation systems;

• more active use of collective bargaining at different levels as an instrument of employment policy aimed at job upgrading, career development, job training and working time reorganisation;

• promotion of flexible employment and flexible working time by introducing the best European practices to the fullest possible extent;

• training and retraining of the workforce and development of lifelong learning at all levels.
## Annex

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th></th>
<th>2002</th>
<th></th>
<th>2003</th>
<th></th>
<th>2004</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Men</td>
<td>Women</td>
<td>Total</td>
<td>Men</td>
<td>Women</td>
<td>Total</td>
<td>Men</td>
</tr>
<tr>
<td><strong>Types of contract</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>% employed on full-time open-ended contract</td>
<td>90.2</td>
<td>89.2</td>
<td>91.2</td>
<td>90.9</td>
<td>89.5</td>
<td>92.2</td>
<td>93.7</td>
<td>92.5</td>
</tr>
<tr>
<td>% employed on fixed-term contract</td>
<td>5.4</td>
<td>5.7</td>
<td>4.9</td>
<td>4.8</td>
<td>4.9</td>
<td>4.2</td>
<td>2.8</td>
<td>3.0</td>
</tr>
<tr>
<td>% employed on part-time contract</td>
<td>3.0</td>
<td>2.7</td>
<td>3.4</td>
<td>2.4</td>
<td>2.0</td>
<td>2.9</td>
<td>2.1</td>
<td>1.8</td>
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<tr>
<td>% self-employed</td>
<td>9.8</td>
<td>11.8</td>
<td>7.5</td>
<td>9.5</td>
<td>11.5</td>
<td>7.2</td>
<td>9.6</td>
<td>11.9</td>
</tr>
<tr>
<td><strong>Working hours</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statutory maximum working week (hours)</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>48**</td>
</tr>
<tr>
<td>Statutory maximum working day (hours)</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>10**</td>
</tr>
<tr>
<td>Usual hours worked per week, full-time employees *</td>
<td>40.9</td>
<td>41.3</td>
<td>40.6</td>
<td>40.9</td>
<td>41.3</td>
<td>40.7</td>
<td>40.9</td>
<td>41.1</td>
</tr>
<tr>
<td>Usual hours worked per week, part-time employees *</td>
<td>21.2</td>
<td>21.7</td>
<td>20.9</td>
<td>20.7</td>
<td>21.6</td>
<td>20.3</td>
<td>20.0</td>
<td>20.6</td>
</tr>
<tr>
<td></td>
<td>2001</td>
<td></td>
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<td>2002</td>
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<tr>
<td></td>
<td>Total</td>
<td>Men</td>
<td>Women</td>
<td>Total</td>
<td>Men</td>
<td>Women</td>
<td>Total</td>
<td>Men</td>
</tr>
<tr>
<td>Statutory maximum hours of overtime per year</td>
<td>150</td>
<td>150</td>
<td>150</td>
<td>150</td>
<td>150</td>
<td>150</td>
<td>150</td>
<td>150</td>
</tr>
<tr>
<td>Average number of hours overtime, per year,</td>
<td>13.27</td>
<td>12.81</td>
<td>12.44</td>
<td>8.53</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>per employee</td>
<td></td>
<td></td>
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<td></td>
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<td>Annual leave</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statutory minimum annual paid leave (days)</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>20</td>
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<tr>
<td>Average collectively agreed annual paid leave</td>
<td></td>
<td></td>
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<tr>
<td>(days):</td>
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</tr>
<tr>
<td>Education</td>
<td></td>
<td></td>
<td></td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Energy (depending on length of service)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Construction</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes:
* First nine months of 2004.
** Extension of the working day to 10 hours and of the working week to 48 hours, introduced with the 2004 changes to the Labour Code, is permitted only for 60 working days during the year.
5. Collective bargaining and working time: Czech Republic

Martin Fassman and Helena Čornejová

5.1. Introduction

At present, it would seem that working time issues are not a priority for collective bargaining in the Czech Republic. The main task appears to be to ensure progress in the rapid real convergence of economic growth, labour productivity, wage (income) levels and living standards. New EU member countries have at their disposal few tools and competitive assets which can be brought to bear at this stage. Apart from a few exceptions and approved derogations from EU standards, the voluminous *acquis communautaire* was recently transposed into Czech law. In many cases, this led to a marked increase in costs and/or restrictions in the use of tools which might enable the Government to promote rapid economic restructuring or to support economic growth. One of the few competitive factors which can still be relied on is labour costs, that is, lower wages and/or longer working hours. This cannot be interpreted as a deliberate reduction of the value of labour for the purpose of promoting competitiveness (in other words, ‘social dumping’). At present, it is rather a specific competitive advantage of the new member states.

5.2. Working time in the Czech Republic

The most recent legislation on statutory weekly working time and permissible overtime in the Czech Republic dates from 2001.1 Since 1 January 2001 statutory weekly working time is 40 hours and the maximum amount of overtime is 8 hours a week. Basic annual leave is four weeks.

On the initiative of the retail trade union a group of parliamentary deputies submitted a legislative proposal on business hours at the end of 2004. The objective was to substantially shorten working hours in shops and supermarkets on Saturdays, Sundays and holidays. The Chamber of Deputies gave the proposal a first reading and further debates will follow.

---

1 Until 1 January 2001 statutory weekly working time in the Czech Republic was 43 hours, including breaks for meals and 30 minutes’ rest time.
5.3. Changes in lifelong working time

There were lively discussions in the Czech Republic on the issue of lifelong working time in the mid 1990s but the context was different, namely extension of the retirement age. In certain sectors, workers’ representatives argued that lifelong working time in the Czech Republic was much longer than in any advanced industrialised country. At present, intensive work continues on an overall reform of the pension system. This will certainly include the issue of early retirement (instituting more stringent conditions, or even discontinuing the practice altogether) and the issue of postponing the retirement age (in the context of longer life expectancy and marked population ageing). Arguments countering these proposals will surely be put forward but, in the Czech context, they will not be directed towards extending the retirement age but rather against the proposed changes.2

5.4. Working time and collective bargaining

Improvement of working conditions, occupational safety and widening the scope for creating job opportunities through shorter working hours are, together with wages, fundamental issues of collective bargaining, as in the rest of the EU. In order to achieve a reduction in working hours the following tools in particular are used:

- shortening of weekly working time without reduction of wages (provisions to this effect could be found in approximately 94% of company collective agreements in 2004 and agreed average weekly working time was 38 hours);
- negotiating an additional week of annual leave over and above the statutory three weeks stipulated by the Labour Code (in 2004, 76.5% of company collective agreements extended statutory annual leave by one week; 0.5% of company collective agreements extended it by two weeks);
- extension by collective agreement of the number of days employees can take as time-off for reasons other than those enumerated in the Labour Code (in 2004, 49% of company collective agreements reduced working time in this way);
- in some sectors there are collective agreements which reduce the amount of work readiness (stand-by) at the workplace and/or reduce overtime below the limit stipulated by the Labour Code.

2 The latest extension of the statutory retirement age has been in force since 1 January 2004: it is intended that by 2013 the retirement age will be 63 for both men and women (up from 59), depending on the number of children: the principle of a lower retirement age for women remains in being though now it is based on their child rearing. Czech-Moravian Confederation of Trade Unions (ČMKOS) assented to this principle.
CMKOS has coordinated bargaining on these issues by declaring ‘collective bargaining objectives for the next calendar year’. In respect of 2004, unions representing private sector workers were asked to put forward demands for a reduction of weekly working hours to 37.5 without a reduction in wages: five unions (representing workers in the mining, energy, chemicals, textiles and clothing industries) managed to achieve this. The declared objective was partially met by KOVO (metalworking industries) and the union of workers in woodworking, forestry and water management. Another objective was the extension of annual leave beyond the statutory period. Seven unions out of 12 achieved this objective.

There are a number of reasons why not all the unions were able to meet their declared objectives in full:

- Strong resistance on the part of employers’ associations to reducing working time in general, even in relatively successful sectors. On the contrary, pressure is being exerted to withdraw previous agreements reducing working time.
- The unions’ inability to exert more pressure (employees are afraid of redundancies).
- Objective reasons in some companies, particularly those undergoing restructuring.
- Some employers are prepared to negotiate on shorter working time only through provision of time-off for specific reasons, extending annual leave by an additional week or increasing the period of severance pay in the event of dismissal for organisational reasons. However, they are opposed to reducing working time in general.

5.5. Why working time reduction is not on the agenda

Number of working hours and working time reduction are not considered major problems or priorities at present. In addition, the objective prerequisites for this move do not exist in the Czech Republic and workers are generally not prepared to go out on a limb on this issue.

Competitiveness

Although the Czech Republic is one of the more developed new EU member states, its performance levels stand at only 63% of those achieved by EU-15 countries. Despite recent marked economic growth and high productivity increases there is little scope for a substantial reduction in working time while maintaining current earnings because this might jeopardise overall competitiveness.
Lack of willingness on the part of workers
It can be argued that, at present, very few workers in the Czech Republic would prefer more leisure time to higher wages. This is a corollary of two factors: economic ‘shock therapy’ and EU accession. Economic reform at the beginning of the 1990s resulted in the immediate reduction of all incomes, both domestically (real wages fell by 30%) and in relation to other countries (the level of Czech wages measured by the new exchange rate was approximately 10% of the EU average at that time). At the same time, a major gap was created between the purchasing power of Czech wages in the domestic market and in foreign retail markets: the purchasing power of Czech wages abroad fell to approximately one-fifth of that in the domestic market. This dual reduction in purchasing power remains a determining factor in the drive for wage increases in the Czech Republic. The developments described above gave rise to strong pressure for wage (income) convergence: at the beginning in order to return to previous levels, and, roughly, from 1998 onwards, to come nearer to wage levels achieved in the ‘old’ EU member states. Both intensive factors (productivity increases) and extensive factors (longer working hours) have gradually contributed towards achieving partial wage convergence. In addition, there are also differences in income tax. The tendency towards a preference for higher income over more leisure time has been further strengthened by EU accession alongside reforms in public spending (reduction of social expenditure and introduction of payments for public services). These measures were taken in order to fulfil the Maastricht criteria with a view to early adoption of the euro. As a consequence, the most burning problem in the Czech Republic is low wages (incomes) rather than working time.

Hours actually worked
Looking at the period 1993-2003, the tendency was towards a moderate increase in total working hours. This increase has levelled off in recent years, with total number of hours worked remaining rather high. (A recent decrease in number of hours worked was due to an increased number of public holidays.) The highest decrease in working time – by approximately 110 hours a year (from 1840 to 1730) between 2000 and 2001 – was due to the so-called Euro-amendment of the Labour Code. The reduction of the statutory working week from 43 hours to 40 hours caused a reduction in the total volume of annual working time of 135 hours. A

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3 Hours actually worked are approximately 15% longer than in Western European countries. This makes a considerable contribution to wage convergence. As to differences in income tax, whereas Czech gross hourly wages as a proportion of German gross hourly wages, measured by exchange rate, were 21% in 2001, Czech net wages stood at 25%. When comparing per capita earnings the difference shrank to 29% due to the longer working hours of Czech workers.
further shortening of annual working time was caused by the addition of two new public holidays. However, in real terms, a small decrease in total working time can be attributed only to the higher number of public holidays. The second of the two factors mentioned above had practically no impact on hours actually worked, but was only a change in the method of recording working hours. From 2001 onwards the number of hours actually worked fluctuated around 1730 a year.

A typical Czech employee works full-time and has an indefinite employment contract. Employees with this type of contract have represented 92-93% of total employment since 1990. The system of fixed term contracts has not expanded so far thanks to the joint impact of existing labour legislation and trade union pressure. Fixed-term contracts represent only 7-8% of total employment. Similarly, part-time employment has no real traditions in the Czech Republic, representing between 4.5% and 5% of total employment. Perhaps the main reason is low wage levels, which can be seen as a major obstacle to an expansion of this type of work.

Official statistics report relatively low levels of overtime, far below the maximum permissible limits. The amount of officially registered overtime per employee is around 50 hours a year.

Negotiated wage settlements (including overtime)

A significant problem in this area is caused by the legislative provision which permits employers to include compulsory overtime of up to 150 hours a year in wage settlements. The impact of such contracts on overtime actually worked cannot really be determined. The problem is caused by the gradual expansion of individual employment contracts which include a clause enabling the imposition of overtime up to the level referred to above. Such employment contracts enable the employer to avoid recording the actual number of overtime hours worked because it does not impact on wages. This could lead to understatement in the statistical data. Analysing the incidence of this type of contract according to size of company, it appears that the larger the company the lower the average number of hours worked and, conversely, the greater the quantity of registered overtime. As a consequence, it can be assumed that the practice referred to above is more present in small and medium-sized enterprises.

4 Whereas formerly the 43 statutory weekly working hours included a 30 minute break for lunch, the new 40 hour week included no break. Thus workers on hourly wages experienced only a methodological change in the calculation of their wages.
5 The maximum permissible number of annual overtime hours is 416. The employer can impose 150 overtime hours a year, the rest being subject to agreement between employer and employee.
This is one of the reasons why there is a proposal to discontinue this practice in the new Labour Code which is under preparation. It appears that this practice has led to considerable complications. In addition to the possibility of misrepresenting the statistical data on overtime, the agreed wage frequently does not correspond to the overtime supplement (25% of average earnings). The present wording of the relevant labour legislation does not exclude this possibility and so in practice violates ILO Hours of Work Convention 1/1919, article 6. (Working time in industrial enterprises is limited to 8 hours a day and 48 hours a week, wage rates for overtime should not be lower than the regular rate plus 25%). The newly proposed provisions do not exclude payment of estimated working time by an agreed flat rate but adherence to agreed principles for calculating wages, including increases for overtime, will be required.

Working time issues have always been subject to collective bargaining but, due to current circumstances, Czech trade unions have not pressed for an overall reduction of working time in recent years. There are many companies in which the level of productivity is not high enough to enable a reduction of working hours while maintaining wage levels, which theoretically could contribute to job creation. The factor of wage convergence has been strong despite the relatively high unemployment (average by European standards). The priority for collective bargaining is wages; to the extent that working time is an issue, bargaining concentrates on, for example, distribution of working hours, the scope of work readiness, overtime, flexible work forms, and so on. Many employees are working unevenly distributed working hours and it has become increasingly important to address this issue in collective agreements.
Annex

<table>
<thead>
<tr>
<th>Types of contract</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>% employed on full-time open-ended contract</td>
<td>92.7</td>
<td>93.5</td>
<td>91.6</td>
<td>92.1</td>
</tr>
<tr>
<td>% employed on fixed-term contract</td>
<td>7.3</td>
<td>6.5</td>
<td>8.4</td>
<td>7.9</td>
</tr>
<tr>
<td>% employed on part-time contract</td>
<td>4.6</td>
<td>2.1</td>
<td>7.9</td>
<td>5.0</td>
</tr>
<tr>
<td>% employed that are self-employed</td>
<td>14.8</td>
<td>18.8</td>
<td>9.7</td>
<td>16.0</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Working hours</th>
<th></th>
<th></th>
<th></th>
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<tbody>
<tr>
<td>Statutory maximum working week (hours)</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td>Statutory maximum working day (hours)</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Average collectively agreed normal weekly hours</td>
<td>38.0</td>
<td>38.0</td>
<td>38.0</td>
<td>38.0</td>
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</table>

Examples of collectively agreed normal weekly hours in a number of important sectors or branches

<table>
<thead>
<tr>
<th>Sector A**</th>
<th>43.7</th>
<th>44.8</th>
<th>41.4</th>
<th>44.2</th>
<th>45.3</th>
<th>41.8</th>
<th>44.9</th>
<th>46.3</th>
<th>42.2</th>
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</thead>
<tbody>
<tr>
<td>Sector B</td>
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<td>42</td>
<td>40.3</td>
<td>42.4</td>
<td>43</td>
<td>39.8</td>
<td>43.3</td>
<td>44</td>
<td>40.1</td>
</tr>
<tr>
<td>---------</td>
<td>------------</td>
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<td>------------</td>
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<td>----------</td>
<td>------------</td>
<td>------------</td>
<td>----------</td>
<td>------------</td>
</tr>
<tr>
<td>Sector D</td>
<td>41.1</td>
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<td>41.9</td>
<td>40.0</td>
<td>41.3</td>
<td>42</td>
<td>40.1</td>
</tr>
<tr>
<td>Sector E</td>
<td>40.5</td>
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<td>39.7</td>
<td>40.9</td>
<td>41.2</td>
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<td>41.2</td>
<td>41.5</td>
<td>39.8</td>
</tr>
<tr>
<td>Sector F</td>
<td>45.2</td>
<td>45.6</td>
<td>41.6</td>
<td>45.7</td>
<td>46.1</td>
<td>41</td>
<td>46.3</td>
<td>46.7</td>
<td>41.2</td>
</tr>
<tr>
<td>Sector G</td>
<td>44.1</td>
<td>46.3</td>
<td>41.9</td>
<td>44.5</td>
<td>47.1</td>
<td>41.9</td>
<td>44.7</td>
<td>47.4</td>
<td>42</td>
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<tr>
<td>Sector H</td>
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<td>42.9</td>
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<td>46.1</td>
<td>49</td>
<td>43.6</td>
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<tr>
<td>Sector I</td>
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<td>43.7</td>
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<td>43.4</td>
<td>44.6</td>
<td>40.3</td>
<td>44</td>
<td>45.5</td>
<td>40.4</td>
</tr>
<tr>
<td>Sector J</td>
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<td>43.1</td>
<td>45.4</td>
<td>41.4</td>
<td>43.1</td>
<td>45.5</td>
<td>41.7</td>
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<tr>
<td>Sector K</td>
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<td>45.6</td>
<td>41.6</td>
<td>44.5</td>
<td>46.3</td>
<td>42.2</td>
<td>44.8</td>
<td>46.7</td>
<td>42.4</td>
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<tr>
<td>Sector L</td>
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<td>40.4</td>
<td>41.2</td>
<td>41.8</td>
<td>40.4</td>
<td>41.4</td>
<td>42</td>
<td>40.7</td>
</tr>
<tr>
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<td>39.7</td>
<td>40.1</td>
<td>41.3</td>
<td>39.7</td>
<td>39.9</td>
<td>40.7</td>
<td>39.7</td>
</tr>
<tr>
<td>Sector N</td>
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<td>41</td>
<td>41.9</td>
<td>44.6</td>
<td>41.2</td>
<td>41.8</td>
<td>44</td>
<td>41.2</td>
</tr>
<tr>
<td>Sector O</td>
<td>42</td>
<td>43.2</td>
<td>40.8</td>
<td>42.8</td>
<td>44.2</td>
<td>41.4</td>
<td>42.9</td>
<td>44.1</td>
<td>41.6</td>
</tr>
</tbody>
</table>

<p>| Usual hours worked per week, part-time employees * | 24.4 | 22.5 | 25 | 23.5 | 22.3 | 23.9 | 23.5 | 22.5 | 24.0 | 23.5 | 23.0 | 23.6 |
| Statutory maximum hours of overtime per year** | 416 | 416 | 416 | 416 | 416 | 416 | 416 | 416 | 416 | 416 | 416 | 416 |</p>
<table>
<thead>
<tr>
<th>Year</th>
<th>Sector A</th>
<th>Sector B</th>
<th>Sector C</th>
<th>Sector D</th>
<th>Sector E</th>
<th>Sector F</th>
<th>Sector G</th>
<th>Sector H</th>
<th>Sector I</th>
<th>Sector J</th>
<th>Sector K</th>
<th>Sector L</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>76 n.a</td>
<td>49 n.a</td>
<td>70 n.a</td>
<td>67 n.a</td>
<td>32 n.a</td>
<td>68 n.a</td>
<td>26 n.a</td>
<td>18 n.a</td>
<td>11 n.a</td>
<td>32 n.a</td>
<td>32 n.a</td>
<td>15 n.a</td>
</tr>
<tr>
<td>2002</td>
<td>79 n.a</td>
<td>54 n.a</td>
<td>75 n.a</td>
<td>60 n.a</td>
<td>36 n.a</td>
<td>67 n.a</td>
<td>28 n.a</td>
<td>12 n.a</td>
<td>29 n.a</td>
<td>29 n.a</td>
<td>29 n.a</td>
<td>13 n.a</td>
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<td>2003</td>
<td>53 n.a</td>
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<td>77 n.a</td>
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<td>64 n.a</td>
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<td>11 n.a</td>
<td>14 n.a</td>
<td>14 n.a</td>
<td>14 n.a</td>
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<tr>
<td>2004</td>
<td>72 n.a</td>
<td>53 n.a</td>
<td>76 n.a</td>
<td>63 n.a</td>
<td>33 n.a</td>
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<td>11 n.a</td>
<td>14 n.a</td>
<td>14 n.a</td>
<td>14 n.a</td>
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Collective bargaining on working time: recent European experiences
<table>
<thead>
<tr>
<th></th>
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<th>2002</th>
<th>2003</th>
<th>2004</th>
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<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Men</td>
<td>Women</td>
<td>Total</td>
</tr>
<tr>
<td>Sector M</td>
<td>32</td>
<td>n.a</td>
<td>n.a</td>
<td>25</td>
</tr>
<tr>
<td>Sector N</td>
<td>92</td>
<td>n.a</td>
<td>n.a</td>
<td>65</td>
</tr>
<tr>
<td>Sector O</td>
<td>47</td>
<td>n.a</td>
<td>n.a</td>
<td>28</td>
</tr>
</tbody>
</table>

**Annual leave**

<table>
<thead>
<tr>
<th>Statutory minimum annual paid leave (days)</th>
<th>20</th>
<th>20</th>
<th>20</th>
<th>20</th>
<th>20</th>
<th>20</th>
<th>20</th>
<th>20</th>
<th>20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average collectively agreed annual paid leave (days)</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>7</td>
</tr>
</tbody>
</table>

*) The International Standard Industrial Classification of all Economic Activities (ISIC) Revision 3.
**) 150 Hours can be ordered by employers and the rest must agreed by employees.

Sources: Czech Statistical Office - Employment and Unemployment in the Czech Republic as Measured by the Labour Force Sample Survey, 2001-2004
Unit Labour Costs 2001-2003, own calculations by authors.
6. Collective bargaining and working time in Denmark

Carsten Jørgensen

6.1. Working time in its national and international context

Working time has always been a central topic in collective bargaining in Denmark. The types of working time issue on which collective bargaining has focused, however, have changed considerably in recent decades. Until the 1980s length of working time dominated and considerable reductions were achieved. Collectively bargained weekly working hours fell from 45 in 1960 to 37 in 1990 (Table 6.1). From the mid-1980s onwards negotiations concentrated more on working time flexibility and variable working hours. In contrast to, for example, Germany, working time extension or reduction as a means of regulation has not played a significant role since the introduction of the 37-hour week in 1990. In Denmark, labour market flexibility is mainly ensured by a combination of flexible rules on recruitment and dismissal and flexible working time arrangements, supported by a high level of vocational training.

Table 6.1: Working time development in the private sector (LO/DA)

<table>
<thead>
<tr>
<th>Year</th>
<th>Agreed weekly working hours</th>
<th>Annual holiday (weeks)</th>
<th>Special holidays a year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>45.0</td>
<td>3</td>
<td>–</td>
</tr>
<tr>
<td>1970</td>
<td>41.8</td>
<td>3</td>
<td>–</td>
</tr>
<tr>
<td>1974</td>
<td>40.0</td>
<td>4</td>
<td>–</td>
</tr>
<tr>
<td>1986</td>
<td>39.0</td>
<td>5</td>
<td>–</td>
</tr>
<tr>
<td>1987</td>
<td>38.5</td>
<td>5</td>
<td>–</td>
</tr>
<tr>
<td>1988</td>
<td>38.0</td>
<td>5</td>
<td>–</td>
</tr>
<tr>
<td>1989</td>
<td>37.5</td>
<td>5</td>
<td>–</td>
</tr>
<tr>
<td>1990</td>
<td>37.0</td>
<td>5</td>
<td>–</td>
</tr>
<tr>
<td>1998</td>
<td>37.0</td>
<td>5</td>
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</tr>
<tr>
<td>1999</td>
<td>37.0</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>2001</td>
<td>37.0</td>
<td>5</td>
<td>4</td>
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<td>2003</td>
<td>37.0</td>
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<tr>
<td>2004</td>
<td>37.0</td>
<td>5</td>
<td>5</td>
</tr>
</tbody>
</table>

In the last decade, the possibilities for concluding company-level agreements on working time between employee representatives and management have been systematically extended. The decentralisation of negotiation implemented during this period can be viewed as a precondition for the flexibility obtained in the area of working time. Danish employers’ representatives in particular have argued that the appropriate response to increasing international competition would be still further decentralisation of the collective bargaining system. Nevertheless, the dominant trade unions have also accepted that flexibility as regards working time organisation – but combined with a high level of training – is the best combination for ensuring strong competitiveness and job security.

Working time regulation has to some extent been influenced by transposition of the Working Time Directive (93/104/EC). In accordance with the tradition of regulating working time issues via collective agreements, initially both the social partners and a clear majority in the Danish Parliament agreed to implement the Working Time Directive solely via collective agreements (rather than by statutory regulations). The Commission did not accept this, arguing that steps needed to be taken to ensure that the part of the labour force that was (and is) not covered by collective agreements (about 15%) would be covered by the provisions of the directive. The result was a new dual method of regulation. The directive was introduced in collective agreements and follow-up legislation was passed in the Parliament. The current law favours collective agreements and applies only in areas not covered by a collective agreement.

Most of the provisions of the Working Time Directive were already practiced on the Danish labour market, but a fixed maximum weekly working time – 48 hours, as specified in the directive – was established for the first time. The employers in particular saw this as a significant obstacle to reaching agreement on flexible working time arrangements at company level.

Average weekly working time in Denmark was (and remains) 37 hours (see Annex); the reference period in most agreements has been extended to 12 months (with 37 hours a week as basis). The limit of 48 hours has little practical relevance in the sectors covered by the directive. Denmark did not make use of the opt-out provided in the directive.

In September 2004 the Commission published a proposal for revising the Working Time Directive. In their respective responses the Danish social partners – the Danish Confederation of Trade Unions (Landsorganisationen i Danmark, LO) and the Confederation of Danish Employers (Dansk Arbejdsgiverforening, DA) – both claimed that the directive was a step in the wrong direction, although for different reasons. The clause providing an opt-out from the maximum 48-hour week and the legislative extension of the reference period to 12 months still separate the parties. LO finds it unacceptable that the directive still allows an individual opt-out from the
48-hour rule; in its view, this contradicts the directive’s intention to ensure workers’ health and safety and a good balance between working life and family life. DA, on the other hand, holds that restrictions on the opt-out provision would limit flexibility and increase bureaucracy, contradicting the directive’s aim of increasing flexibility. Both DA and LO regret that the government’s decision to allow extension of the reference period to 12 months will impose un-necessary constraints on the social partners and the collective bargaining system. These responses to the proposed revision of the directive are somewhat more conflictual than has traditionally been seen when sectoral-level LO and DA member organisations have concluded agreements on working time flexibility, as we shall discuss further. However, the Danish social partners’ attitudes to the proposal coincide with those of ETUC and UNICE.

6.2. Collective bargaining on working time

As already mentioned, working time issues are first and foremost subject to collective bargaining. With the exception of a limited group of employees, working time duration, flexible working time arrangements and flexible contracts (fixed-term and part-time contracts) have all traditionally been regulated via collective agreements. However, EU directives have led to supplementary legislation with regard to fixed-term and part-time work; the regulation of pension age and pre-pension schemes are also subject to legislation.

Flexible working time arrangements are at the centre of the bargaining agenda. Provisions on flexible working time were included in collective agreements for the first time in 1967, and over the years these rules have been extended. A decisive change came in 1995 in the dominant industrial agreement, normally referred to as the Industry Agreement. The previous agreement stated that working time could vary within a period of six weeks, so that the average weekly working time over six weeks remained 37 hours. In the 1995 agreement this reference period was extended to six months, but on condition that the organisation of working time would be based on agreements between employers and employees at workplace level. This step was significant and gave rise to concern among both the employers’ associations and the trade unions. The trade unions feared that employees would be pressed to regularly accept heavy workloads, while the employers feared that the requirement of local agreement would challenge their managerial rights. Nevertheless, in 1998 the reference period was further extended to 12 months, which is also the rule in the current collective agreement in the private sector (2004-2007). The public sector organisations have also established a 12-month reference period.

This development in the 1990s was first and foremost a demand of the employers in national-level bargaining. However, it also reflects the fact that informal local agreements were already established practice. The employees and employee representatives in individual companies accepted the more flexible schemes and quite often introduced new informal rules which were in conflict with the then more rigid working time rules laid down in the collective agreements through the conclusion of the so-called ‘closet agreements’, typically addressing overtime and other working time rules: 27% and 24%, respectively, of the employee representatives of the two biggest unions in the trend-setting industrial sector, Dansk Metal (Union of Metal Workers) and SiD (General Workers’ Union), affirmed that they had concluded such closet agreements.\(^2\)

Paradoxically there have been examples of employee representatives who strongly protested when the trade unions met the demands of the employers, although in doing so they were often merely formalising an informal practice. There are also cases in which the closet agreements are in compliance with central rules of which the two parties at the local level were not aware. However, this does not change the fact that these closet agreements can be seen to express an alliance between the two parties at company level. Such alliances seem to have emerged in the light of new management strategies and the ensuing new forms of work organisation and they will – if necessary – oppose the parties at the central level and establish their own local regulatory system, which may subsequently spread to other fields and gradually lead to a change in the agreements concluded at the central level.

This process of decentralising bargaining competences has been characterised as organised decentralisation or centralised decentralisation, emphasising that organisational mergers at national level have led to a centralisation of social partner organisations, while the bargaining process has become still more decentralised. However, whereas both centralised regulation and centralised decentralisation are characterised by hierarchical governance with a strong top-down character, the still more autonomous company-level negotiations imply a more horizontal, ad hoc form of governance. This form of regulation is not necessarily hierarchical. It may be a matter of bottom-up influence instead of top-down steering, that is, a form of reversed hierarchy. But it may also be a matter of a shifting or failing connection between the different levels of the present multi-level system of regulation.\(^3\)


6.3. Bargaining outcomes

On 21 March 2004, LO and DA agreed on an overall compromise settlement to conclude 2004's various sectoral collective bargaining rounds across the major part of the private sector that they represent. The settlement was drawn up by the Public Conciliation Service (Førglsinstitutionen), and subsequently accepted in a membership ballot.4

According to more or less informal bargaining rules under the umbrella of LO and DA, the Industry sector is the first to conclude a collective agreement, which then acts as guideline for the other sectors. This also happened in 2004. Particularly as regards working time two new features of the Industry Agreement drew attention, both introducing a wider range of competences for local agreements.

First, the Industry Agreement gives the local partners increased manoeuvrability in the introduction of pilot schemes, which makes it possible to deviate from a number of rules in the Agreement, including those on vocational training and working time. A similar opening clause on working time was present in the former agreement but local agreements required approval from the parties to the Industry Agreement, that is, the Central Organisation of Industrial Employees (CO-industri) and the Confederation of Danish Industries (Dansk Industri, DI). In the new agreement it is established as a right for the local partners to conclude agreements that differ from the central agreement, and CO-industri and DI are merely to be informed. The element of central control is thus abolished. From the employers' perspective this provision offers more flexibility because the agreement can be tailor-made to the individual company. From the union perspective, on the other hand, the role of the shop steward is strengthened because a local framework agreement between the parties is a precondition and, furthermore, because the opening clause can only be agreed at workplaces with an elected shop steward. An important element in these local agreements is that each side can end an agreement with two months' notice. If this happens the rules laid down in the sectoral collective agreement will once again apply.5

The possibility of opening clauses is defined as a pilot scheme which expires at the end of the agreement period in 2007. Thereafter the provisions in the agreement from 2000, in which the central parties must acknowledge local agreements,
come back into force – unless otherwise agreed. However, seen in the light of developments towards increased local freedom of action over the last decade, it is possible that the partners will agree to renew or even extend the provision.

The other new provision which extends the decentralisation of the bargaining system in Industry is the possibility to implement variable working time. So far such variations could only be implemented by local agreement (management and employee [union] representatives). In future, the local partners will still have to agree on a framework, but the actual organisation within this framework will be agreed directly with individual employees or groups of employees. In this way the employers have taken a step in the direction of working time individualisation, while the unions have maintained the collectively agreed framework.

There is a difference between the two provisions on working time. In the first case – the pilot scheme – the agreed number of extra working hours is compensated by a wage payment. That was a demand of the unions. The extra hours are not considered overtime, however, and are therefore paid as normal hours if not otherwise agreed. The other provision deals with average weekly working time. In this case the variable working hours are equalised over the agreed reference period. The maximum period is 12 months as agreed in the central agreement. This is laid down in the law implementing the Working Time Directive and there is no opt-out possibility in relation to this provision. The scope for making local agreements on flexible weekly working time is thus constrained by the central agreement and the directive as implemented in Danish law: that is, a maximum of 48 hours a week on average over a reference period of 12 months. The introduction of these provisions into the Industry Agreement of 2004 is further evidence of decentralisation to company level. It could also be said that the new possibilities in the name of flexibility are a step towards individualisation. This raises the question of whether a degree of top-down coordination and control is dominant or bottom-up effects and more ad hoc horizontal coordination processes are threatening the overall coherence of the bargaining system. The opening clause has so far been used in accordance with intentions: there are an increasing number of local agreements on working time. The companies report to the central organisations – DI and CO-industri – on the nature of the local agreement, and DI and CO-industri have further agreed to keep each other informed on reported agreements. According to DI, as of April 2005 approximately 40 local agreements had been concluded under the Industry Agreement pilot scheme. The types of agreement vary, but according to social partner representatives no local agreement aims to go beyond the centrally agreed normal 37 weekly working hours.

There are examples of collective agreements concluded in 2004 that have led to the extension of working time. Scandinavian Airlines (SAS) has been loss-making for a number of years. New agreements for, for example, pilots and cabin crew
include both working time extensions and wage reductions. Trade union representatives complained about these agreements, but nevertheless accepted that cost cutting was necessary in order to ensure company survival.

Another much debated agreement was concluded at an abattoir in the town of Ringsted. The employer stated that all activities would be outsourced to Germany if a new local agreement failed to introduce cuts in costs. This did not lead to working time extensions, but to an agreement that reduced wages by 15%. The agreement was accepted by a clear majority of the employees, but rejected by their trade union, the Food and Allied Workers Union (NNF). The trade union claimed that the local agreement was not in line with the sectoral agreement. Subsequently, trade union representatives were involved in a second round of negotiations that led to the conclusion of a new agreement with a 14% reduction in wages. The new agreement contained a different distribution of wage cuts among various groups of employees. This time the trade union acknowledged that the agreement was to be seen as part of a special pilot scheme in the sectoral agreement allowing substantial deviations in local agreements. However, the employees at the abattoir rejected the new agreement in a ballot. Most likely, pressure from colleagues at other abattoirs, where strikes had been organised, and the debate in the media led the employees to reject the proposal of wage cuts in exchange for job security. Shortly afterwards the management announced that the site was to be closed down. This shows that the bargaining system allows for quite far-reaching deviations from the sectoral-level agreement in local agreements. However, trade unions and even more so the greater part of the employees were not prepared to accept such deviations.

6.4. Flexible employment and early retirement

6.4.1. Flexible employment

Recent collective bargaining has not focused on flexible contracts – part-time contracts, fixed-term contracts, temporary agency work – or other working time-related issues, such as retirement age, pre-pension or parental leave. (The incidence of flexible employment contracts is shown in the Annex.) Part-time and fixed-term contracts are not as widespread in Denmark as in other EU countries, which is mainly due to flexible labour market rules on recruitment and dismissal, including rather short notices of dismissal, combined with a low level of unemployment (5.4% in 2004 and 5.6% in 2003).6

Temporary agency work is a growth industry in Denmark, however. Turnover in the sector has increased tenfold since 1993 (in 2002 turnover was DKK 3.3 billion or EUR 443 million according to Statistics Denmark), and the number of agencies

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6 Based on the EU definition, Ministry of Finance, Økonomisk oversigt (May 2005).
has more than doubled since the mid-1990s. Several factors have contributed to the recent growth. One factor is the present prosperity of the Danish economy, with low unemployment leading to bottlenecks on the labour market.

In 2001 agencies employed 32,206 temporary workers who contributed 13.5 million temporary agency work hours, equivalent to 8,000 full-time employees. There were 550 agencies in 2001, but turnover is concentrated among the largest agencies, such as Adecco and Manpower. Furthermore, turnover mainly concerns three categories of temporary worker: health care, production/storage/chauffeurs, and administration. Understaffing in hospitals has led to extended use of nurses recruited from temporary work agencies.

However, despite impressive growth rates over the last ten years, the use of temporary agency work is still relatively limited in Denmark as compared to other European countries. Only 0.2% of employment in Danish companies was covered by temporary agency workers in 1999, whereas in Sweden the share of temporary agency workers in total employment is 0.8% and in Germany 0.7%, while in the most developed markets in this respect, The Netherlands and the United Kingdom, the share of temporary agency workers is about 4.6% and 4%, respectively.

Temporary agency work long had a poor reputation, focusing on bogus companies hiring unorganised labour without protection or rights. That is no longer the case (if indeed it was ever an accurate reflection of reality). Eight out of ten temporary work agencies are members of an employers’ association, Danish Commerce and Service (Dansk Handel og Service), and they have a collective agreement with all relevant trade unions.

6.4.2. Early retirement

The state pension age in Denmark is 65 years. In the 1999 Budget it was reduced from 67 to 65 effective from 2004 as part of a wider retirement scheme that aimed at making access to early retirement at the age of 60 less attractive within the context of the ageing of the workforce. The early retirement scheme was introduced in 1979 in order to make room for younger people in the labour market. This 1979 reform exceeded its objectives: not only the intended unskilled workers, but large

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7 In 1990 regulation of temporary work agencies was abandoned in order to make it easier to establish flexible temporary work agencies. Until 1990 regulation was comprehensive. Agencies needed a license and standard contracts with temporary workers were compulsory. See European Foundation for the Improvement of Living and Working Conditions, Temporary agency work national reports: Denmark, Dublin 2002 and Statistics Denmark 2003.


numbers of salaried workers and professionals seized the opportunity for an early retirement pension, which provided a good income if combined with a good private pension (something rarely available to the unskilled, however).

However, by 1999, like everywhere else in Europe, the demographic composition of the population had changed in the direction of an ageing workforce and reform was presumably inevitable. One way of tackling this problem was to reform the early retirement pension scheme, but this time with the aim of keeping older workers in the labour market. Technically speaking, the possibility of withdrawing from the labour market at the age of 60 was maintained, but the rules for receiving an early retirement pension payment were tightened and made less attractive.10

The reform, which was almost literally adopted overnight, without prior consultation of the social partners, met with loud protests from the greater part of the trade union movement. The original early retirement scheme was introduced to benefit ‘worn-out’ unskilled workers; in contrast, the new reform benefited these same workers the least. The then Social Democratic government, and especially the Prime Minister Poul Nyrop Rasmussen, lost much credibility in this process, also because only seven months earlier, during the general election campaign, the latter had said that ‘early retirement benefit and pension would not be touched’. Three years later Mr Nyrop Rasmussen and the Social Democrats lost the general election to a liberal-conservative coalition, which won again in February 2005.

The early retirement pension is still a hot issue in the political debate in Denmark. After having lost a second general election in a row in early 2005, the Social Democrats felt the need to regroup. The winner of the election for party president, Helle Thorning Schmidt, during her campaign emphasised that the early retirement pension had to be phased out slowly. Mrs Thorning Schmidt proposed that the early retirement benefit and pension should be abolished for people who are today under the age of 40. The trade union movement is divided on the question, and the result of the political debate remains to be seen.

Statistically speaking the 1999 reform has not been successful. In 1999, 149,000 people were receiving an early retirement benefit, and by 2004 this had increased to 181,000.11

10 New early retirement rules cause controversy, EIROnline, Denmark (December 1999).
## Annex

<table>
<thead>
<tr>
<th>Types of contract</th>
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<td>Total</td>
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<td>Women</td>
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<tr>
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### Working hours

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<td>1686</td>
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<td></td>
<td>2001</td>
<td></td>
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<td>2002</td>
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<tr>
<td></td>
<td>Total</td>
<td>Men</td>
<td>Women</td>
<td>Total</td>
</tr>
<tr>
<td>Statutory maximum working week (hours)</td>
<td>48</td>
<td>48</td>
<td>48</td>
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<tr>
<td>Statutory maximum working day (hours)**</td>
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<td>Average collectively agreed normal weekly hours</td>
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<tr>
<td>Average collectively agreed annual number of working hours</td>
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<td></td>
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<tr>
<td>Usual hours worked per week, full-time employees**</td>
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<td>18.3</td>
<td>14.8</td>
<td>21.8</td>
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* Source: Statistics Denmark (Danmarks Statistik). Note: figures concerning contract conditions and self-employed are the author's own calculations and are percentages of the total number of employees in Denmark.

** Source: Eurostat. The figures concerning part-time workers show percentages of the total number of employees in Denmark.

Note: The data available are collected on a quarterly basis; hence FAOS has calculated a yearly percentage to fit this table. Figures from 2001-2003 are calculated as an average over the four quarters of the year, whereas only the three first quarters of 2004 are covered in this report.

*** Own calculation based on temporary agency working hours performed, Statistics Denmark.

**** Source: Confederation of Danish Employers (Dansk Arbejdsgiverforening, DA). The minimum statutory rest period between two working days is 11 hours; with some compensation regarding specific sectors.
<table>
<thead>
<tr>
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<td>(x working days + x days)</td>
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† Holiday Act.
7. Collective bargaining on working time in Finland

Pekka Sauramo

7.1. Introduction

Finland is a corporatist country in which collective bargaining has generally been based on tripartite cooperation between employees’ and employers’ confederations and the government. Sectoral agreements have been based on centrally negotiated incomes policy agreements which specify the development of negotiated wages in industry collective agreements. Besides wages, centrally negotiated agreements have also covered employment policy and developments as regards working life, working time included.

During the past ten years there has been a tendency towards decentralisation, but most collective agreements continue to be based on centrally negotiated incomes policy agreements. However, although the Finnish bargaining system has remained relatively stable, it is currently in a period of transition. The strongest demands for change have come from the employers’ side. This has also been reflected in the recent debate on working time.

The year 2004 was ‘normal’ in the sense that the social partners agreed upon a new centrally negotiated agreement. However, the evolution of the Incomes Policy Agreement for 2005-2007 was exceptional. First, the Confederation of Finnish Industries (EK), which is the central organisation of employers’ associations, initially indicated that it was not willing to start negotiations on the new centrally negotiated agreement. This position may have been partly tactical, but it also reflected the view that tripartite cooperation has become obsolete and that employers might pursue their interests better by decentralised negotiations.

After this difficult start, however, negotiations started and eventually a new agreement was signed. The new agreement covers an exceptionally long period, almost three years, and concerns most but not all sectors of the economy. One important absentee is the paper industry. This is important because, among the employers’ confederations, the Finnish Forest Industries Federation, which represents the interests of Finnish forest companies, has been sceptical about continuing tripartite cooperation. It is also one of those confederations which are actively attempting to change working time practices in Finland in favour of employers and to the detriment of employees.
7.2. Working time and collective bargaining

In the Finnish corporatist system, all major working time issues can be bargained about at the central level when incomes policy agreements are negotiated. This is also the only level at which the government participates in negotiations. However, working time issues can also be negotiated at sectoral or company level. With the tendency towards decentralisation, the local level is becoming more and more important for bargaining on working time issues. Not surprisingly, at every level the nature of bargaining has been rather conflictual than consensual. This is especially the case at local level, when, for example, employers try to deviate from the basic conditions of sectoral collective agreements.

As already mentioned, the Finnish trade union movement has been on the defensive and the pressure to accept concessions on working time issues has been strong. However, unions have not been forced to accept such concessions. The centrally negotiated agreements have been compromises in which both employers and trade unions have been able to achieve some of their aims as regards working time issues.

However, it seems that recently employers' attitudes have become tougher, and major conflicts on working time issues are likely to arise in the future. For example, in spring 2005 the Finnish Forest Industries Federation tried to force the Finnish Paper Workers' Union to accept concessions, deviating from the national agreement.

7.2.1. Working hours and working time flexibility

Recently, employer confederation representatives have become very active in pursuing the extension of effective working time. The main argument used in favour of such extension is the need to increase competitiveness because of accelerating globalisation in general and EU enlargement in particular. In addition, the high level of unemployment, originating from the deep depression of the early 1990s, has been a key feature of the debate.

Rather than suggest lengthening the statutory working day or working week, employers are trying to increase working time flexibility by various means. Their main aim is to reduce hourly labour costs by extending effective annual working hours without pay increases. The debate on these issues may not be as hot in Finland as, for example, in Germany but arguments put forward by employers' representatives are sometimes quite similar and indeed interrelated. Company-level agreements concluded, for example, at Siemens and DaimlerChrysler have been used to bolster the argument for increasing working time flexibility in Finland.

The measures suggested by employers' organisations to increase flexibility and reduce labour costs have varied between branches. For example, in the paper
industry employers’ representatives are trying to facilitate the use of 12-hour work shifts. They are also attempting to prevent the closure of factories over Christmas and to make it easier to divide up annual leave in such a way that labour inputs could be adjusted as flexibly as possible. In the service sector, employers’ representatives have been calling for the scrapping of bonuses for overtime and weekend work.

At every level, the trade unions have opposed the employers’ aims. In general, they have been successful and so far no major deterioration has taken place in the rules and practices concluded in collective agreements. However, the unions have clearly been on the defensive, and active pursuit of their main objective, reduction of (weekly) working time, has been difficult. They have made some progress, however. For example, in the Incomes Policy Agreement for 2001-2002 the partners agreed that the Saturday following Ascension Day would be a paid holiday. Since then it has been increasingly difficult to achieve working time reductions.

For example, the trade unions have sought employee-friendly working time flexibility measures which would facilitate harmonisation of work and family life. Some unions have proposed the setting up of individual working time accounts which would allow workers to coordinate their working and family life more satisfactorily. Such accounts have been part of the negotiations on the central income policy agreement. They have been actively endorsed by two of the three trade union confederations: the Finnish Confederation of Salaried Employees (STTK) and the Confederation of Unions for Academic Professionals (AKAVA). These confederations represent white-collar workers. On the other hand, the Central Organisation of Finnish Trade Unions (SAK) has been sceptical. Above all, SAK is worried that workers would not be given any workplace-level autonomy over the timing of working-time ‘deposits and withdrawals’. SAK argues that working-time flexibility would thus be mainly determined by the employers in accordance with their production objectives, instead of being directed towards the individual needs of workers. However, in the new Incomes Policy Agreement for 2005-2007 the three confederations, together with the employers’ confederations, recommend that the use of working time banks be promoted in sectoral agreements.

7.2.2. Flexible contracts

The use of flexible contracts has been rising in Finland (see Annex). In addition to part-time contracts, work through temporary agencies has become more widespread. This is apparent especially in the construction sector. In part-time jobs, especially in the service sector, daily work shifts are sometimes very short, shorter than employees prefer. Therefore the trade unions have pursued a minimum working time which would reduce the uncertainty typical of part-time work. In the Incomes Policy Agreement for 2003-2004, a four-hour minimum working time was
agreed. Use of this minimum working time depends, of course, on employee preferences.

During the past few years, trade unions have paid particular attention to the increase in work through temporary agencies. SAK, which represents mainly blue-collar workers, has aimed to increase the responsibilities of employers towards labour hired through temporary work agencies, as well as workers working for subcontracted organisations. In autumn 2004, when the new central agreement was under negotiation, this was an important topic. The new Incomes Policy Agreement for 2005-2007 includes the first references to this issue and the associated and independent right of trade unions to institute civil legal proceedings. Employer liability will be enlarged through both collective agreements and new legislation. The labour market organisations will appoint a task force to formulate recommendations on how to ensure that subcontractors and enterprises offering labour for hire meet their obligations as employers.

7.2.3. Pensions

Working time over the life course in general and the pension system in particular have been key topics in the Finnish debate on working time. Finland is one of those countries which may encounter difficulties when population ageing accelerates as funding for the Finnish welfare state becomes more difficult. Therefore labour market participation should be increased. Currently the official target is to raise the employment rate to 75% by the end of the decade. Clearly, this target is very ambitious: in 2004, for example, the employment rate was 67.3%. Attainment of this target requires, among other things, that the average retirement age be increased substantially. Due to various early-retirement schemes, the average retirement age has been about 59 years. In contrast to many other European countries, the Finnish trade union movement has not opposed reform of the pension system and recently major changes have been made.

New legislation was passed in 2002, coming into force at the beginning of 2005. The main aim is to postpone the average effective retirement age by 2-3 years by financially rewarding long working careers. The general retirement age of 65 will be abolished. Workers may instead start to receive an ordinary old age pension at any time they choose between the ages of 63 and 68. The qualifying age for an early old age pension will be raised from 60 to 62. The individual early retirement pension, which is intended for those with reduced working capacity, will be phased out. The ‘unemployment pension’ (for older unemployed workers) will be phased out, too. At present, the pension is available to long-term unemployed people aged 60 or over, whereas after the reform those out of work may not retire before the age of 62. In addition to the gradual abolition of these two types of pension, the conditions for part-time pensions have also been restricted in recent years.
The accrual of pension entitlements will take place between the ages of 18 and 68 instead of the current ages of 23 and 65. The annual pension accrual rate will be 1.5% until the age of 52. From 53 years of age onwards, it will be 1.9% for the following 10 years, and 4.5% between 63 and 68 years of age. These accrual rates will replace the current rates of 1.5% for those under 60 and 2.5% for those 60 or over. Obviously, the new accrual rates reward longer working careers.

7.3. Collective bargaining and the labour market

According to standardised Labour Force Surveys, average weekly and annual working time in Finland is very near the EU-15 average. During the past ten years no major changes have taken place in this respect. However, these figures give too simplified a picture of working-time changes, particularly of the significant changes in working-time distribution.

Some of these changes are summarised in Figure 7.1 (below). During the past fifteen years the share of employees working 35-39 hours a week has fallen significantly. On the other hand, the shares of employees working fewer than 30 or at least 40 hours have increased. This means that the share of employees with a standard working week has decreased substantially. Figure 7.1 also reflects the rising importance of part-time jobs in Finland. Traditionally, the share of part-time jobs has been below the EU average, but during the past ten years it has been rising. Part-time jobs constitute a substantial share of the new jobs created in Finland.

It is important to note that the share of employees working too short or too long involuntarily has been rising. Consequently, the change depicted by Figure 7.1 does not reflect changes in preferences towards part-time work or working weeks over 40 hours. According to a recent survey, some 40 per cent of employees would like to change their working time. A lot of those who have part-time jobs would like full-time jobs, and many of those who work over 40 hours a week – often involving overtime without pay – would prefer a shorter working week. These changes in working time distribution are not the result of changes in legislation or collective agreements, but rather of market forces operating within the existing legal and bargaining framework.
7.4. Future prospects

As already emphasised, employees have been on the defensive. There is no reason to believe this will change in the near future. On the contrary, employers’ attitudes may become still tougher. The behaviour of the Finnish Forest Industries Federation in spring 2005 may be an indication of the shape of things to come.

So far the Finnish trade union movement has been able to resist major changes. The Incomes Policy Agreement for 2005-2007 also ensures that no general deterioration, due to collective bargaining, will take place in Finnish working-time arrangements in the near future. However, the ongoing dispute in the paper industry and its as yet uncertain outcome may indicate the direction of change in the labour market as a whole.
### Annex

**Types of contract**

<table>
<thead>
<tr>
<th>% employed on full-time open-ended contract</th>
<th>75.4</th>
<th>82.2</th>
<th>68.6</th>
<th>75.3</th>
<th>82.2</th>
<th>68.5</th>
<th>74.9</th>
<th>82.1</th>
<th>67.8</th>
<th>74.7</th>
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<th>67.5</th>
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<tr>
<td>% employed on fixed-term contract</td>
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<td>13.0</td>
<td>20.0</td>
<td>16.2</td>
<td>12.6</td>
<td>19.6</td>
<td>16.4</td>
<td>12.7</td>
<td>20.0</td>
<td>16.2</td>
<td>12.7</td>
<td>19.6</td>
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<tr>
<td>% employed on part-time contract</td>
<td>11.9</td>
<td>7.1</td>
<td>16.8</td>
<td>12.5</td>
<td>7.7</td>
<td>17.3</td>
<td>12.6</td>
<td>7.6</td>
<td>17.5</td>
<td>13.2</td>
<td>8.0</td>
<td>18.3</td>
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<tr>
<td>% employed working through temp agency</td>
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<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>2.3</td>
<td></td>
</tr>
<tr>
<td>% self-employed</td>
<td>13.0</td>
<td>16.7</td>
<td>8.9</td>
<td>12.8</td>
<td>16.6</td>
<td>8.8</td>
<td>12.9</td>
<td>16.5</td>
<td>8.9</td>
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**Working hours**

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<tr>
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<th>40</th>
<th>40</th>
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<tr>
<td>Statutory maximum working day (hours)</td>
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<tr>
<td>Usual hours worked per week, full time employees*</td>
<td></td>
<td>39.2</td>
<td>40.0</td>
<td>38.2</td>
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<tr>
<td>All sectors, average (full time+part time)</td>
<td>37.1</td>
<td>36.9</td>
<td></td>
<td>36.8</td>
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<td></td>
<td>2001</td>
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<td></td>
<td>Total</td>
<td>Men</td>
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<td>Total</td>
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<td>Women</td>
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<tr>
<td><strong>Working hours</strong></td>
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<tr>
<td>Manufacturing</td>
<td>38.6</td>
<td>38.1</td>
<td>38.3</td>
<td></td>
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<tr>
<td>Trade</td>
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<tr>
<td>Usual hours worked per week, part-time employees*</td>
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<tr>
<td>Statutory maximum hours of overtime per year</td>
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<td>250</td>
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<td>250</td>
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<td>250</td>
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<tr>
<td>Actual average number of hours overtime worked per year, per employee</td>
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<td>34.3</td>
<td>32.0</td>
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<tr>
<td>Manufacturing</td>
<td>49.5</td>
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<td>44.4</td>
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<tr>
<td>Trade+hotels and restaurants</td>
<td>28.4</td>
<td>31.4</td>
<td>28.2</td>
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<td><strong>Annual leave</strong></td>
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<tr>
<td>Statutory minimum annual paid leave (days)</td>
<td>24</td>
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<td>24</td>
<td>24</td>
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In matters of working time, France followed its own original path in the late 1990s, differing from the routes taken elsewhere on the international scene. Looking back over this episode now that eight years have elapsed since its start, what is the general picture? What role did bargaining play in a process in which the initiative seemed to be political? How did shorter working hours affect employment, unemployment and pay? How did the new system of working time withstand the combination of the arrival of a right-wing government hostile to the initiative and growing competitive pressures?

In the article that follows, we shall first look at the political, economic and union context in which the movement towards reducing working time was launched. Next we present the outcome of this policy in terms of bargaining, developments in working time practices and the economy in general. In the third part, we describe the current position, three years after the return of the Right to power and the end of a buoyant economic period.

8.1. Legislation on working time reduction through bargaining and experiment

The question of working time and its adjustment first became a central bargaining issue in France in the early 1980s. Several attempts followed one after another, but foundered. Over some twenty years, the only break with the practice of the forty-hour week came as a result of measures adopted after the Left came to power in 1981: the statutory working week was reduced from 40 to 39 hours, and a fifth week’s annual paid holiday was extended to all employed workers. Several difficulties were encountered in the negotiations. On the one hand, they were conducted at national central level, where the players found it hard to go beyond a confrontation of principles or to formulate working proposals without them being contradicted by their respective principals. On the other, a trade-off between flexibility and shorter working hours was rejected by employers’ associations, which preferred greater flexibility, and by some of trades union federations, which sought only a reduction in working hours. These difficulties were faced against the backdrop of a tradition, dating back over a century, of working hours being the prerogative of the legislator (Chatriot et al. 2003).
8.1.1. A legislative and experimental process

For fifteen years unemployment had rarely fallen below 10% of the active population, but in 1997 it reached a high threshold of 12%. The Socialists and the Greens, which had been in opposition for four years, came to an agreement under which combating unemployment would be the main issue in the election campaign expected in 1998. Job creation measures for young people and a policy favouring shorter working hours were planks in this platform. A maladroit political manoeuvre by the Right led to early elections and then a clear victory for the Left in June 1997. The new government was installed, with its election promise still fresh in the mind. In September 1997 it convened a tripartite conference with employers and unions on this issue. But this conference revealed the persistence of the obstructive attitudes. The employers’ associations thought that immobilism on their part would lead to the discarding of a promise that they felt had been made purely to win votes. The government, with the reassurance of its election victory, then decided to proceed via the legislative route.

This was no mean task: the automatic, uniform reduction of the working week was impossible, as amply demonstrated by the series of setbacks during the central bargaining process. To formulate legal principles promoting original solutions for working hours would risk coming up against many forms of opposition from all sides. The idea was thus adopted of proceeding in two stages. A first law was to be enacted, setting the objective of reducing working time but allowing this to be negotiated at company level or at industry level. The law, which was to apply for eight months, would be experimental in nature. The lessons learned from experience could be drawn upon in bringing in a second law, which would extend the reduction of hours of work, incorporating the arrangements and solutions tried out as a result of the impetus imparted by the first law.

8.1.2. The repercussions from the first law

The first law (known as the “Aubry I law”) came into force in June 1998. Technically it introduced little that was new. It extended the options that had been opened up by a previous law introduced by the Right (the Robien law of 1996), which had led to wide divisions among the parties in the preceding coalition government. Aubry I offered financial support for companies that a) operated through negotiations, b) reduced working hours by at least 10% (i.e. from 39 to 35 hours a week) and c) recruited new employees. The forms to be taken by this reduction in working hours and the levels of bargaining (company, industry, etc.) were left open by the law, as were the pay arrangements accompanying this reduction. The Ministry of Employment was required to validate the outcome of negotiations, give its approval and temporarily authorise innovations pending the second law.
The unions were divided on this law. Some of them gave it their vigorous support, while others criticised it for not laying down the conditions of bargaining in more precise detail, especially for negotiations on compensatory pay and the greater flexibility of working time. The main employers’ associations were violently opposed. They relied on the passivity of companies to demonstrate that their position could not be circumvented, and they prepared to block bargaining at industry level.

Despite this prognosis, in many companies employers and employees voluntarily entered into negotiations on the subject (Dufour 1999). On the employers’ side, the windfall effect combined with longer-term strategies. If working hours were reorganised, they could rationalise the use of their plant or optimise their relations with customers. Companies in a phase of expansion could use the subsidies offered by the law to expand their work force at lower cost. The workers demonstrated a willingness to accept substantial changes in working practices in return for a reduction in working hours, at the same monthly pay but with a temporary freeze on that pay. Hence, the work force did not in fact constitute the obstacle predicted. In 80% of cases those employers who embarked on the experiment offered to reduce working hours without asking for anything in return (this was equivalent to an 11% increase in the hourly wage), except for a wage standstill over a number of years. The higher productivity achieved through greater flexibility, government subsidies and the wage freeze financed the immediate rise in the wage bill.

This unexpected development was soon noted by the employers’ associations. They offered the employees’ organisations to negotiate at industry level, their aim being to prevent the negotiations from moving down to company-level agreements. In July 1998 the metallurgical industry arrived at an agreement, and others followed. The validity of the government’s strategy of introducing a law that provided an incentive for experimental bargaining, even in the smallest enterprises, was borne out.

A review of this first law was conducted in late 1999. It found that a reduction in working time could be achieved by varying working time schedules. Some firms continued to work a 39-hour week, recouping the difference by means of days or half-days off; others cut down the number of hours worked in the day; some set up more frequent shifts, while yet others took the seasonal nature of production into account and varied the length of the working week to reflect this constraint, etc.
8.1.3. A widespread reduction in working hours through a more detailed second law

This led to the second law in January 2000 (Aubry II). Following heated debate, the reduction of working time was applied to companies with a work force of over twenty. They used industry-wide agreements or negotiated on their own account in order to reduce the hours of work to an average of 35 hours a week, but on an annual basis. Smaller firms were to wait until January 2002 before the new rules applied. The law recognised many forms of flexibility in working times, along the lines noted under the first law but with specific limitations. The working week could be up to 48 hours, and the maximum number of hours worked in the day was 10, but the hours had to be recouped in the short term. A maximum quota of 130 hours’ overtime was allotted, which might allow the working week to be kept at the level of 38 hours. If the overtime worked increased the working week from 36 to 39 hours, it qualified for a 10% bonus rate (in terms of pay or time off in lieu). Hours worked from 40 to 44 hours a week qualified for a 25% bonus, 50% for over 44 hours. These measures applied to a majority of the work force. Employees with significant levels of responsibility could opt for what was known as a “forfait”, or an arrangement whereby the global time worked was calculated as a number of days per year rather than hours. The annual global number of days could not exceed 217 in a year. “Time savings accounts” were also opened. The amount of compensatory pay was a matter of negotiation, but for employees paid on the basis of the national minimum statutory earnings (SMIC) a special measure was adopted to prevent their monthly earnings from falling. Government aid was now less generous, but it was no longer a condition that new employees had to be recruited; their number also became a matter of negotiation. Firms with a work force of under 20 were not under an obligation to negotiate a 35-hour week, but they paid a 10% overtime bonus for hours worked over 35 and up to 39.

During the second phase, the last industries where working time reductions had not yet been made started to conclude agreements, and tens of thousands of companies did the same on their own account, under the guidance of the new legislative measures, of the industry agreements and in the light of experiences made elsewhere. Within companies, it was necessarily the union delegates who were recognised as being entitled to sign agreements.

1 See “Law on the 35-hour week is in force”, www.eiro.eurofound.eu.int/2000/01.
2 Union delegates are the employees who represent their union body within a company. They are members of the company bodies of elected representatives, whether they have themselves been elected (as in a majority of cases) or are members by virtue of their union duties. In companies without union delegates, the law provides for a case of an employee obtaining a temporary mandate from a union to follow negotiations in the company.
“Between June 1998 and November 2000, 42,805 agreements on the reduction of working time, covering 4.6 million employees, had been concluded. These agreements have meant the creation or retention of 251,915 jobs. The favourable economic conditions partially explain why the vast majority of agreements on the reduction of working time referred to above are ‘offensive’ in nature, i.e. they provide for job creation. Fewer than 10% are defensive, i.e. they provide for job retention, and include job security clauses. Around 90% of agreements have been signed by all the unions operating within a given company. The average working week was 36.8 hours at the end of September, which is 0.5% shorter than it had been the previous quarter, and 4.1% less than it had been 12 months previously. Weekly working time is now less than 36 hours for over half the full-time employees in companies with 10 or more staff (compared to 15% a year previously) (Dufour 2001).”

8.2. The results: shorter working hours, job creation, enhanced bargaining

The results of the new regulations should be analysed at several levels: the effects on hours of work and pay, which was the main objective of the process; on job creation, a corollary aim of the laws; and on the social partners, an indirect effect but at the same time a decisive factor (Commissariat Général du Plan 2001).

8.2.1. Reduced working time, stagnating wages

As a result of the new regulations, working time was reduced and at the same time working time arrangements became more flexible. By the end of December 2001, all companies in the private sector with more than twenty employees had to implement working time reductions. By this date, 69.4% of full-time workers in companies with a work force of 10 or more were working fewer than 36 hours a week (compared with 56.3% a year earlier). The average working week was about 36.1 hours at the end of December, a fall of -0.1% over the quarter and -1.5% over the year. Between the end of 1997 and the end of 2001, the average working week of full-time employees of companies with a work force of 10 and over fell by about 2.7 hours. Recent statistics show that the working time reduction was fairly rapid and widespread. Over less than three years, the average working week for full-time employees in companies employing 10 or more people dropped from 38 to 35.6 hours (Figure 8.1.). The number of hours worked per week has remained stable since 2002, with a large majority of employees in these companies continuing to work 35 to 36 hours (Figure 8.2.).

Christian Dufour

Figure 8.1: Average weekly working time of full-time employees in companies with ten or more employees, 1999-2004 (hours)

Sources: enquête trimestrielle sur l’activité et les conditions d’emploi de la main-d’œuvre (ACEMO); DARES.

Figure 8.2: Weekly working hours in companies with ten or more employees 2002-2004 (% of employees/working time category)

Sources: enquête trimestrielle sur l’activité et les conditions d’emploi de la main-d’œuvre (ACEMO); DARES.
8.2.2. Creation of new jobs, partly due to the buoyant economic situation

How many jobs have been created by the reduction in working time? Or how many have been lost as a result of the same measures? Seven years after the first Aubry Law, the debate is still heated and the results still open to dispute (Boisard, 2004). The assessments conducted by the Ministry of Employment and the Commissariat Général du Plan point to the creation or retention of some 400,000 jobs that can be attributed to the measures introduced for the reduction of working hours over this period. In any case, during the four years in which the policy of reducing working time was being implemented (1997-2001), France created a substantial number of jobs, at a rate not experienced for decades. Over the space of four years 1.6 million jobs came into being (Table 8.1.), a quarter of which might be the result of working time reduction. The number of temporary jobs increased rapidly as well in this period, however as a percentage of total employment temporary jobs remain quite insignificant. Unemployment fell by only a half of the number of new jobs, but the percentage of jobseekers dropped to below the 9% threshold, something that had not happened in France for about fifteen years. During the four-year period from the time when the shorter working hours were first implemented, France enjoyed a markedly higher growth rate than the European average. For a time this coincidence made it possible to offset the budget costs associated with the subsidies granted to employers reducing working hours. It also helped employers to link the reorganisation of their production processes with a phase of growth in production and in the number of people employed.

Table 8.1: Trends in paid employment and working conditions in the private sector

<table>
<thead>
<tr>
<th></th>
<th>End 1997</th>
<th>End 2001</th>
<th>Change</th>
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<tr>
<td></td>
<td>in thousands</td>
<td></td>
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<tr>
<td>Industry</td>
<td>4,091</td>
<td>4,163</td>
<td>+1.8%</td>
</tr>
<tr>
<td>Building</td>
<td>1,137</td>
<td>1,267</td>
<td>+11.4%</td>
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<tr>
<td>Tertiary</td>
<td>8,620</td>
<td>9,990</td>
<td>+15.9%</td>
</tr>
<tr>
<td>Total</td>
<td>13,848</td>
<td>15,419</td>
<td>+11.3%</td>
</tr>
<tr>
<td>of which temporary jobs</td>
<td>400</td>
<td>640</td>
<td>+ 60%</td>
</tr>
<tr>
<td>Jobseekers at end of month</td>
<td>3,052</td>
<td>2,212</td>
<td>- 27.5%</td>
</tr>
</tbody>
</table>


8.2.3. Bargaining comes into its own, but is disconcerting for those involved

In the political debate on working hours, it has been alleged that the reduction of working time is the result of a mechanical, constricting legislative process. This is by no means the case. It has come about from over 200 industry agreements...
and several tens of thousand of company-level agreements. All the indicators, all the surveys, show that there was a revival in company and industry bargaining over this period. It is open to debate whether the unions or the employers’ associations have taken advantage of this period to establish themselves more firmly, especially in the private sector.

The quality of the agreements negotiated at industry level is often lower than is the case with agreements at company level. Those employers least in favour of reducing working hours, moreover, have preferred to apply industry-wide agreements rather than negotiating directly with their own employees. However, since many companies lack union representation, mandating procedures were established to remedy this situation. In enterprises without union representation, an employee could negotiate and sign a legally valid agreement if he could obtain a temporary mandate from a representative union. Very many agreements were signed in this way, and they have not been among the least favourable for employees (Dufour et al. 2000).

The reluctance displayed by the employers’ associations led individual employers to take independent action outside the traditional industry-wide regulatory framework (Dufour, 2004). Paradoxically, this factor has been one reason for the success of the law, in that it has encouraged a move to very specific ways of adapting, as well as bringing together employers and employees in direct face-to-face encounters. But this has not helped to strengthen the coordinating role of the trade organisations. On the other hand, the employee associations that were the most critical of the laws for not being more prescriptive had to accept that their representatives within companies were entering into very open negotiations. The risks incurred led to the results of negotiations being validated by referenda among the employees; this was also demanded by the employers, who were sometimes concerned about whether the new forms of work organisation would be accepted by their work force.

8.3. The measures adopted by the right-wing government against shorter working hours and their practical effects

8.3.1. Reaction of the government against the 35-hour week

When the electorate returned the Right to power in 2002, was it a reaction against the left-wing coalition government for its policy of reducing working hours, supported by the unions? It is a question that needs to be asked, even if there is no simple answer. The surveys conducted and the more spontaneous reactions both show that male and female employees had somewhat mixed feelings about the new working conditions. A substantial majority were satisfied with the way in which the balance between their work and personal lives had been reorganised.
due to the shorter working hours. At the same time, they found that work had become more intensive, allowing less contact with colleagues. Overall, however, their judgment was positive. This was not enough to mobilise left-wing voters around the Socialist candidate in the 2002 presidential elections. They became fragmented, many of them voting for candidates calling for an increase in social measures in a period when the economy was at a low ebb. Blue-collar workers, the employees least persuaded of the benefits of the shorter working hours and who had to put up with a prolonged pay freeze, which had been easier to accept at the beginning of the period than at its end, did not support the Socialist candidate as had been their custom. Symbolically, the Minister for Employment who had piloted the laws bearing her name, Martine Aubry, was defeated in these elections in a traditionally left-wing blue-collar constituency.

The Right, on the other hand, was able to mobilise its own grassroots membership to censure what it had always regarded as an economic nonsense, or even as morally wrong. The less socially advanced and the less economically dynamic employers could hope that the reduction might not in the event be extended to companies with fewer than twenty employees, and looked to the Right to do away with the legislative measures that had been adopted by the government of the Left. What has happened now, three years after the right-wing government returned to power?

8.3.2. A legal counter-attack with limited effects?

“Get France back to work” was the focal theme of the Right on resuming business in 2002. It promised its customers to unlock the “ball and chain shackled to the foot of the French economy by the Left”. For their part, the principal employers’ associations struck back at the laws that they felt had sapped the workforce’s taste for work and had as a result made the country less competitive.

The Right’s first move was to desist from extending the obligation of the 35-hour week to employees with fewer than twenty employees, and to suspend the ongoing negotiations for the hundreds of thousands of employees in the catering trades. It then increased the statutory maximum quota for overtime to 180 hours (October 2002). This meant that hours of work could be increased by four hours a week, in other words the working week could once again be 39 hours. In February 2003, a law was passed to the effect that this quota does not apply in the case of an industry agreement providing for a higher or lower volume of overtime. Unless otherwise agreed, as well, the overtime bonus is 25% (from the 36th to the 44th hour) and then 50% (44 hours or more). The overtime system for companies with a workforce of fewer than 20 employees has been extended to the end of 2005.

But these measures did not satisfy the employers’ associations, which brought strong pressure to bear on the government. A new law was passed in early 2005 with the aim of “making the 35 hours more flexible”. The intention is not to do
away with the 35-hour week, since the statutory working hours remain unchanged, but to allow “employees wishing to do so to work longer”. The law is based on several measures:

- the number of compensatory days off that can be accumulated under a “compte d’épargne-temps” (CET, or “working time savings account”) is no longer restricted to 22. Moreover, the obligation to liquidate the days outstanding in a CET every five years will be withdrawn. Days outstanding in a CET can be cashed in;
- it will now be possible to deposit overtime, benefits from profit-sharing schemes, and pay rises into CETs;
- extra days off resulting from the reduction of working time scheme for managerial staff can be ‘bought out’ (i.e. paid in lieu rather than taken), even if they have not been deposited in a CET. This scheme will be available only to managerial staff, and on a voluntary basis;
- firms employing fewer than 20 employees will be able to make payments in lieu of the “reduction of working time” days, rather than offering compensatory days off; and
- employees will be able to work longer than the statutory overtime quota, set at 220 hours a year.

The aim of these different measures is to pave the way for a possible return to the 40-hour system (35 hours a week + 220 hours a year with 5 weeks’ paid holiday). It should be possible to arrive at this arrangement, according to the lawmakers, by opening up an option of industry agreements derogating from the legislative measures, which would forfeit their central role.

8.3.3. The current economic position of the 35-hour week?

Working time practices within companies do not become public knowledge until a certain time has elapsed. Recent research published in April 2005 on “the collective duration of work and overtime in 2003” does, however, provide a good picture of actual working hours. In companies with a work force of ten or over in the non-agricultural commercial sector, for full-time employees the average number of hours worked at the end of 2003 was 1,609, which corresponds to around 35.8 hours a week (Figure 8.3.). This number had declined constantly since 1998. Working time was lowest in large companies and highest in small enterprises (Figure 8.3.). As far as sectors are concerned, working time was lowest in industry and highest in construction (Annex Table 1).

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4 See www.eiro.eurofound: France: “Reform of 35-hour week law underway”.
Figure 8.3: Divergence from the average annual duration of work, by size of company, 1998-2003 (Average annual duration in hours)

Interpretation: at the end of 2003, the collective annual duration of work in companies with a work force of 10 to 19 was 66 hours more than the average of 1,609 hours. At the end of 1998, it was 30 hours more than the average of 1,742 hours.

Notes: data refer to companies with a work force of 10 and over in the non-agricultural commercial sector.


While total hours worked have declined, the percentage of employees performing overtime has increased compared to the previous years (Table 8.2., also Annex Table 2). However, the number of hours overtime worked by individual employees is decreasing. It is also far from the maximum number laid down in 2003 (180) and even further from the maximum envisaged from 2005 onwards (220).

The conclusion is fairly straightforward: companies are using overtime not in order to inflate individual working time but to adjust to demand. The new forms of work organisation at their disposal are robust, because they were reshaped at the time of negotiations on reducing working hours. The new options for the flexibility of working time on an annual basis mean that their optimum adjustment to short-term fluctuations can be achieved. The negotiations on working time regulations took place when the economy was flourishing; full advantage of the possibilities they offer was taken during the lengthy phase of economic depression that began at the end of 2001 and is still continuing today. This explains why the employers were not so doggedly determined to modify the agreements reached in the period from 1998 to 2002 as were the government or the employers’ associations. Furthermore, reductions in working hours have been obtained through very decentralised negotiations. This means that most employees (especially women)
are strongly attached to the new working time arrangements and their effects on their non-working life. The employers know that a frontal attack on this field would be counter-productive in the long run. Traces of these social realities are to be found in the two conflicting strategies of employers’ associations. On the one hand, one association of small employers – the UPA – has promoted the 35-hour arrangement to its members to avoid difficulties when they come to recruiting on the labour market. On the other, employers in the catering trades – where the 40-hour week still exists – say in 2005 that they find it hard to recruit labour.

In more general terms, negotiations on the 35 hour system have no doubt led to the emergence of new norms, and it will take time for their nature and potential to be revealed (Bouffartigue Bouteiller 2003).

Table 8.2: Declared overtime from 2000 to 2003, by major sector of employment

<table>
<thead>
<tr>
<th>Sector in which company operates</th>
<th>Year</th>
<th>Percentage of employees working declared overtime</th>
<th>Annual average volume of declared overtime per full-time employee working overtime</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>in all companies</td>
<td>in companies declaring</td>
</tr>
<tr>
<td>Industry</td>
<td>2000</td>
<td>31</td>
<td>49</td>
</tr>
<tr>
<td></td>
<td>2001</td>
<td>31</td>
<td>48</td>
</tr>
<tr>
<td></td>
<td>2002</td>
<td>31</td>
<td>48</td>
</tr>
<tr>
<td></td>
<td>2003</td>
<td>36</td>
<td>47</td>
</tr>
<tr>
<td>Construction</td>
<td>2000</td>
<td>38</td>
<td>67</td>
</tr>
<tr>
<td></td>
<td>2001</td>
<td>35</td>
<td>63</td>
</tr>
<tr>
<td></td>
<td>2002</td>
<td>42</td>
<td>69</td>
</tr>
<tr>
<td></td>
<td>2003</td>
<td>43</td>
<td>67</td>
</tr>
<tr>
<td>Services</td>
<td>2000</td>
<td>28</td>
<td>44</td>
</tr>
<tr>
<td></td>
<td>2001</td>
<td>25</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td>2002</td>
<td>25</td>
<td>41</td>
</tr>
<tr>
<td></td>
<td>2003</td>
<td>29</td>
<td>48</td>
</tr>
<tr>
<td>Total</td>
<td>2000</td>
<td>30</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>2001</td>
<td>27</td>
<td>44</td>
</tr>
<tr>
<td></td>
<td>2002</td>
<td>28</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>2003</td>
<td>32</td>
<td>49</td>
</tr>
</tbody>
</table>

Interpretation: 36% of full-time employees in all companies in industry have worked declared overtime at least once during 2003. In only those companies declaring overtime, 47% of full-time employees have worked overtime, and the average annual volume of overtime worked per employee was 48 hours.

Note: table refers to companies with 10 or more employees in the non-agricultural commercial sector.
8.4. Conclusion: a new working time system that is validated by society

Up to this time, the main supporters of the 35-hour week have been the men and women employees themselves, who have closely monitored the changes that these imply for themselves. The greater flexibility of working time in exchange for pay moderation has been broadly endorsed, even though it has been painful for those employees who have seen the minimum wage (SMIC) being increased to a point at which it has caught up with their own. The government of the Right and the employers’ associations have first of all had to face these social and political realities and to propose a new – non-negotiated – law making it a matter of negotiation whether the reduced hours of work attained in 1998-2002 can now be exceeded.

There have been several cases of negotiation in 2004 (Bosch, Doux, SEB) that have shown that the new legislative measures could be used to detract from working conditions by employers threatening to relocate production. But these assume the consent of employees, and often a union majority. Relocations take place for reasons associated with the cost of labour, not with the duration of working time.

The weakness of the economy offers a good reason for the greater flexibility that authorise the safeguarding of jobs during this period. On the other hand, there is beginning to be less tolerance of the prolonged period of wage moderation. The issue of pay rises has come up to the top of the list of union demands.

Bibliography


Christian Dufour


Annex

Table 1: Annual working hours at end 2003, by company size and sector

<table>
<thead>
<tr>
<th>Size of company</th>
<th>Proportion of employees whose yearly hours of work are lower than 1,620 hours (a)</th>
<th>Average annual hours of work for full-time employees (except for executives calculating working time in days)</th>
<th>Absolute divergence compared with end 2002</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>as %</td>
<td>in hours</td>
<td>Absolute divergence compared with end 2002</td>
</tr>
<tr>
<td>10 to 19 employees</td>
<td>49</td>
<td>1,675</td>
<td>+8</td>
</tr>
<tr>
<td>20 to 49 employees</td>
<td>61</td>
<td>1,637</td>
<td>+4</td>
</tr>
<tr>
<td>50 to 99 employees</td>
<td>79</td>
<td>1,606</td>
<td>+9</td>
</tr>
<tr>
<td>100 to 249 employees</td>
<td>76</td>
<td>1,604</td>
<td>+2</td>
</tr>
<tr>
<td>250 to 499 employees</td>
<td>85</td>
<td>1,598</td>
<td>+4</td>
</tr>
<tr>
<td>over 500 employees</td>
<td>88</td>
<td>1,586</td>
<td>+1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Company sector</th>
<th>Proportion of employees whose yearly hours of work are lower than 1,620 hours (a)</th>
<th>Average annual hours of work for full-time employees (except for executives calculating working time in days)</th>
<th>Absolute divergence compared with end 2002</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>as %</td>
<td>in hours</td>
<td>Absolute divergence compared with end 2002</td>
</tr>
<tr>
<td>Industry</td>
<td>81</td>
<td>1,595</td>
<td>+4</td>
</tr>
<tr>
<td>Agricultural &amp; food</td>
<td>79</td>
<td>1,599</td>
<td>+3</td>
</tr>
<tr>
<td>industries</td>
<td></td>
<td></td>
<td>-10</td>
</tr>
<tr>
<td>Consumer goods industries</td>
<td>83</td>
<td>1,587</td>
<td>+2</td>
</tr>
<tr>
<td>Automotive industry</td>
<td>88</td>
<td>1,577</td>
<td>+13</td>
</tr>
<tr>
<td>Capital goods industries</td>
<td>77</td>
<td>1,601</td>
<td>+4</td>
</tr>
<tr>
<td>Intermediate goods</td>
<td></td>
<td></td>
<td>-6</td>
</tr>
<tr>
<td>industries</td>
<td>77</td>
<td>1,602</td>
<td>+3</td>
</tr>
<tr>
<td>Energy</td>
<td>99</td>
<td>1,578</td>
<td>+1</td>
</tr>
<tr>
<td>Construction</td>
<td>58</td>
<td>1,636</td>
<td>+12</td>
</tr>
<tr>
<td>Service</td>
<td>77</td>
<td>1,613</td>
<td>+5</td>
</tr>
<tr>
<td>Commerce</td>
<td>71</td>
<td>1,618</td>
<td>+9</td>
</tr>
<tr>
<td>Transport</td>
<td>70</td>
<td>1,657</td>
<td>+3</td>
</tr>
<tr>
<td>Finance</td>
<td>82</td>
<td>1,587</td>
<td>-5</td>
</tr>
<tr>
<td>Real estate</td>
<td>93</td>
<td>1,574</td>
<td>+21</td>
</tr>
<tr>
<td>Company services</td>
<td>86</td>
<td>1,596</td>
<td>+3</td>
</tr>
<tr>
<td>Individual services</td>
<td>60</td>
<td>1,657</td>
<td>+10</td>
</tr>
<tr>
<td>Education, health &amp;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>social action</td>
<td>86</td>
<td>1,577</td>
<td>+3</td>
</tr>
<tr>
<td>Overall</td>
<td>77</td>
<td>1,609</td>
<td>+5</td>
</tr>
</tbody>
</table>

(a) Proportion of employees working in an establishment or company whose average collective hours of work are 1,620 hours a year or less (i.e. 36 hours a week or less, based on 45 working weeks).

Interpretation: at the end of 2003, 77% of employees are working in an establishment or company whose average collective hours of work are 1,620 hours a year or less, i.e. plus 5 percentage points compared with the end 2002. The average collective hours of work per year for full-time employees amounted to 1,609 hours at the end of 2003, i.e. five yours less than at the end of 2002.

Note: table refers to companies with a work force of 10 or more in the non-agricultural commercial sector.

Table 2: Declared overtime in 2003, based on collective annual duration of work

<table>
<thead>
<tr>
<th>Annual average collective duration of work</th>
<th>Percentage of employees affected by such duration</th>
<th>Percentage of full-time employees working declared overtime</th>
<th>Percentage of full-time employees working overtime in all companies</th>
<th>Percentage of full-time employees working overtime in companies declaring overtime</th>
<th>Annual average volume of declared overtime per full-time employee working overtime</th>
<th>Percentage of full-time employees working overtime in a company where average annual volume of overtime exceeds 130 hours</th>
<th>Percentage of full-time employees working overtime in a company where average annual volume of overtime exceeds 180 hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>- less than 1,574 hours, i.e. under 35 hours a week</td>
<td>26</td>
<td>29</td>
<td>43</td>
<td>44</td>
<td>6</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>- between 1,575 and 1,600 hours, i.e. approx. 35 hours a week</td>
<td>44</td>
<td>31</td>
<td>46</td>
<td>50</td>
<td>6</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>- between 1,601 and 1,719 hours, i.e. between 35 and 38 hours a week</td>
<td>18</td>
<td>36</td>
<td>53</td>
<td>56</td>
<td>11</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>- over 1,711 hours, i.e. over 38 hours a week</td>
<td>12</td>
<td>34</td>
<td>62</td>
<td>90</td>
<td>27</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>Overall</td>
<td>100</td>
<td>32</td>
<td>49</td>
<td>55</td>
<td>6</td>
<td>4</td>
<td></td>
</tr>
</tbody>
</table>

Interpretation:
12% of employees work in companies where the annual collective duration of work is over 1,711 hours. In these companies, 34% of full-time employees have worked declared overtime at least once over the year in 2002. In only those companies declaring overtime, 62% of full-time employees have worked overtime, and the average annual volume of overtime worked was 90 hours. The percentage of full-time employees working overtime in a company in which the annual average volume is greater than 130 hours was 27%, and the percentage of those working in a company where the annual average volume is greater than 180 hours was 14%.

Note: companies with a work force of 10 or over in the non-agricultural commercial sector.
Table 3: Declared overtime in 2003, by company size and sector

<table>
<thead>
<tr>
<th>Size of company</th>
<th>Proportion of full-time employees working declared overtime</th>
<th>Average annual declared volume per full-time employee working overtime</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>in all companies</td>
<td>in companies declaring overtime</td>
</tr>
<tr>
<td>10 to 19 employees</td>
<td>31</td>
<td>69</td>
</tr>
<tr>
<td>20 to 49 employees</td>
<td>26</td>
<td>60</td>
</tr>
<tr>
<td>50 to 99 employees</td>
<td>26</td>
<td>48</td>
</tr>
<tr>
<td>100 to 249 employees</td>
<td>31</td>
<td>47</td>
</tr>
<tr>
<td>250 to 499 employees</td>
<td>35</td>
<td>45</td>
</tr>
<tr>
<td>Over 500 employees</td>
<td>36</td>
<td>41</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Company sector</th>
<th>Proportion of full-time employees working declared overtime</th>
<th>Average annual declared volume per full-time employee working overtime</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>in all companies</td>
<td>in companies declaring overtime</td>
</tr>
<tr>
<td>Agricultural &amp; food industries</td>
<td>34</td>
<td>52</td>
</tr>
<tr>
<td>Consumer goods industries</td>
<td>28</td>
<td>41</td>
</tr>
<tr>
<td>Automotive industry</td>
<td>47</td>
<td>50</td>
</tr>
<tr>
<td>Capital goods industries</td>
<td>33</td>
<td>44</td>
</tr>
<tr>
<td>Intermediate goods industries</td>
<td>37</td>
<td>48</td>
</tr>
<tr>
<td>Energy</td>
<td>45</td>
<td>46</td>
</tr>
<tr>
<td>Construction</td>
<td>43</td>
<td>67</td>
</tr>
<tr>
<td>Commerce</td>
<td>34</td>
<td>52</td>
</tr>
<tr>
<td>Transport</td>
<td>46</td>
<td>60</td>
</tr>
<tr>
<td>Finance</td>
<td>16</td>
<td>23</td>
</tr>
<tr>
<td>Real estate</td>
<td>7</td>
<td>21</td>
</tr>
<tr>
<td>Company services</td>
<td>30</td>
<td>49</td>
</tr>
<tr>
<td>Individual services</td>
<td>16</td>
<td>45</td>
</tr>
<tr>
<td>Education, health &amp; social action</td>
<td>30</td>
<td>46</td>
</tr>
<tr>
<td>Overall</td>
<td>32</td>
<td>49</td>
</tr>
</tbody>
</table>

Interpretation:
in companies in general, 32% of full-time employees have worked declared overtime at least once during 2003. In only those companies declaring overtime, 49% of full-time employees have worked overtime, and the average annual volume of overtime worked was 55 hours.

Note: companies with a work force of 10 or over in the non-agricultural commercial sector.

9. Germany: Working time and its negotiation

Reinhard Bispinck

9.1. Working time: a controversial topic

In Germany, working time has been the subject of hard-fought battles in the field of collective bargaining and corporate policy for some two decades now. The trade unions began the fight for a 35-hour week back in 1984, but it took them six years before they managed to negotiate the first 35-hour week agreements in the metalworking and printing industries. It was to be another five years before these agreements were finally implemented, at least in these two sectors. Moreover, despite these partial successes, the trade unions have not been able to achieve their key working time policy goal in the vast majority of industries. The industry-wide average working week stipulated by collective agreements in western Germany currently stands at 37.4 hours, and the figure is approximately an hour and a half higher in eastern Germany. The price that the trade unions paid (or rather were forced to pay) for a shorter working week was extensive flexibilisation of the workplace and the duration and distribution of working time. So much so that the president of the Confederation of German Employers’ Associations, Dieter Hundt, could already say some years ago that working time arrangements were now so flexible ‘that anyone who says that collective agreements are an obstacle to companies adapting working time precisely to meet their requirements is either being malicious or does not know anything about collective agreements’ (Handelsblatt 20.4.2000).

Nevertheless, the employers’ associations have never really come to terms with the idea of collective working time reduction. After a period of inactivity on the working time front, the mid-1990s saw them begin trying to roll back working time standards. They took advantage of the fact that the trade unions’ position had been severely weakened as a result of the dramatic rise in unemployment in order to attempt to rectify the ‘historical error’ of the 35-hour week. Virtually every collective bargaining round saw them calling either for flexibilisation clauses allowing companies to diverge from collective agreements or even for an across-the-board increase in collectively agreed working hours. This led to a major dispute in the 2004 bargaining round in the metalworking industry. The employers’ associations’ main argument rested on the fact that, according to them, the metalworking and electronics industries are not competitive because their labour costs are too high, resulting in the risk of large-scale relocation of production. However, the disputes are not restricted to the metalworking industry or to the issue of working time. Severe downward pressure is now being brought to bear on collective-
ly agreed standards in practically every industry, and it is affecting all the areas that are regulated by collective agreements, including pay. The trend towards company-specific agreements resulting from the rapid spread of opt-out clauses has led to an erosion from within of collectively agreed standards, accompanied by a tendency for collective agreements to become less and less binding in nature.

The conflict surrounding working time and other collectively agreed standards, in the realm of both collective bargaining policy and, increasingly, corporate policy, is an international issue. The solutions found in Germany serve as a model that influences the debate in other countries. The next section will deal with the statutory regulation of working time, and this will be followed by a look at the key area of regulation through collective agreements. There will then be an overview of the available empirical data on what working time arrangements are like in practice. The final section will present the current collective bargaining issues and results for the 2004/2005 bargaining rounds.

9.2. Working time regulation

The statutory and collectively agreed regulations concerning the workplace and the duration and distribution of working time in Germany are closely interlinked. The statutory regulations, the most important of which is the Working Time Act (Arbeitszeitgesetz – ArbZG), establish the compulsory minimum conditions that have to be met with regard to working time. These cover, for example, the duration of the working day, breaks, special regulations for dangerous work, and work performed on Sundays or public holidays. They also regulate the circumstances under which exceptions are allowed. The collective agreements take these statutory regulations as their basis and adapt them to the requirements of each industry. The duration of (weekly) working time, as well as its differentiation and variation in detail is something that is regulated by all collective agreements. The sectoral collective agreements currently in force in Germany often leave plenty of scope for company-specific arrangements through company-level agreements.

9.2.1. Statutory regulations – the Working Time Act

The principal statutory regulation is the 1994 Working Time Act that provides the basic framework for matters such as the duration of the working day, time off, and Sundays and public holidays. Its key provisions are as follows:

- An employee’s working day may not exceed eight hours. It may be extended to ten hours as long as the average working day over any six-month period remains at eight hours. There are special regulations governing night and shift work.

- Workers working between 6 and 9 hours a day are entitled to a minimum break of 30 minutes. This rises to at least 45 minutes for anything over 9 hours. There
must be a period of at least 11 hours between the end of one working day and the start of the next.

- Employees may not be asked to work on Sundays or public holidays.

However, there are numerous exceptions to these basic regulations that are at least as important as the regulations themselves. To begin with, there are certain circumstances under which it is possible to establish exceptions to virtually all of the statutory regulations 'in a collective agreement or in a company agreement provided for by a collective agreement'. In practice, this means that the parties to the collective agreement can agree to increase working time and to reduce the duration of breaks and time off work. Despite the overall ban on work on Sundays and public holidays, there are several cases where it is in fact allowed, and compensation for such work is once again regulated by collective agreement. Furthermore, both the federal and regional governments can issue statutory orders permitting further exceptions to the ban on working on Sundays and public holidays, particularly in situations where the fact that other countries have longer working hours means that sticking to the maximum statutory working hours is causing unreasonable damage to competitiveness.

All this room for manoeuvre means that employers and trade unions can agree on conditions that exceed the minimum stipulated by the law, and this has indeed been done, particularly with regard to the duration of working time. Almost all collective agreements also contain regulations that restrict or develop the provisions of the Working Time Act pertaining to the workplace and working time distribution. However, neither the statutory nor the collectively agreed regulations provide a comprehensive framework that covers all the eventualities that may arise within individual companies. The specific details and implementation of the regulations are thus to a large extent left up to each company. Indeed, many collective agreements explicitly state that the exact details of how collectively agreed working time regulations are to be put into practice should be regulated by company-level agreements.

9.2.2. Working time provisions in collective agreements

Although at economy-wide level there has been little change in the key data concerning the collectively agreed working week over the course of the past year (Table 9.1), there have been changes in the working time arrangements stipulated by collective agreements in individual industries. The industry-wide average collectively-agreed working week for the whole of Germany stood at 37.6 hours at the end of 2004 (western Germany 37.4, eastern Germany 38.9) (see Bispinck/WSI Collective Agreement Archive 2005a). However, as explained below, the numerous opt-out clauses and flexibilisation regulations relating to working time mean that the industry-wide and sectoral data on collectively-agreed working time should be taken as broad reference figures rather than as an exact indication of actual working time standards.
### Table 9.1: Collectively agreed weekly and annual working hours, 1995–2004

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Weekly</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>W</strong></td>
<td>37.5</td>
<td>37.5</td>
<td>37.5</td>
<td>37.4</td>
<td>37.4</td>
<td>37.4</td>
<td>37.4</td>
<td>37.4</td>
<td>37.4</td>
<td>37.4</td>
</tr>
<tr>
<td><strong>E</strong></td>
<td>39.5</td>
<td>39.4</td>
<td>39.4</td>
<td>39.2</td>
<td>39.1</td>
<td>39.1</td>
<td>39.1</td>
<td>39.0</td>
<td>38.9</td>
<td></td>
</tr>
<tr>
<td><strong>Annual</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>W</strong></td>
<td>1,651.9</td>
<td>1,645.1</td>
<td>1,644.4</td>
<td>1,643.2</td>
<td>1,642.8</td>
<td>1,642.5</td>
<td>1,641.9</td>
<td>1,642.6</td>
<td>1,643.3</td>
<td>1,643.3</td>
</tr>
<tr>
<td><strong>E</strong></td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>1,735.5</td>
<td>1,729.9</td>
<td>1,727.7</td>
<td>1,724.2</td>
<td>1,722.7</td>
<td>1,721.9</td>
<td>1,719.2</td>
</tr>
</tbody>
</table>

Note: Figures for 31.12 of each year; Source for weekly figures up to 1996: BMWA Collective Agreements Register; W=West, E=East.


### Table 9.2: Working week stipulated by collective agreement in selected industries

<table>
<thead>
<tr>
<th>Industry</th>
<th>West</th>
<th>East</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banking</td>
<td>39</td>
<td>39</td>
</tr>
<tr>
<td>Construction</td>
<td>39</td>
<td>39</td>
</tr>
<tr>
<td>Chemicals</td>
<td>37.5</td>
<td>40</td>
</tr>
<tr>
<td>Deutsche Bahn AG (railways)</td>
<td>38</td>
<td>38</td>
</tr>
<tr>
<td>Deutsche Post AG</td>
<td>38.5</td>
<td>38.5</td>
</tr>
<tr>
<td>Deutsche Telekom AG</td>
<td>34</td>
<td>34</td>
</tr>
<tr>
<td>Printing industry</td>
<td>35</td>
<td>38</td>
</tr>
<tr>
<td>Retail trade</td>
<td>37.5</td>
<td>38 1</td>
</tr>
<tr>
<td>Iron and steel industry</td>
<td>35</td>
<td>38</td>
</tr>
<tr>
<td>Building cleaning workers</td>
<td>39</td>
<td>39</td>
</tr>
<tr>
<td>Wholesale and foreign trade</td>
<td>38.5</td>
<td>39 2</td>
</tr>
<tr>
<td>Hotels and restaurants</td>
<td>39</td>
<td>39.5</td>
</tr>
<tr>
<td>Agriculture</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td>Metalworking industry</td>
<td>35</td>
<td>38</td>
</tr>
<tr>
<td>Public sector</td>
<td>38.5</td>
<td>40</td>
</tr>
<tr>
<td>Paper processing industry</td>
<td>35</td>
<td>37</td>
</tr>
<tr>
<td>Confectionery industry</td>
<td>38</td>
<td>39</td>
</tr>
<tr>
<td>Textiles industry</td>
<td>37</td>
<td>40</td>
</tr>
<tr>
<td>Insurance</td>
<td>38</td>
<td>38</td>
</tr>
<tr>
<td>Industry-wide average</td>
<td>57.4</td>
<td>39</td>
</tr>
</tbody>
</table>

Notes:
2. In the majority of branches.

Just one fifth of workers have a 35-hour week stipulated by their collective agreement (Table 9.2). The figure is between 36 and 37 hours for some 10% of workers, between 37.5 and 38.5 hours for a further 45%, and just under 25% still have collectively agreed working weeks of 39 hours or more. The average collectively agreed holiday entitlement for the whole of Germany remained at 30.0 days (western Germany 30.1, eastern Germany 29.6). Based on the above figures combined with other data, the collectively agreed average annual working hours for the whole of Germany stand at 1,655.7 hours: for western Germany 1,643.3 and for eastern Germany 1,719.2 (Table 9.3).

Table 9.3: Collectively agreed working time, 2004

<table>
<thead>
<tr>
<th>Area covered by collective agreement</th>
<th>East</th>
<th>West</th>
<th>All Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td>Working week (hrs)</td>
<td>38.9</td>
<td>37.4</td>
<td>37.6</td>
</tr>
<tr>
<td>% employees with:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>up to 35</td>
<td>3.3</td>
<td>23.2</td>
<td>20.0</td>
</tr>
<tr>
<td>36-37</td>
<td>5.3</td>
<td>11.3</td>
<td>10.4</td>
</tr>
<tr>
<td>37.5-38.5</td>
<td>31.1</td>
<td>47.7</td>
<td>45.1</td>
</tr>
<tr>
<td>39-40 or more hrs</td>
<td>60.3</td>
<td>17.5</td>
<td>24.4</td>
</tr>
<tr>
<td>Holiday entitlement (working days)(^1)</td>
<td>29.6</td>
<td>30.1</td>
<td>30.0</td>
</tr>
<tr>
<td>Annual working hours</td>
<td>1,719.2</td>
<td>1,643.3</td>
<td>1,655.7</td>
</tr>
</tbody>
</table>

Note:
\(^1\) Upper grade.


9.2.3 Flexibility of working time provisions in collective agreements

Existing collective agreements allow for various basic models and a whole array of variations in terms of the details of flexible working time arrangements (Bispinck/WSI Collective Agreement Archive 2005b). The main models of flexible arrangements for regular collectively agreed (weekly) working hours are as follows:
Increasing working time/working time corridors

One important means of implementing flexible working time arrangements is the introduction of permanent increases in regular working hours or the use of ‘working time corridors’ establishing a fixed band within which companies can vary working time on a permanent basis. It is thus possible in the metalworking industry, for example, to agree to a permanent individual regular working week of up to 40 hours for up to 18% of workers (and up to 50% in exceptional cases), as opposed to the 35-hour week stipulated by the collective agreement. This means of increasing working time is a variation on the ‘working time corridor’ model. Working time corridors enable companies to vary the regular working time of certain groups of workers or the company’s entire workforce within the limits of a fixed band. This allows them to introduce permanent increases or decreases with respect to the working week stipulated by the collective agreement. In the chemical industry, for example, the 37.5-hour working week may be varied by +/- 2.5 hours. If the employers and the works council so agree, the regular working time of individual groups of workers can be set at anything between 35 and 40 hours, and the same is possible for whole operating units or indeed a company’s entire workforce if approved by the parties to the collective agreement.

Seasonal working time arrangements

In almost every industry it is possible for working time to be varied on a seasonal basis or more generally depending on the time of year. Some industries simply have annualised working hours, as is the case in the German railways company Deutsche Bahn AG where the annual total is 1,984 hours. Other industries actually stipulate seasonal variations in their collective agreement. The collective agreement for the construction industry, for example, splits the 39-hour working week into a 40-hour week in the summer and a 37.5 hour week in winter.

Uneven working time distribution and the ‘averaging-out period’

Uneven distribution of regular working time is possible in every sector, but there are major differences between industries with regard to the extent of the variations in working time and the length of the period over which working hours must ‘average out’ at the collectively agreed working week. In the majority of sectors, the collectively agreed working week runs from Monday to Friday. Most collective agreements contain some form of lower and upper limit for the extent to which regular working time may be unevenly distributed, often stipulating daily and weekly limits. A key factor in determining the extent of working time flexibility is the ‘averaging-out period’, i.e. the period over which working time should average out at the same as the working week stipulated by the collective agreement. Virtually all sectors, and not just the major industries, now have averaging-out
periods of one year, and in some exceptional cases this figure rises to as much as three years.

**Weekend work**

The majority of collective agreements permit Saturday work in some form or other and it is only rarely possible for the works council to prevent this. However, Saturday work may not automatically be counted as regular working time, except in the sectors in which continuous shift work is the norm.

**Extra work**

Extra work or overtime has always been part and parcel of working life and is something that is naturally provided for by collective agreements. Collective agreements regulate extra work either by establishing the maximum number of overtime hours that can be worked per week or per month, for example, or by stipulating a daily or weekly maximum number of working hours that includes overtime. Extra work that exceeds these limits is normally allowed in exceptional circumstances, and some agreements do not regulate overtime at all.

**Temporary reduction of working time**

In response to the major recession in 1992/93, many sectors have, since the mid-1990s, adopted regulations that provide for the temporary reduction of the working time stipulated by collective agreements (Table 9.4). This collectively agreed form of short-time working is intended to safeguard jobs when the company's order book is down or when there is a break in production for some other reason. Pay is cut accordingly during the period of short-time work, although the difference with the full salary is partly made up in some exceptional cases.

The basic flexibilisation models outlined above can also be combined with each other. All this indicates that in practically every sector, and quite apart from the other flexibilisation options that exist, it is possible for collectively agreed regular working time to be distributed in an irregular manner. In addition to this (legitimate) extra work over and above regular working hours is used as the principal supplementary flexibilisation measure. By way of example, in Table 9.5 the few basic elements described above have been combined in the metalworking industry to produce the following flexible working time arrangements that are allowed by the collective agreement. Table 9.6 provides an overview of the different combinations for a number of sectors and branches.
Table 9.4: Temporary reduction of collectively agreed working week (hours)

<table>
<thead>
<tr>
<th>Industry</th>
<th>Working week</th>
<th>Reduced to</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banking</td>
<td>39</td>
<td>31</td>
</tr>
<tr>
<td>Chemicals West</td>
<td>37.5</td>
<td>35-40</td>
</tr>
<tr>
<td>Printing West/East</td>
<td>35/38</td>
<td>30/33</td>
</tr>
<tr>
<td>Iron and steel Lower Saxony, Bremen, North Rhine-Westphalia</td>
<td>35</td>
<td>35-30</td>
</tr>
<tr>
<td>Energy North Rhine-Westphalia (GWE)/East (AVEU)</td>
<td>38</td>
<td>regulated by company agreements</td>
</tr>
<tr>
<td>Wood and plastics Saxony</td>
<td>38</td>
<td>35-30</td>
</tr>
<tr>
<td>Metalworking West/East</td>
<td>35/38</td>
<td>30/33</td>
</tr>
<tr>
<td>Public sector East</td>
<td>40</td>
<td>32</td>
</tr>
<tr>
<td>Paper processing West/East</td>
<td>35/37</td>
<td>29/31</td>
</tr>
<tr>
<td>Textiles/clothing West</td>
<td>37/40</td>
<td>reduction of 130 hrs/6.75 % of annual working hours</td>
</tr>
<tr>
<td>Textiles East</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insurance</td>
<td>38</td>
<td>30</td>
</tr>
</tbody>
</table>


Table 9.5: Flexible working time arrangements allowed by collective agreement in the metalworking industry*

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular working week:</td>
<td>35 hrs</td>
</tr>
<tr>
<td>Permanent increase for max. 50% workers up to:</td>
<td>40 hrs</td>
</tr>
<tr>
<td>Temporary reduction down to:</td>
<td>30 hrs</td>
</tr>
<tr>
<td>Uneven distribution over period of:</td>
<td>12 months</td>
</tr>
<tr>
<td>Max. permissible overtime:</td>
<td>10 hrs/wk</td>
</tr>
<tr>
<td></td>
<td>20 hrs/month</td>
</tr>
<tr>
<td>Max. permissible working week:</td>
<td>50 hrs</td>
</tr>
</tbody>
</table>

Note:
- North Württemberg-North Baden

Source: WSI Collective Agreement Archive.
Table 9.6: Flexible working time arrangements allowed by collective agreement in selected sectors (western Germany)

<table>
<thead>
<tr>
<th>Sector</th>
<th>Working week hrs</th>
<th>Working time corridor/increase</th>
<th>Uneven working time distribution</th>
<th>Overtime limited to ... hrs</th>
<th>Maximum working time hrs</th>
<th>Working time account</th>
<th>Temporary reduction to ... hrs</th>
<th>Time in lieu in exchange for overtime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banking</td>
<td>39</td>
<td>40/37.5 1</td>
<td>45</td>
<td>6 months</td>
<td>10/day 53/wk</td>
<td>Multi-year account (Langzeitkonto) max. 175 hrs/yr</td>
<td>31 as a matter of course Multi-year account also possible</td>
<td></td>
</tr>
<tr>
<td>Construction</td>
<td>40/37.5 1</td>
<td>-</td>
<td>12 months</td>
<td>-</td>
<td>10/day + 150/-50 hrs</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Clothing</td>
<td>37</td>
<td>4-9.5/day 45/wk</td>
<td>possible</td>
<td>9.5/day 45/wk</td>
<td>possible</td>
<td>-130 hrs/yr possible</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Chemicals</td>
<td>37.5</td>
<td>35-40</td>
<td>yes</td>
<td>12/36 months</td>
<td>10/day</td>
<td>Multi-year account</td>
<td>-</td>
<td>as a matter of course</td>
</tr>
<tr>
<td>Printing</td>
<td>35</td>
<td>-</td>
<td>yes</td>
<td>several weeks</td>
<td>10/day</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Hotels and restaurants</td>
<td>39</td>
<td>-</td>
<td>5-10/day 32-45/wk</td>
<td>5 months</td>
<td>195/month</td>
<td>possible</td>
<td>-</td>
<td>if requested by worker</td>
</tr>
<tr>
<td>Metalworking (North Württemberg/ North Baden)</td>
<td>35</td>
<td>35-40 (for 48% of workers)</td>
<td>yes</td>
<td>12/24 months</td>
<td>10/wk 50 hrs</td>
<td>Multi-year account possible</td>
<td>30 up to 16 hrs possible over 16 hrs if requested by worker as a matter of course</td>
<td></td>
</tr>
<tr>
<td>Public sector</td>
<td>58.5</td>
<td>-</td>
<td>10/day 60/wk 5</td>
<td>1/2 year</td>
<td>-</td>
<td>by negotiation</td>
<td>32 (East)</td>
<td>as a matter of course</td>
</tr>
<tr>
<td>Steel</td>
<td>35</td>
<td>-</td>
<td>yes</td>
<td>up to 1 year</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>possible up to 8 hrs, 9-16 hrs if in company agreement, over 17 hrs compulsory possible</td>
</tr>
<tr>
<td>Insurance</td>
<td>38</td>
<td>20-42 4</td>
<td>25 %</td>
<td>6 months</td>
<td>10/day</td>
<td>-</td>
<td>-</td>
<td>30 possible as a matter of course</td>
</tr>
<tr>
<td>Volkswagen</td>
<td>28.8</td>
<td>-</td>
<td>38.8</td>
<td>12 months</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Notes:
1. Annual average 39 hrs
2. 36 months in the case of project work
3. In areas where work is seasonal
4. Working time can be increased or reduced by the same amount

Source: WSI Collective Agreement Archive as of December 2004
9.3. Real working time arrangements in Germany

Over the past twenty years, the working week stipulated in collective agreements initially became significantly shorter before levelling off in western Germany in the mid-1990s and experiencing only a fractional further reduction in eastern Germany. However, the picture as regards actual working time is very different. The trends for the collectively agreed and actual working weeks no longer strictly follow each other, particularly in western Germany (Figure 9.1). The divergence between the two trends has become more pronounced since 1995. While the collectively agreed working week has remained more or less constant at around 37.4 hours, actual weekly working hours have risen from 39.5 to 39.9 hours. In eastern Germany, on the other hand, the gap between collectively agreed and actual working time has remained stable (data based on EU Labour Force Survey). Overall, effective working time in Germany corresponds to the EU average (Lehndorff 2003).

According to a workforce survey carried out across the whole of Germany in 2003, the divergence is even greater than indicated above (for the following figures, see Bauer and Munz 2005). Its results suggest that the average actual working week is 41.9 hours for full-time employees in western Germany and 43 hours for east-
ern Germany, i.e. 3 hours and 3.2 hours, respectively, over the working week stipulated by the collective agreements. Part-time workers also work longer hours than those established by their collective agreements, albeit to a lesser extent. In western Germany they work 21.4 hours a week and in eastern Germany 25.8 hours, i.e. an average of 1.2 hours and 2 hours, respectively, over and above the collectively agreed working time.

These averages hide a growing polarisation of working time according to the employee’s position within the company. Over half (52%) of the employees in higher-grade jobs work more than 40 hours a week, and a fifth of them (21%) have an effective working week of over 48 hours (Table 9.7). Meanwhile, just under half (43%) of the employees in lower-grade jobs work fewer than 35 hours a week, and approximately 18% work fewer than 19 hours, i.e. less than the equivalent of a half-time position. This points to the fact that highly-skilled workers are being asked to work longer hours while lower-skilled workers work shorter hours and an increasing percentage of them find themselves in marginal employment. A similar polarisation also exists between men and women. There has been a marked increase in recent years in the percentage of male employees working long hours (over 40 hours a week), while there has been a concurrent rise in the number of women working short hours (under 35 hours a week).

Table 9.7: Actual working week by job grade, 2003

<table>
<thead>
<tr>
<th>Job grade</th>
<th>Under 19 hours</th>
<th>From 19 up to 35 hours</th>
<th>35-40 hours</th>
<th>Over 40 but less than 48 hours</th>
<th>Over 48 hours</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>High grade</td>
<td>1</td>
<td>8</td>
<td>38</td>
<td>31</td>
<td>21</td>
<td>100</td>
</tr>
<tr>
<td>Middle grade</td>
<td>4</td>
<td>16</td>
<td>51</td>
<td>21</td>
<td>8</td>
<td>100</td>
</tr>
<tr>
<td>Low grade</td>
<td>18</td>
<td>25</td>
<td>39</td>
<td>13</td>
<td>6</td>
<td>100</td>
</tr>
<tr>
<td>Men West</td>
<td>2</td>
<td>5</td>
<td>50</td>
<td>30</td>
<td>14</td>
<td>100</td>
</tr>
<tr>
<td>Men East</td>
<td>1</td>
<td>3</td>
<td>49</td>
<td>25</td>
<td>22</td>
<td>100</td>
</tr>
<tr>
<td>Women West</td>
<td>15</td>
<td>31</td>
<td>38</td>
<td>12</td>
<td>4</td>
<td>100</td>
</tr>
<tr>
<td>Women East</td>
<td>6</td>
<td>23</td>
<td>47</td>
<td>18</td>
<td>6</td>
<td>100</td>
</tr>
</tbody>
</table>


Since the beginning of the 1990s, there has been a marked increase in the percentage of people working shifts, nights and weekends. The proportion of people doing these types of work rose from 42.0% to 48.6% between 1991 and 2004, with a particularly significant rise in the percentage of people working on Saturdays and Sundays.
Working time accounts have become the instrument of choice for implementing flexible forms of working time management in Germany (Seifert 2005). According to a representative survey of works council and staff council members carried out in 2004/2005, working time accounts are in use in 77% of companies. The figure varies from as much as 93% in the investment and consumer goods sector down to 60% in the transport and news media sector. The results of previous surveys show that in almost half of all cases (47%) the ‘averaging-out period’ for these accounts is a year or more, and that the trend is for this period to get longer. Indeed, a significant percentage (28%) of the accounts do not stipulate an averaging-out period at all. In the vast majority of cases, workers wishing to draw on the hours in their account need their boss's approval (67%) and/or the agreement of their co-workers (30%). Workers can only decide to do so on their own in some 20% of cases (Seifert 2005).

9.4. Current working time disputes

Collective bargaining in 2004 was characterised by disputes concerning the working time arrangements provided for by collective agreements (Bispinck/WSI Collective Agreement Archive 2005a). The controversy revolved around the duration of the collectively agreed working week. Employers, politicians and many economic analysts called for the working week to be increased with no corresponding rise in pay and for further flexibilisation of working time management. They argued that this would improve the cost base and competitiveness of businesses and also stimulate the economy as a whole. The bargaining round in the metalworking and electrical industry was of central importance.

9.4.1 Metalworking industry

In the 2004 bargaining round for the metalworking and electrical industry, IG Metall called for a collectively agreed pay rise of 4% valid for a twelve-month period. In IG Metall’s opinion, this was a ‘proportionate pay claim’ that would support the expected economic recovery and contribute to a ‘modest rise in real incomes’. However, the debate in the run-up to the bargaining round did not focus exclusively or even predominantly on issues relating to pay. The industry’s employers made it clear from a very early stage that they intended to use this bargaining round as a testing ground for further flexibilisation of collective agreements in the metalworking and electronics sector. In so doing they systematically widened the debate surrounding the future shape of the sectoral collective agreement that had concentrated in 2003 on the general issue of collectively agreed and statutory opt-out clauses (see Bispinck 2004a). The metalworking industry’s employers wanted to make it possible for management and works councils within a company to conclude voluntary agreements concerning working time, i.e. the individual regular
working week and the corresponding pay, which would allow the working week to be set anywhere between 35 and 40 hours. IG Metall considered this demand of the industry’s employers’ association Gesamtmetall to be an attempt to reintroduce the 40-hour week through the back door and without any corresponding increase in pay.

During the third round of negotiations in Baden-Württemberg, the employers put forward an overall package that contained the following elements:

- The introduction of a working time corridor of 35-40 hours with full wage compensation, or with partial or no wage compensation where this would serve to safeguard the competitiveness of a site, promote employment or accelerate strategic innovation.

- A 1.2% pay increase valid for 15 months from 1.1.2004 to 31.3.2005, to be followed by a further 1.2% pay rise valid for 12 months from 1.4.2005 until 31.3.2006.

IG Metall rejected this offer, and once the ‘Friedenspflicht’ period during which industrial action is banned had expired on 28.1.2004, it organised a series of warning strikes that lasted until the end of the bargaining round and in which more than half a million workers across Germany took part. During the sixth round of negotiations on 11/12.2.2004, the parties in Baden-Württemberg reached agreement on the following terms that were subsequently adopted by the other regions as well:

- Pay: After two months with no wage increase (January and February), there would be a 1.5% pay rise effective from 1.3.2004 plus a one-off payment of 0.7%. This would be followed by a further 2.0% wage increase effective from 1.3.2005 accompanied by another 0.7% one-off payment. The one-off payments are intended to cover the costs arising from a completely new Framework Agreement on Pay Structures (ERA).

- Working time:
  - In companies where more than 50% of employees are in the higher salary brackets, management and the works council can agree to increase the percentage of employees allowed to work 40 hours a week from the 18% stipulated hitherto by the collective agreement up to a maximum of 50%.
  - The parties to the collective agreement may also agree to increase the percentage for a company or an operating unit if this is necessary for innovation or if there is a shortage of specialised staff.
  - An increase in the percentage should in no case give rise to redundancies. Works councils may refuse to accept longer working hours if the maximum percentage has already been reached in a company.
• Negotiation of opt-out clauses to safeguard and create jobs:
  – In the interests of achieving a sustained improvement in the employment sit-
    uation, the parties to the collective agreement may, after studying the details
    together with management and works council at company level, agree on
    complementary regulations to the collective agreement or on temporary
    deviations from the minimum standards established therein (e.g. reduction
    of special payments, deferment of payments, increases in or reductions of
    working time with or without full wage compensation).
  – After a three-year period, the parties to the collective agreement will evalu-
    ate the extent to which this agreement has met its objectives and the areas
    in which further negotiation is required.

In its evaluation report on the collective agreement, IG Metall stressed the fact that
an unpaid increase in working time had been averted. Although a new balance
had been struck between sectoral agreements and company agreements, this had
been achieved without abandoning the role of the parties to the collective agree-
ment. In exchange, IG Metall had agreed to a more prominent role for company-
level agreements. The employers’ association Gesamtmetall’s initial reaction to the
agreement was to say that employers had not managed to hand full control of
working time management over to management and works councils at company
level. Nevertheless, Gesamtmetall described the agreement as a ‘paradigm shift’. If
the changes turned out to be unsatisfactory in practice within companies, then the
matter would be revisited.

The ‘Pforzheim agreement’ is a good example of the way in which recent collective
bargaining and corporate policy trends have been developing. The agreement ini-
tially met with harsh public criticism owing to the fact that employers had supposed-
edly been too ready to compromise with IG Metall, but this reaction turned around
over the course of 2004. The highly symbolic disputes at Siemens and
DaimlerChrysler in particular were seen to mark the onset of a new trend (Box 9.1).
In both cases, highly profitable companies were able to diverge from collectively
agreed benefits and regulations in order to improve their cost structure, competi-
tiveness and profitability. The unpaid increase in the working week from 35 to 40 hours
at the Siemens plants in Bocholt and Kamp-Lintfort was particularly important in
sending out the signal that if enough pressure is brought to bear then it is possible
to get even IG Metall to accept (unpaid) increases in working time. Everything
points to the fact that attempting to undercut the standards contained in the collec-
tive agreement has now become a standard part of global cost management prac-
tice in many companies. Gesamtmetall’s president Martin Kannegießer says that this
is a prerequisite for the survival of sectoral collective agreements. In his view, ‘sec-
toral collective agreements will cease to exist unless constructive use is made of the
Box 9.1: Agreements aimed at safeguarding sites and jobs*

**Siemens Bocholt and Kamp-Lintfort** (June 2004)
- Annual working hours increased to 1,760 (= from 35 to 40 hrs/week) without increasing wages.
- Replacement of 105% holiday and Christmas bonuses by a performance-related special payment of 45% when 100% of performance target has been met (max. 90%).
- Late working hours allowance cut from 15% to 8%.
- Switch from incentive pay scheme to time-based pay (116% instead of 128% of a month’s salary).

*Company’s commitments:*
- The site will not be closed and there will be no operational redundancies for 2 years.
- Insourcing of certain services.
- Investment in the site.

**DaimlerChrysler** (July 2004)
- 2.79% pay reduction from 2006 (with acquired rights regulation).
- New employees’ pay after introduction of Framework Agreement on Pay Structures (ERA) to be approx. 8% lower than that of existing employees.
- In R&D division: removal of the 18% quota for people on a 40-hour week.
- In services division: phased increase in working time to 39 hrs.
- Changes to elements of rest periods (hourly 5-minute break known as the ‘Steinkühlerpause’) during training.

*Company’s commitments:*
- No operational redundancies for current employees before the end of 2011.
- Commitment to new products and investment.
- No outsourcing in services division.

* These regulations were adopted in the form of what were in some cases very comprehensive company(-wide) agreements and complementary agreements. Only the most important points have been listed here.

Source: WSI Collective Agreement Archive.

The employers’ association Gesamtmetall carried out its own survey among its members with regard to the implementation of the ‘Pforzheim Agreement’ (Gesamtmetall 2005). According to its results, up until April 2005 a total of 199 companies attempted to make use of the Pforzheim Agreement’s provisions to negotiate deviations from the sectoral collective agreement with IG Metall, and 183 were successful in so doing. Ninety-four companies negotiated regulations concerning working time, the vast majority of which involved unpaid increases in working time. Of the 127 regulations concerning pay (this figure includes some agreements where various aspects of pay were regulated), 62 involved the reduction of special payments, 15 reduced monthly wages, 11 did away with bonuses and 10 involved the decision not to implement the collectively agreed pay rise. As
far as employer commitments are concerned, they mainly focus on protection against dismissal (92 cases), while far fewer deal with investment or assurances concerning sites or jobs (18, 11 and 8 cases respectively). In 72 (!) cases, employers failed to provide any details about their commitments.

IG Metall has also been tracking developments. The trade union’s central office registered just under 390 regulations that deviated from collective agreements in 2004. In addition to agreements based on the Pforzheim Agreement, this figure also includes regulations based on the hardship clause in collective agreements for eastern Germany as well as agreements on restructuring (Sanierungstarifverträge) and agreements to safeguard employment (Beschäftigungssicherungstarifverträge). The subjects regulated by these agreements break down as follows: working time 143, wages 119, holiday bonuses 80, special payments (Christmas bonus) 80. Some agreements contained more than one deviation from the collective agreement. It is not possible to analyse the agreements based on the Pforzheim Agreement separately using these data.

Over a longer timescale, the following picture emerges: according to IG Metall’s records, the number of company-level agreements has almost trebled since the beginning of the 1990s. While at the start of the 1980s some three-quarters of company-level agreements were either identical to or of equivalent value to the relevant sectoral collective agreement, the reverse is now almost true: about 70% of company agreements contain temporary or permanent regulations providing for standards lower than those stipulated by the sectoral agreement.

9.4.2. Chemicals industry

Flexible working time arrangements regulated by collective agreement have already existed for some time in the chemical industry. Since 1993, companies in the industry have been able to make use of a working time corridor allowing working time to be reduced or increased by two-and-a-half hours with respect to the collectively agreed working week of 37.5 hours. If the corridor is used to increase working time, in principle this increase must be remunerated. It is also possible for working time to be distributed unevenly, with an averaging-out period of 12 months or up to 36 months in the case of project work. The implementation of the corridor across whole companies or for large operating units requires the approval of the parties to the collective agreement, but in all other cases agreement between the employer and the works council is sufficient. It is, however, possible for working time flexibilisation to be combined with opt-out clauses sanctioning lower pay. Since 1998 it has been possible to introduce temporary reductions of up to 10% of collectively agreed monthly pay if the company is experiencing financial difficulties or in order to secure employment and/or improve competitiveness. Once again, any company-level agreements signed in this respect
have to be approved by the parties to the collective agreement. Furthermore, in
the event of ‘major financial difficulties’ it is possible to negotiate company-level
exceptions concerning the level and date of payment of the collectively agreed
annual bonus, the holiday bonus and employer-financed saving schemes.

As can be seen from Table 9.8, there has been a marked increase in the use of
these opt-out clauses, especially since 2003. Last year, some 74,000 workers were
covered by such clauses.

Table 9.8: Opt-out clauses from terms of the collective agreement in the chemicals
industry

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<tbody>
<tr>
<td>No. of opt-outs approved</td>
<td></td>
<td></td>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Employees</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Working time corridor</td>
<td>37</td>
<td>28</td>
<td>28</td>
<td>53</td>
<td>33</td>
<td>34</td>
<td>34</td>
<td>37</td>
<td>35</td>
<td>44</td>
<td>86</td>
</tr>
<tr>
<td>Pay corridor</td>
<td>6</td>
<td>14</td>
<td>22</td>
<td>18</td>
<td>9</td>
<td>23</td>
<td>21</td>
<td>66</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual bonus</td>
<td>12</td>
<td>15</td>
<td>23</td>
<td>22</td>
<td>9</td>
<td>21</td>
<td>24</td>
<td>34</td>
<td>15</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: IG BCE.

By far the most commonly used regulations are those concerning working time.
During the period 2003–2004, two thirds of the clauses related to an increase in
working time, just under 30% related to a reduction in working time and the
remainder provided for both possibilities.

9.4.3 Disputes concerning working time in other industries

It has become abundantly clear in the 2005 bargaining round that employers and
employers’ associations across all sectors are attempting to come as close as they
can to doing away with collectively agreed working time regulations, in particular
the regular collectively agreed working week. Public sector employers, irrespec-
tive of their political allegiance, have been at the forefront of this trend. First of
all, they increased the (legally regulated) working time of civil servants (who are
not covered by collective agreements), before going on to call for the same thing
to be done, in the ‘interests of fairness’, in the case of employees covered by col-
lective agreements. The trade unions were largely able to prevent this from hap-
pening for central government and local authority employees, although they did
have to agree to flexibilisation of working time. However, employers at
Bundesland (federal state) level, who already gave notice of termination of the collective agreements on working time last year, continue to call for their employees' working week to be increased from 38.5 to 42 hours.

Employers in the printing industry called for a working time corridor that would enable the working week to be extended up to 40 hours, if necessary without additional remuneration, as well as the abolition of schemes that provide additional time off as compensation for night and shift workers and for older employees. They also sought to make Saturday a regular working day. Similar demands were made in the paper processing industry, where employers have said that they will not sign a collective agreement at all unless their demands are met. In the wood and plastics processing sector, the employers' list of demands includes a major flexibilisation of working time, while in the motor vehicle repair trade there are calls for unpaid overtime and shorter holidays. The list of such examples could go on.

Furthermore, there are some industries in which the trade unions have already been forced to accept increased working hours in their collective agreements. From July 2005, the working week for employees of the German railway company Deutsche Bahn AG will rise from 38 to 39 hours, while in the painting and varnishing trade it has been increased from 39 hours to 40.

9.5. Outlook

The 'shorter working hours plus flexibilisation' approach is being replaced by calls for 'flexibilisation plus longer working hours'. Even in cases like the metalworking industry, where it has been possible to prevent even further-reaching demands from being implemented for the time being, it can be expected that in the medium-term the compromise that has been struck will strengthen the trend towards an increase in effective working time. Even if it is true that in some individual cases the parties to the collective agreement have been able to prevent the untrammelled use of opt-outs by laying down strict limits and monitoring developments closely, it is nevertheless hard to avoid the growing impression that collectively agreed working time is becoming little more than a reference figure for calculating (collectively agreed) pay. As far as reducing working hours (without wage compensation!) is concerned, the most that can be said is that it is accepted as a useful temporary measure for achieving a cost-effective reduction in a company's total man hours. However, it seems that it has been thoroughly discredited as a general means of redistributing labour while maintaining income levels. According to the proponents of radical flexibilisation and deregulation of the labour market, 'the policy of working time reduction' is 'largely responsible for the structural crisis of the German economy' (Friedrich Merz, Der Spiegel 16.2004). The trade unions are faced with two tasks. On the one hand, they need to put a stop
to the insidious increase in effective, and indeed collectively agreed, working time. On the other, the goals and implementation of the increasingly unrestricted flexibilisation of working time need to be assessed in order to establish whether and to what extent they actually take into account workers' interests as well as (or indeed over and above) business requirements.

References


10. Collective bargaining and working time in Greece

Katerina Christofi

10.1. Working time in its national and international context

Over the last five years the question of working time has increasingly figured on the agenda of the social partners' discussions and has become ever more closely linked with the government's economic and employment policy goals. Yet the employers' opinions and positions are quite different from those of the trade unions, while those of the government are different yet again.

Basic components of the policy adopted by the government in recent years on this subject and on employment matters generally have been, on the one hand, the orientation towards European integration and Greek accession to Economic and Monetary Union, the so-called Euro-zone, and, on the other hand, the attempt to tackle unemployment by means of an employment policy the basic components of which are in accordance with the guidelines of the European Employment Strategy.

As far as the government's economic policy is concerned, its main goals have been constituted in recent years by the priorities promoted by the national Programme for Stability and Development which is focused on, among other things, the improvement of macro-economic parameters and speeding up of economic development, as well as developing the competitiveness of Greek businesses while keeping down labour costs.

Where employment policy is concerned, the basic priorities are set out in the National Action Programmes for Employment which also incorporate the basic orientations of the European Employment Strategy with the principal aim of adopting policies and measures to promote increased flexibility on the labour market and the development of flexible forms of employment.

Within this framework, both the economic policy and the employment policy adopted by the government are shaped by the conviction that the stability of macroeconomic parameters, the increase in competitiveness and, more generally, the acceleration of economic development, on the one hand, and the implementation of measures to promote flexible employment on the labour market, on the other, will bring about the desired result of increasing employment and reducing unemployment.

However, the improvement in the macroeconomic indicators in recent years has not so far led to corresponding improvement in the labour market indicators.
Thus, the rates of both employment and unemployment have remained relatively stable over the past five years. More to the point, the employment rate remains low and the unemployment rate high. (Tables 10.1 and 10.2).

Table 10.1: Employment rate by gender (Greece, 2001-2004, 2nd quarter, aged 15 and over)

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>46.1</td>
<td>46.8</td>
<td>47.6</td>
<td>47.8</td>
</tr>
<tr>
<td>Men</td>
<td>59.7</td>
<td>60.2</td>
<td>60.9</td>
<td>60.8</td>
</tr>
<tr>
<td>Women</td>
<td>33.3</td>
<td>34.1</td>
<td>35</td>
<td>35.5</td>
</tr>
</tbody>
</table>

Source: EUROSTAT, LFS series

Table 10.2: Unemployment rate by gender (Greece, 2001-2004, 2nd quarter, aged 15 and over)

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>10.4</td>
<td>9.9</td>
<td>9.3</td>
<td>10.2</td>
</tr>
<tr>
<td>Men</td>
<td>6.9</td>
<td>6.4</td>
<td>6</td>
<td>6.3</td>
</tr>
<tr>
<td>Women</td>
<td>15.9</td>
<td>15.2</td>
<td>14.3</td>
<td>15.9</td>
</tr>
</tbody>
</table>

Source: EUROSTAT, LFS series

The positive performance of the Greek economy on the one hand and the poor performance on the labour market on the other show, among other things, that the National Action Plans for Employment that have been devised up to now have not succeeded in delivering the expected reduction in unemployment. The drop in the unemployment rate in other EU countries during the same period raises substantial questions about the direction of Greek government policy and the priorities set by it.

For the above reasons, the trade union position is highly cautious. The unions argue that the government policy should give priority not just to the competitiveness of Greek businesses but also to social aims such as full and quality employment and a sharp reduction in unemployment. By contrast, what is becoming apparent is that the above aims do not constitute goals pursued by the economic
policy. Rather, they are aims pursued within the autonomous framework represented by employment policy, and these policy goals are of secondary importance in comparison with those pursued by the economic policy. The unions further point out that the efforts to reduce unemployment have been based principally on enforced labour market flexibility but that even these have failed to prevent a further rise in unemployment.

This state of affairs reinforces the positions adopted by the Greek General Confederation of Labour (GSEE), namely, that labour market flexibility, apart from the fact that it entails serious infringement of the rights and position of workers and of industrial relations practices, actually does very little to raise employment levels. What is more, in order to tackle unemployment there is a need for a serious policy of sustainable economic growth and a generalised reduction of the working week.

Meanwhile, the position adopted by the employer side is also one of caution. In this case, however, the caution is attributable less to differences of view with the government side than to the delays that have been incurred in implementing the planned changes to the economy and the labour market. Thus, the employer side stresses the need to speed up the structural changes, the opening up of all markets, the removal of the barriers which today impede the realisation of new investment, the influx of foreign investment and the reduction of labour costs. According to this view, the stagnation and the poor performance of the government's labour market policy are the outcome of the continuing lack of flexibility on the labour market.

10.2. Collective bargaining on working time

In this framework, the trade union position towards implementation of measures to increase flexibility on the labour market is unequivocally hostile, the view being that full-time employment on an open-ended contract should remain the prevailing employment model. The trade unions consider that a major way of increasing employment is the reduction of working time. Indeed, a longstanding and basic demand of both the GSEE and the ADEDY (the confederation of public servants) is that the reduction of working time should be based on regular weekly and daily working hours (35 hours a week and working days of 7 hours), without loss of pay and on the basis of secure forms of employment. According to the unions, a reduction along these lines should be introduced in stages, i.e. subject to phased implementation over three years, based on the number of employees in the firm. It is proposed furthermore that incentives, tax reductions and subsidies be offered to firms introducing such a reduction, over a 3-5 year period, in order to compensate for the increase in their production costs. The proposal is that negotiations along these lines should take place at the level of the National General Collective Labour Agreement.
Alongside the above basic claim, the trade unions call for the implementation of additional measures related to overtime. One is a drastic reduction of overtime through an increase of the related costs, such that it ceases to be worthwhile and the hours worked by existing employees – reduced by the introduction of the 35-hour week – will be increased by means of new recruitments rather than by recourse to overtime. Another measure would be the abolition of systematic compulsory overtime.

As to the introduction of flexible forms of employment and flexible working time, the trade unions are in favour of steps to prevent the generalised introduction of such flexibility (e.g. part-time work), their argument being that encouragement of flexible forms of employment should constitute a complementary measure – and not the primary approach – in seeking to strengthen the employment situation, so as not to jeopardise the standard full-time employment model. They stress, furthermore, that the Greek labour market is suffering not from a lack of flexibility but from the absence of an institutional framework governing the operation of the flexible forms of employment so as to underpin the rights of flexibly employed persons and thereby limit the adverse effects of labour market flexibility (e.g. creation of an institutionalised framework governing fixed-term contracts, part-time work, telework and sub-contracting; strengthening of enforcement mechanisms for the implementation of labour legislation).

The employers’ organisations claim, for their part, that reduction of working time to 35 hours a week would heavily constrict labour costs and the competitiveness of Greek enterprises. They stress the need to speed up structural change, open up all markets, and lift the obstacles currently standing in the way of new investment and the reduction of labour costs.

Moreover, their position on the various measures designed to introduce flexible forms of employment is more positive than that of the unions. They point out, indeed, that the measures formally adopted to date are rather inadequate and call for additional and more energetic measures.

A closer look at the employer position with regard to the question of working time reveals a focus on the following positions:

• An increase in labour market flexibility and reform of the labour legislation are necessary.

• The introduction of the 35-hour week without loss of pay would result in an increase in wage costs, thereby constituting a disincentive to the recruitment of new workers. In addition, in the present phase, it would constitute a threat to the competitiveness of Greek businesses, and particularly small and medium-sized businesses, in comparison with the other European economies. For this reason, they state that the above trade union demand is not yet ripe for negotiation and
they propose a flexible arrangement of working time designed to foster labour productivity and the competitiveness of Greek businesses in world trade.

As for the trade union position on increasing the cost of overtime, this would – according to the employers – exacerbate the already negative effects of the 35-hour week on production costs, on competitiveness and, by extension, on the problem of unemployment.

The distance between the positions of the employers and the trade unions is attested to also by the fact that the attempts made over a long period of time to find common points of discussion have proved unfruitful. An instance of this is the Negotiating Committee of Experts, set up in 1999 by the two sides of industry – with the goal of investigating the possibility of implementing the 35-hour working week – whose work ultimately came to nothing. Thus, the first organised attempt to produce a jointly drafted set of principles, as a possible basis for continuing the dialogue at expert level, proved a failure.

10.3. Outcomes of bargaining

Given the divergent views on the working time question held by employers and trade unions and the absence of any agreement on this matter, recent developments in this area have been the result, largely, of government initiative, in the form of legislation and measures the main purpose of which was to regulate industrial relations, including an increase in labour market and working time flexibility.

The first government attempt geared to the above goal came in 1998 with the adoption of law 2639 regulating matters relating to, among other things, working time and the so-called “atypical” forms of employment. It included, in particular, the following provisions:

- Authorisation, for the first time, of the organisation of working time on an annual basis, subject to agreement between the company and its workforce, for the purpose of reducing the cost of overtime and matching production to fluctuations in demand.

- Extension of fixed-term employment to the public sector and provisions to cover seasonal needs by means of six-month contracts that may not be converted into open-ended contracts.

- Possibility of distributing working time under a part-time contracts not only on a daily or weekly but also on a fortnightly and monthly basis.

- Broadening of the definition of part-time employment by the introduction of two forms of part-time work: a) job sharing; b) on call work, that is to say part-time work but without prior setting of the precise periods to be worked.
• Requirement that workers’ representatives be informed of the number of part-time workers and the prospects for full-time employment in the firm.

Two years after adoption of the above law, came another, number 2874/2000, designed to complete the earlier one by the adoption of supplementary regulations, including the following:

• Restriction of compulsory overtime. More especially, in companies where collectively agreed working time is a 40-hour week, the obligation of the employee to perform compulsory overtime was reduced from 8 to 3 hours a week. Every additional hour of work over and above 43 hours would in future be considered as normal overtime and be compensated accordingly. Furthermore, the cost of overtime was increased. The purpose of this regulation was to encourage employers to meet their need for additional labour by means of new recruitment rather than by expecting their existing workforce to perform overtime. In this respect, the law is in accordance with one of the most longstanding demands of the trade unions concerning the matter of compulsory overtime.

• Settlement, by means of company-level collective agreement, of working time on an annual basis linked with the forecast reduction of weekly working hours from 40 to 38. The settlement relates to 138 annual working hours, to be distributed in accordance with increased numbers of working hours in specific periods and a corresponding reduction for the remaining period. The upper limit on average weekly working hours over the year, not including the legal overtime, is 38 hours.

• Ratification of the decrees of the National General Collective Labour Agreement on an additional week of paid maternity leave (total of 17 weeks).

• By way of economic incentive to encourage the shift towards part-time work, a 7.5% supplement was added to the wages of part-time workers working less than 4 hours a day and whose pay is in accordance with the official minimum wage.

In October 2001 further regulations were adopted relating to temporary work agencies. The regulations define, for the first time, the legislative framework governing the setting up and operation of temporary work agencies as well as the labour rights of their employees. In accordance with the new regulations, the activity of such firms is defined as being to supply other employers, on a temporary basis, with labour performed by their own employees. Temporary agency work performed by a third party thus refers to work supplied to another employer for a fixed period of time by a wage-earner who is linked to his/her direct employer by an employment contract of fixed-term or open-ended duration. The period of employment of the wage-earner by the indirect employer may be no longer than eight months.
The possibility of part-time work in the public sector also was created by legislation passed in 2003 and 2004. The part-time posts in question are subject to fixed-term employment contracts of a total duration of 18 months. Hours of work may not exceed 20 hours per week. Workers formerly employed under such contracts may be re-employed only if at least four months have passed since expiry of the preceding contract.

A fundamental issue which kept the government side as well as the workers occupied over a long time and gave rise to considerable social tension was regulation of the working hours of workers on fixed-term contract and the transposition into Greek legislation of EU Directive 70/99/EC which defines fixed-term contracts and lays down the rules governing their conversion into open-ended contracts.

Accordingly, in order to fill the gaps in Greek legislation in this area, a presidential decree (81/2003) entitled “Regulations governing employees with fixed-term contracts” was issued in 2003 to transpose the content of the corresponding Community Directive into domestic legislation. It filled in some of the important gaps previously found in Greek legislation pertaining to fixed-term contracts and which related principally to the upper limit on fixed-term contracts and the question of successive contracts. More specifically, provisions were laid down relating, on the one hand, to improvement of the quality of fixed-term work, via the principle of non-discrimination in comparison with open-ended contracts, and, on the other hand, prevention of the abuse that may arise from the use of successive fixed-term contracts or employment relationships.

However, Decree 81/2003 enumerated a series of “objective” reasons that justified the unrestricted renewal of fixed-term employment contracts. In this way, it removed from its scope numerous important categories of worker, particularly in the public sector, and failed, in substance, to deal with the underlying social problem. In accordance with estimates relating to the proportion of cases covered by the provisions of the presidential decree, the greater part of persons employed under fixed-term contract, particularly in the public sector, were not covered by the regulations. This large number of exemptions and, by extension, the highly restricted nature of the transposition of the EU Directive gave rise to problems with the European Commission which accordingly issued a deadline to the Greek government for adoption of the necessary amendments and additional provisions in Greek law.

It is symptomatic that a number of workers employed under fixed-term contracts of long duration and who were not covered by the above legislation instituted litigation in pursuit of their rights. The first court rulings vindicated these complaints on the grounds that the work performed by these workers catered for stable and long-term needs on the part of their employers, as a result of which their contracts should be made open-ended. The court findings led the judges to conclude that
the exceptions to presidential decree 81/2003 significantly restricted the extent to which Directive 1999/70 had been effectively transposed into Greek law and hence that the Greek legislation was unfair to a large number of workers who had suffered infringement of their rights.

In the wake of the above developments and ensuing demands from social partners and workers for fair and full transposition of the Directive, the government side proceeded to issue new legislation in 2004 in a renewed attempt to settle this matter, particularly in relation to the problematic issues arising in the public sector. Decree 164/2004 thus represents an attempt to restrict the indiscriminate conclusion of fixed-term contracts in the public sector, enacting, to this end, a set of criteria and conditions whereby public sector contracts are made permanent by means of automatic conversion of fixed-term into open-ended contracts. It enacts rules to prevent the abusive conclusion of successive fixed-term contracts, in accordance with which:

- “Successive contracts” is taken to mean contracts concluded and executed between the same employer and the same worker with the same or equivalent terms of employment and the same or equivalent area of work when the interval between expiry and conclusion of such contracts is not more than three months.
- The number of successive contracts may not exceed three.
- A total period of employment is determined, for the purpose of limiting “abuse” of fixed-term contracts, which may not exceed 24 months, irrespective of the intervals of time between contracts.

Similar regulations were enacted to cover fixed-term contracts in the private sector, with the adoption of presidential decree 180/2004, amending presidential decree 81/2003 that had been subject to such criticism, for the purpose of fuller transposition into national law of the Community Directive. It is to be noted that the new regulations do away with the exceptions that removed certain categories of worker from coverage by the provisions for the conversion of fixed-term contracts into open-ended ones. Significant limitations are also placed on the combinations of objective reasons allowing the renewal of fixed-term employment contracts.

As regards the question of the total length of working life, the increasingly predominant issue is the viability of the insurance and pensions system which is fundamentally influenced by the reduction in the ratio of workers to pensioners. Consequently, the conditions for the establishment of pension rights are becoming more stringent and the retirement age is rising. This trend is apparent also in the latest attempt to tackle the problem represented by adoption of new legislation (law 3029/2002) for the reform of the system of social security and retirement pensions. In accordance with the above law:
• The minimum conditions for establishing entitlement to a pension are to have paid contributions for 15 years and to have reached the age of 65 in the case of men and 60 in that of women. Eligibility for a full pension accrues after 20 years of contributions or 6,000 days of work on reaching the age of 55.

• Entitlement to a full pension also accrues after 37 years of contributions without condition of age, while entitlement to a reduced pension may be established after 35 years of contributions between the ages of 55 and 64.

• Mothers of minors or handicapped children are eligible for a reduced pension once they have reached the age of 50. If they have at least three children and 20 years of contributions the age threshold is reduced by 9 years and to 50 years of age in the case of five children.

A development worth mentioning, finally, is the recent attempt of some employers in public enterprises and in banking to conclude agreements with the trade unions at company level for the introduction of early retirement programmes. The fundamental aims of these employers are to reduce operating and wage costs, to rejuvenate their workforce and speed up changes in work organisation.

In some cases the attempts in this direction meet with a consensual stance on the part of the trade unions, while in others unions strongly object. One example worth mentioning here is that of the Greek Telecommunications Company OTE, where in spite of the agreement that was taking shape between the relevant trade union and the employer side, objections were voiced from the side of the GSEE, principally on account of the unfavourable terms that were to be applicable to workers recruited by the company in the future, entailing the creation of two categories of workers.

10.4. Collective bargaining and the labour market

In spite of the attempt on the government side to increase employment and reduce unemployment by enacting several legislative measures to facilitate the introduction of flexibility in the area of working time, the results to date are not encouraging (see Tables 10.1 and 10.2). It appears that the increase in the cost of overtime and the “abolition” of compulsory overtime have not sufficiently encouraged employers to step up recruitments. It would appear, furthermore, that there is no employer interest in introducing the annualisation of working time under the provisions of law 2874/2000.

What is more, almost eight years after the first basic attempt to introduce flexible forms of work, with the adoption of law 2639/1998 for the “regulation of industrial relations”, the flexible forms of work still account for a limited portion of the labour market (see Tables 10.3 and 10.4).
More especially, the standard (open-ended and full-time) form of contract continues to constitute the chief form of employment, representing the majority of waged labour. Meanwhile, the appearance of a variety of forms of flexible employment has been recorded. Among these forms temporary work, in its varying expressions (fixed-term contracts, seasonal labour,) accounts for the greater part of the flexibly employed workforce (around 13%). At the same time, there continues to be a rather low incidence of part-time work (around 4%). In addition, recourse to telework and personnel leasing is currently recorded to an extremely limited extent.

All in all it may be stated that with regard to working time there have been no noteworthy developments in recent years (see Tables 10.5 and 10.6). As a result, working time continues to be high in comparison with other EU countries. In particular, agreed working hours for full-time employees are still 8 hours a day while the corresponding working week is 40 hours. The same trend is observable in relation to actual average working time.

Table 10.3: Temporary employees as a percentage of the total number of employees (%). Greece, 15 years and over, 2001-2004 (2nd quarter)

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Source: EUROSTAT, LFS series

Table 10.4: Part-time employment as percent of the total employment Greece, 15 years and over, 2001-2004 (2nd quarters).

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Source: EUROSTAT, LFS series
Table 10.5: Average number of usual weekly hours of work in main job (employees), by sex, professional status, full-time/part-time and economic activity (hours). Greece, 2001-2004 (2nd quarter)

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Source: EUROSTAT. LFS series
11. Collective bargaining and working time: Hungary

*Szilvia Borbély*

11.1. Working time in its national and international context

Currently, the EU working time directive states that employees cannot be forced to work more than an average 48 hours per week (including overtime). In addition, there must be rest periods of at least 11 consecutive hours a day and of one day per week, and there is a statutory right to four weeks' paid leave per year.

In comparison to the EU average, Hungary’s average 8-hour daily working time is high (weekly 40 hours). In fact, depending on the collective agreement, it may in some circumstances rise to 12 hours a day, resulting in a 60-hour week. (For example, in the case of stand-by duty or working for close relatives.)

On average, actual working hours are longer in Central and Eastern Europe (CEE) than in the EU-15, at 44.4 and 38.2 respectively. This is linked to significantly less use of part-time work in accession countries (15% in contrast to 18%), a higher proportion of self-employed (22% compared to 17%), and a larger proportion of workers having two jobs (10% compared to 6%) and devoting on average longer hours to the second job (17.8 hours per week, compared to 12.1 in the EU).

In Hungary, longer working hours are also linked to the very low proportion of part-time work (3.9%), in comparison not only with the EU-15 but also the other new members.

Within the framework of national tripartite cross-sectoral social dialogue the trade union confederations demanded a reduction in statutory working time to 38 hours/week as early as 2002. Since then the topic of working time reduction has been constantly postponed, even after EU entry, where several member states have shorter working weeks. Hungarian trade union attempts to harmonise working time have so far failed. Neither the employers’ organisations nor the government support the idea of reducing statutory working time. Their counter-arguments include the following:

- The employers’ organisations and the Socialist coalition government emphasize that working time should not be reduced at present because the global compet-

   
   Caroline Konrad, ‘More time for rest? EU attempts to revise working-hours directive’
Itiveness of the Hungarian economy must be strengthened. Instead of a working time reduction the employers are demanding an increase in labour market flexibility and a reduction in labour costs.

- Since Hungary is obliged to make progress towards meeting the requirements of the Stability and Growth Pact, in autumn 2004 one of the cornerstones of negotiations at the National Interest Reconciliation Council was that the social partners must count on a tighter fiscal policy, as the budget deficit must be reduced to meet the requirements of EU convergence.

- In many cases the real working day is higher than statutory working time or the working time agreed by collective bargaining. For example, according to the findings of the National Labour Inspectorate (OMMF) last year the rules on working time were violated in around 4,000 cases and those on annual leave in around 2,000 cases. The inspectors had to fine employers in 700 cases because they had compelled employees to undertake extra work, and in more than 500 cases for violating the rules on public holidays and Sundays.2

- In Hungary the unemployment rate (6.1% January-December 2004)3 is lower than in the EU. At the same time, the employment rate is very low by international comparison (57% in 2004). The trade unions have called attention to a possible correlation between reducing working time and employment growth, but in Hungary this impact seems to be weaker than in some EU member countries (like in France). Furthermore, in Hungary work sharing as a tool to reduce unemployment and increase the employment rate has not been on the agenda. (Better active tools, such as training, tax allowances, wage support for the employment of the unemployed or young persons entering the labour market, are applied.)

11.2. Collective bargaining on working time

11.2.1. Aims of the social partners and working time debates

Two main trends can be observed regarding working time. On the one hand, the amended Labour Code gives some room for increasing working time and working schedule flexibility, also by collective agreements. Employers and trade unions may negotiate collective agreements including:

- a longer reference period (up to 4 months in the case of an enterprise collective agreement; up to 6 months in the case of a so-called ‘multi-employer’ agree-

2 Source: www.ommf.hu.
3 Source: CSO.
ment; and up to one year in the case of specific job categories: for details, see 4.2);
• higher overtime ceiling (up to 300 hours instead of the 200 hours included in the Labour Code);
• in specified cases a higher daily working time limit (up to 12 hours).

This regulation may encourage employers to conclude collective agreements incorporating flexibility measures.

Collective agreements may deal with atypical forms of work, such as part-time, as a way of avoiding redundancies. The collective agreement for the electrical energy industry states that when labour is reduced, the following solutions are recommended:

• early retirement;
• internal regrouping and retraining;
• promotion of employment within the sector;
• provision of relocation benefit;
• job creating investments;
• part-time work.

On the other hand, the trade unions are seeking to reduce working time. The idea of reducing the statutory working week from 40 hours to 38 was raised by MSZOSZ (National Confederation of Hungarian Trade Unions) as early as 2000. Furthermore, MSZOSZ also proposed that the statutory lunch break should be considered as part of the working day, and that Christmas Eve should be a paid public holiday.

The trade union idea of starting negotiations on reducing working time over the long term and on reinforcement of the labour inspectorate seemed to be supported by the social partners.

In November 2002, the Prime Minister announced that the government supported trade union demands to reduce the 40-hour working week and to begin negotiations with a view to reaching agreement by June 2003. This deadline was not met, however, mainly due to the employers. Negotiations on reducing working time were postponed to 2004.

Within the framework of a bilateral cooperation agreement with the trade unions the government promised, among other things, to support the idea of gradually moving to a 38-hour working week by 2006.

This was followed by discussions in national-level institutions of social reconciliation between trade unions and employers’ organisations on the gradual introduction of a statutory 38-hour working week in Hungary and the designation of 24
December as a public holiday. Despite the preliminary support and promises of the government, reduction of the working week has been postponed.

MSZOSZ raised the issue of working time reduction in October 2004 when the MSZOSZ Council of Federations met the Prime Minister and then in November when it met the Minister of Employment and Labour Market. The government did not consider a rapid reduction of statutory working time realistic, but on two issues the government did respond positively to the trade unions: (a) the proclamation of 24 December as a public holiday from 2005, and (b) including a 20-minute break in the working day. On the latter point, the National Interest Reconciliation Council decided to ask its legal committee to prepare a draft and to have the Labour Code amended already in 2005.

Working time reduction is on the agenda in some sectors. In the electrical industry the social partners have signed a sectoral agreement for 2005 in which enterprises which have not yet done so are asked to start negotiations on including the 20-minute break in the 8-hour working day, if possible before 1 July 2005.

11.2.2. Levels of bargaining

In July 2002 the newly elected socialist coalition government and the social partners concluded an agreement on the 'renewal of the interest reconciliation process', that is, of tripartite consultation and negotiation, and the promotion of bipartite, autonomous social dialogue. The programme of the current government (for 2002-2006) explicitly states: 'the Government claims for consultation and negotiation with social partners, the continuous reconciliation of interests with trade unions, employer organisations, as well as with civil (non-governmental) organisations'. Since then, national interest reconciliation has regained its role in annual wage bargaining and minimum wage determination, and its consulting role in relation to macroeconomic and legislative questions affecting employees and the labour market.

In the competitive sector in Hungary the several times amended Labour Code (1992) serves as a legal framework protecting employees’ social and economic interests, for example, setting minimum standards. It applies to national and cross-sectoral interest reconciliation (that is, tripartite social dialogue), trade unions as interest representative organisations, and works councils as employee participatory bodies. The Public Servants Act (1992) covers public services in education, health care, and so on, while the Civil Servants Act (1992) covers the state administration, giving detailed job classifications, wage scales, and promotion criteria (based on qualifications and seniority).
According to the Labour Code the trade unions are entitled to conclude collective agreements which must contain better conditions for employees than those laid down in the Labour Code. In the competitive sector wage agreements are an important part of collective agreements.

A collective agreement may be concluded by one or more employers and by one or more trade unions. Collective agreements may be concluded at workplace (enterprise) or branch (sectoral) level. The Minister of Labour may extend the scope of a collective agreement to the entire sector (or subsector), if requested by the parties. A collective agreement shall also apply to employees at a particular enterprise who are not members of the trade union concluding the collective agreement. At present, enterprise level negotiations are most common in Hungary.

According to the Labour Force Survey (CSO 2005, p. 51), out of 3,246,662 employees 25.2% said that their workplace was covered by a collective agreement, 48.2% that there was no agreement, and 26.6% did not know. Nearly 50% of employees in energy, transport and telecommunications are covered by a collective agreement; and around 40% in education, health care, social services and mining. The least covered sectors are the building industry (5.6%), hotels and catering (7.9%) and trade and repairs (8.8%). Interestingly, 34% of white-collar workers but only 18.5% of blue-collar workers are covered by a collective agreement. Finally, 60% of employees covered by a collective agreement said that working schedule and wages were influenced by the collective agreement.

In case of collective agreements bound in public sphere the collective agreements covering more than one employer, are bound always by employers themselves since, of course, there are no employers’ organisations in the public sphere. Wages in public administration and the civil service are regulated by strict rates.

One of the major shortcomings since the transition is the lack of a comprehensive system of sectoral collective agreements.

As late as 2001 only 6% of employees were covered by voluntary sectoral collective agreements, and extension procedures (applying sectoral agreements to employers and employees not belonging to signatory organisations) increased coverage by only 2.1 percentage points. Moreover, the contents of sectoral agreements were rather poor and implementation guarantees doubtful. Resources and experts were lacking on both sides. The trade unions have practically no strike leverage at sectoral level, and have been unable to force employers to accept their demands. In turn, most employers’ organisations are not authorised by their members to conclude a collective agreement, and once an agreement is reached, opt-outs by member companies are quite common. Moreover, in many subsectors the employers’ associations and unions are not counterparts. However, both employ-
ers' associations and unions were keen on having sectoral committees to consolidate their own structure and internal and external relations.\footnote{Research papers on sectors were prepared within the framework of the Phare Twinning programme. See the homepage of the Hungarian Labour and Employment Ministry.}

Since 2003 the Phare twinning project (HU 0104-01) ‘Strengthening autonomous social dialogue’ has promoted the emergence of Sectoral Dialogue Committees. The government committed itself to the development and maintenance of autonomous sectoral social dialogue, and within this framework the creation of a system of sectoral dialogue is considered a priority.\footnote{Ministry of Labour and Employment. We should not forget that the European Commission and the European social partners (especially the ETUC) have imposed a strong set of requirements on the Hungarian social dialogue system. In the past, they have criticised the Hungarian practice of social dialogue on numerous occasions. The government jointly with the social partners agreed to improve social dialogue. In this spirit a Phare project was proposed in order to strengthen the underdeveloped area of sectoral collective bargaining. Accordingly, the tasks for the preparatory period are as follows: 2/1: to strengthen the sectoral level of Hungarian social dialogue through the establishment of so-called Sectoral Dialogue Committees; 2/2: to extend the knowledge of the social partners concerning European social dialogue and to support their preparation for tasks awaiting them once Hungary becomes a member of the European Union.}

In the agreement signed with the social partners in March 2003 the government undertook to continue sectoral dialogue even after the end of the Phare project (31 March 2004). On 2 July 2003 the Sectoral Council signed a framework agreement on the operating principles of Sectoral Dialogue Committees.\footnote{According to this agreement, the partners shall either recognise one another as partners or must satisfy complicated representativeness criteria:  • the parties must have legal personality and must have the right to represent the employees’ or employers’ interests;  • they must have been operating legally for at least two years;  • for the employees’ side: works council elections, number of trade unionists, active participation in social dialogue, membership in organisation participating in national interest reconciliation council, membership of international trade union organisation; for the employers’ side: number of employees, net income, number of members in negotiating employers’ organisation, membership of organisation participating in national interest reconciliation council, international organisation membership.}

The National Interest Reconciliation Council agreed in its meeting of 27 October 2003 that sectoral dialogue committees should be organised and emphasise sectoral wage bargaining. The committees may have a role in addressing sectoral needs in relation to such topics as training, and sectoral labour market demand and supply.

By April 2005, 31 sectoral and subsectoral dialogue committees had been set up. The sectors and subsectors in which Sectoral Dialogue Committees have been set up include: agriculture, food, beverages, tobacco, mining, bakery products, light
industry (textiles, clothing and leather), pharmaceuticals, metallurgy, electrical energy, construction, trade (possible subsectoral dialogue committee in the retail trade), tourism and catering, public catering (subsectoral committee), travel agencies (subsectoral committee), hotels (subsectoral committee), catering (subsectoral committee), air transportation (subsectoral committee), telecommunications, IT (subsectoral committee), water supply, other communal services, rehabilitation employment, chemicals, postal services, gas (subsectoral committee), railways, mechanical industry, public road transportation (subsectoral committee), culture and the arts, education, health care.

The big changes in sectoral social dialogue do not mean that employers are not keen to maintain their leverage over working conditions and tight regulation of wages and working time by sectoral agreements, not least because working time and work organisation greatly influence work flexibility at enterprises.

11.3. Collective bargaining and the labour market

11.3.1. Effective working time

In 2004, according to the Labour Force Survey, 71% of employees worked in normal daytime jobs. This means that only 29% of the labour force was employed in shift work (continuous shifts, two or three shifts, day and night work arrangements, on-call work, and so on).

Surprisingly, the proportion of the labour force working on the basis of a normal daytime arrangement in 2004 was higher than in 2001, when it was 69.9%. In 2004, the proportion of women working in normal daytime jobs was particularly high, at 74.7%; 68% of men were in normal daytime employment.

Even higher – around 90% – is the proportion of employees working a normal 8-hour working day in sectors like construction, public administration, defence, social security, financial intermediation, education.

Normal one-shift daytime work applies to around 83% of white-collar and 63% of blue-collar workers.

The second most prevalent type of employment is three continuous shifts, including weekends: this affected 15% of the labour force (16.5% of men and 13.1% of women) in 2004. 31.5% of employees in the hotel and restaurant sector and 24% in health care and social services are employed on a continuous three-shift basis, including weekends. Furthermore, more than 10% of employees work two or three shift schedules, including weekends, in such sectors as manufacturing, trade and transport.
In 2004, 18% of employees in manufacturing worked a continuous three-shift pattern, but only 6.5% of employees in health care and social services worked two or three shifts (not including weekends).

11.3.2. Working time frame – working time flexibility
As already mentioned, the Hungarian Labour Code (Act XXII of 1992) has been modified to make it possible for the social partners to negotiate the working time frame:

- In Hungary, according to the Labour Code, working time may be determined in cycles of no more than 2 months (8 weeks).
- A collective agreement at enterprise level may establish a maximum working time frame of 4 months or 18 weeks.
- A collective agreement extended to more than one employer may establish a working time frame of up to 6 months or 26 weeks.
- A collective agreement may specify a working time frame of up to 1 year or 52 weeks for:
  - employees working stand-by;
  - employees working continuous shifts;
  - employees working alternating shifts;
  - seasonal workers.

If a working time frame is applied, the starting and final dates must be established and the employees informed in writing.

In 2002, of the registered collective agreements bound by one employer and the trade unions, 165 laid down a working time frame of less than 2 months, 189 agreements one of 2-4 months, 29 agreements one of 4-6 months and 159 agreements one of 1 year (table 11.1). In the same year, of the collective agreements bound by more than one employer and the trade unions 6 agreements laid down a working time frame of less than 2 months, 9 agreements one of 2-4 months, 3 agreements one of 4 months and 6 agreements one of 6 months.

By June 2004, of the 1,274 registered collective agreements 905 (71%) made reference to a working time frame, an increase of 66%. This major increase also indicates the interest of employers.

In 2004 – as in 2002 – the majority of collective agreements laid down a 2-4 month working time frame. The total number was 264, representing an 80% increase compared with 2002.
In 2004 (again as in 2002) the second most popular working time frame was less than 2 months (29.2%). The number of collective agreements with a one-year working time reference increased from 159 in 2002 to 251 in 2004.

Despite the increase in the absolute number of collective agreements with a one-year working time frame from 2002 to 2004, their proportion decreased from 29.3% in 2002 to 27.7% in 2004.

The one-year working time frame tends to be adopted in sectors characterised by seasonal work, such as hotels and catering, agriculture and construction, and sectors characterised by continuous shift work, such as the chemical industry.

Table 11.1: Working time frame in registered collective agreements, 2002 and 2004

<table>
<thead>
<tr>
<th></th>
<th>2002 number of agreements</th>
<th>2002 %</th>
<th>2004 (30 June) number</th>
<th>2004 %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 2 months</td>
<td>165</td>
<td>30.4</td>
<td>264</td>
<td>29.2</td>
</tr>
<tr>
<td>2–4 months</td>
<td>189</td>
<td>34.9</td>
<td>340</td>
<td>37.6</td>
</tr>
<tr>
<td>4–6 months</td>
<td>29</td>
<td>5.3</td>
<td>50</td>
<td>5.5</td>
</tr>
<tr>
<td>1 year</td>
<td>159</td>
<td>29.3</td>
<td>251</td>
<td>27.7</td>
</tr>
<tr>
<td>Total</td>
<td>542</td>
<td>100</td>
<td>905</td>
<td>100</td>
</tr>
</tbody>
</table>

Table 11.2: Working time frame in registered collective agreements: coverage, 2004

<table>
<thead>
<tr>
<th></th>
<th>2004 (30 June) number of covered employees</th>
<th>2004 %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 2 months</td>
<td>155 072</td>
<td>23</td>
</tr>
<tr>
<td>2–4 months</td>
<td>260 298</td>
<td>38.8</td>
</tr>
<tr>
<td>4–6 months</td>
<td>21 472</td>
<td>3.2</td>
</tr>
<tr>
<td>1 year</td>
<td>233 749</td>
<td>34.8</td>
</tr>
<tr>
<td>Total</td>
<td>670 591</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: FMM.
11.3.3. Flexible contracts

In 2004, only 2.4% of the labour force worked on the basis of fully flexible working arrangements. In 2004, 3.2% of men and 1.6% of women worked fully flexible arrangements.

In 2004, 3.4% of the workforce had the right to determine its own work schedule. Partially flexible arrangements or staggered working hours affected 8.4% of employees: in this case, the daily number of hours is fixed, but the start and end of working time can be determined in a band.

In summary, in 2004 14.2% of the labour force (12.6% of women and 16.2% of men) worked fully or partially flexible – staggered – working hours or had the right to determine their own work schedule.

The qualifications of employees working flexible hours are higher than average. The vast majority of the labour force working flexible hours have a higher education (college or university diploma). In 2004, 4.2% were working fully, 16.3% partially – staggered – flexible working hours and 4.9% had their own working schedule. The same figures for workers with 8 grades or fewer of elementary school were 1.3%, 5.1% and 2.8%.

We find the highest proportion (5.6%) of people working flexible working hours among legislators, senior officials of interest representing organisations and managers: 18.3% of them work a fixed number of daily hours, but with varying start and end times, while 8.5% of them determine their own work schedule.

In 2004 manual workers in manufacturing and the building industry enjoyed the lowest proportion of fully (1.2%) or partially (4.9%) flexible working arrangements and own working schedule (2.1%).

The most flexible working arrangements in 2004 were in the real estate business and economic services (5.5% fully flexible, 17.9% partially flexible – staggered – and 6.7% own work schedule). The least flexible arrangements were in manufacturing (1.4% fully flexible, 4.4% partially flexible – staggered – and 2.4% own work schedule) and education (0.8% fully flexible, 6.7% partially flexible – staggered – and 2.4% own work schedule).

To present a clear picture of working time arrangements in Hungary we must emphasise that in 2004 82.1% of the labour force worked fixed working hours.

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7 Staggered working hours mean that workers may start earlier or finish later around a given period during which their presence is compulsory. It is regulated by collective agreement or regulation. It differs from the system of working time banking in that there is no account system of credit and debit hours. The number of hours worked each day is equal to the contractual number. Source: GSO, Working time arrangement, organisation (2005), p. 68.
starting and finishing the workday at fixed hours (for example, 85.7% of women worked a working day characterised by a fixed start and a fixed end, including 91% of women in manufacturing).

The amended collective agreement (2004) of MOL Rt. (Hungarian Oil Company) regulates the possibility of applying a flexible working schedule. It may be implemented in all workshops where an electronic admission system has been installed.

11.3.4. Part-time
In Hungary, the proportion of the labour force employed in part-time jobs is low. In 2004, a total of 128,111 persons worked part-time, representing 3.9% of the total number of employees included in the Labour Force Survey. Two-thirds of part-timers in 2004 were women; around 15% of them worked in manufacturing, trade and repairs, and education; 22% of men working part-time were in manufacturing.

The vast majority (62%) of part-time workers perform manual work: 24% of part-time workers are predominantly in elementary occupations not requiring professional skills; 25% of women working part-time perform unskilled work.

In Hungary part-time workers mostly work fewer hours per day (66% of all part-timers) rather than fewer days; 19% of part-timers work 1-4 days a week, and only 13.3% other time schedules.

According to the Labour Force Survey, only 32% of those working part-time do not want to work full-time. This means that part-time work tends to be involuntary. Child rearing is not the main reason for working part-time: 66% of women working part-time do not care for children aged below 15 years; only 8% of women work part-time to care for children or other relatives; while 28% of men and 18% of women work part-time because of ill health. When part-time work is of a voluntary nature, it may be a second job, or involve retired people, the disabled or young first entrants. In Hungary nearly 20% of employees working part-time have a disability. 8

11.3.5. Overtime
The number of extra working hours, according to the Labour Code, may not exceed 200, although collective agreements may lay down a maximum of 300 hours (as in the case of bakery workers). Extraordinary conditions are needed to order overtime work and extra payments must generally be made (one-and-a-half time), although the partners can also agree on a time provision rather than extra payment.

In 2004 around 5% of employees worked overtime, averaging 10 hours a week or 2 hours a day; 2.6 of these 10 hours were unpaid. Unpaid overtime was particularly high in public administration (4.7 hours a week), education and financial intermediation (4.6 hours a week) and trade (4 hours a week).

The sectors in which overtime was most frequent were the building industry and financial intermediation (around 9% of the total). Longer overtime (above 10 hours a week) was found in construction, hotels and restaurants, and trade.

According to the amended Labour Code, employees working stand-by or working for a close relative may work up to 12 hours a day or 60 hours a week (including overtime).

The collective agreement for the electrical energy industry may be taken as an example of overtime regulation. It lays down that overtime cannot exceed 30 hours a month or 200 hours a year. Exceptional cases include:

- natural disaster;
- prevention of serious damage;
- averting breakdown.

Overtime should be ordered at least two days in advance.

11.3.6. Early retirement

In Hungary the number of early retirements not paid from the Pension Insurance Fund is decreasing.

In 2004, 143,545 persons were entitled to receive a pension before reaching old age.

In 2004, 8,777 persons were entitled to the so-called pre-pension for the unemployed, to pension waiving the age limit, when employer holds the financial burden until the time when the person reaches the age to be entitled for old-age pension, and to the miners' pension.9

The collective agreement for the electrical energy industry provides an example of how a collective agreement may deal with the issue. According to this agreement, the employer can agree early retirement with an employee a maximum of 5 years before reaching pensionable age. The conditions which have to be met are as follows:

9 Source of data: http://www.onyf.hu/.
• 30 years' service for males, 25 years for females, a minimum of 10 years of which must have been worked in mining or electrical energy.

• The employer is obliged – if the employee demands it – to agree to early retirement if the employee has worked a minimum of 20 years under harmful health conditions, as specified in the local collective agreement, and the employee will reach pensionable age within three years, or if the employee has worked in the sector for a minimum of 20 years under a three-shift system and will reach pensionable age within three years.

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http://www.onyf.hu/

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Műszakrend, munkarend, szervezettség, KSH (CSO), 2005

Munkakerületi helyzetkép 2004, KSH (CSO) 2005

www.ksh.hu
### Annex

<table>
<thead>
<tr>
<th>Types of contract</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Men</td>
<td>Women</td>
<td>Total</td>
</tr>
<tr>
<td>% employed on full-time open-ended contract</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>92.8</td>
</tr>
<tr>
<td>% employed on fixed-term contract</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>7.2</td>
</tr>
<tr>
<td>% employed on part-time contract</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3.5</td>
</tr>
<tr>
<td>% self-employed</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>13.1</td>
</tr>
</tbody>
</table>

### Working hours

<table>
<thead>
<tr>
<th></th>
<th>Statutory maximum working week (hours)</th>
<th>Statutory maximum working day (hours)</th>
<th>Average collectively agreed normal weekly hours</th>
<th>Sector 1 MOL OIL company</th>
<th>Sector 2 Electrical energy industry</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>481, 481, 481, 481, 481, 481, 481, 481, 481</td>
<td>12², 12², 12², 12², 12², 12², 12², 12²</td>
<td>Nor 40³, Nor 40³, Nor 40³, Nor 40³, Nor 40³, Nor 40³, Nor 40³, Nor 40³</td>
<td>Up to 48</td>
<td>8 h/d³, 8 h/d³, 8 h/d³, 8 h/d³, 8 h/d³, 8 h/d³, 8 h/d³, 8 h/d³</td>
</tr>
</tbody>
</table>

## Collective bargaining on working time: recent European experiences

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Usual hours worked per week, full-time employees</strong></td>
<td>42-43</td>
<td>42.7</td>
<td>42-43</td>
<td>42.7</td>
</tr>
<tr>
<td></td>
<td>Women</td>
<td></td>
<td>Women</td>
<td></td>
</tr>
<tr>
<td><strong>Usual hours worked per week, part-time employees</strong></td>
<td>20-30</td>
<td>20-30</td>
<td>20-30</td>
<td>20-30</td>
</tr>
<tr>
<td><strong>Statutory maximum hours of overtime per year</strong></td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td><strong>Average collectively agreed maximum hours of overtime per year</strong></td>
<td>300</td>
<td>300</td>
<td>300</td>
<td>300</td>
</tr>
<tr>
<td><strong>Statutory minimum annual paid leave (days)</strong></td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
</tbody>
</table>

### Sources:


*** Estimate.

**** Mészáktrend, munkakrend, szervezettség, KSH (2005), pp. 36, 66.


******* Indicators of the National Action Plan for Employment, Table 16, KSH (2004).

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1 48 as standard 60 including overtime standby 72.

2 12 including overtime stand-by 24.

3 Normally 40 (8 hours/day) up to 48.

4 8 hours/day.

5 20 (30 days over 45 years.)
12. Collective bargaining on working time in Italy, 1990-2005

G. D’Aloia, G. Olini and R. Pelusi

12.1. Working time policy in Italy: background

Italy, unlike other countries, experienced no significant reduction in working hours during the second half of the 1990s. Indeed, the available data indicate that the working time per employee negotiated through collective bargaining has remained substantially unchanged since the mid-1990s. For a full-time employee who does not work shifts and does not benefit from specific reductions in working time resulting from company bargaining or from his/her particular work situation, the average contractual schedule amounts to 1,720 hours per year in industry (narrowly defined) and 1,670 hours in the private service sector. The overall average for the economy as a whole is lower (1,646), owing to the shorter hours worked in the public administration (approximately 1,450). These figures have remained stable over a ten-year period. There has been a minor change in de facto working time over the same period: the hours actually worked in manufacturing industry (excluding statutory short-time working arrangements in companies with more than 50 employees) numbered 1,646 per year on average in 2003, 42 hours less than in 1995 (-2.5%). This reduction was, however, brought about by the unfavourable economic situation from 2001 onwards and, to a lesser extent, by the increased prevalence of shiftwork.

As far as more qualitative aspects of working time in Italy are concerned, let us cite the comments made by two researchers in a report presented at a recent symposium of the Italian Association of Labour Economists: “The analysis carried out helps to undermine the misguided belief that the Italian labour market is excessively rigid. Compared with the EU average, rather more use is made in Italy of flexibility mechanisms in response to production requirements: flexible schedules based on an average number of annual hours and adjusted to company demands; and shiftwork. At the same time, the amount of work normally performed in Italy in the evening, at night or on Sundays lies only slightly below the European Union average. Moreover, the types of flexibility preferred by business are much more

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1 This report is the product of a collective effort: the first section was written by G. Olini; the others by G. D’Aloia and R. Pelusi.
prevalent here than elsewhere in Europe. In this context the fact that “time-banks” are not at all widespread in Italy is symptomatic of the difficulty of removing obstacles to a better work/life balance” (Albassini and Massarelli 2004). This verdict should in reality be viewed in the light of the inroads being made into national bargaining by practices such as time-banks and “multi-week” flexibility, and their frequent use in decentralised bargaining (see below).

Why has there been no reduction in working hours in Italy over recent years? In order to answer this question, we need to look at policy developments in the field and, of course, at the economic scenario. A fairly clear distinction can be drawn between three separate phases as concerns working time in Italy during the 1990s:

• the first and most productive, in terms of the measures devised and implemented, was a period when working time policies were extensively recast;

• the second, when the draft law on the 35 hour working week saw the light of day, was a time of conflict not so much among trade unions as among politicians, owing to two different views on how to go about reducing working hours. The dispute was such that the two approaches cancelled each other out;

• thirdly, after the failure of the draft law on reducing hours, working time issues disappeared off the agenda in 1998 and, in certain respects, have still not reappeared.

With regard to the economic scenario, it should be pointed out that de facto working hours significantly outstripped collectively agreed hours in Italy during the 1980s, owing to the growth in overtime. A fall in productivity growth stood in the way of negotiations to reduce working time, apart from a trade-off on more intensive plant utilisation. Added to this, in the 1990s – during the extremely difficult transition to the single currency and the adaptation to its rules – it was essential not to burden companies with excessive costs. Concertation and wage restraint were, at the start of the 1990s, the trade unions’ chosen method of keeping pace with Europe. Vital though these practices were, they left no economic scope for measures to reduce working time across the board, as had been the case in the late 1970s and the 1980s. On the other hand, post-Taylorist society inevitably leads to a more multi-faceted and “soft” management of working time.

As a result of both of these factors (the need for wage restraint and the organisational shift towards a post-Taylorist fragmentation of schedules), Italy’s three major trade unions CGIL, CISL and UIL devised a new policy on working time in the early 1990s. It was a joint approach on an issue which had sharply divided them in the not-too-distant past. The major inter-union agreements of those years (the July 1993 Agreement; the Pact for Jobs of September 1996) and a number of government measures sought to persuade businesses to create new jobs rather than
resorting to longer working hours. The objective, backed by the trade unions, was to confront this complex matter by means of a very elaborate strategy: in keeping with – and in some cases pre-empting – the European debate, there was talk of modulating and reducing working time, managing flexibility by negotiation, allowing employees more scope to choose their own hours, calculating working time over the entire lifecourse, and adapting work schedules to private life. All these issues are interrelated: they involve the ratio of actual to contractual working time, the growth in overtime, management of flexibility, the connection between the growing demand for labour, the north-south divide, and territorial and occupational mobility, training issues and shop and office opening hours. Most of the Italian trade union movement regards working time as being absolutely central both to a competitive production system and to quality of life; there is, however, a tendency not to be too mechanistic and determinist about the link between reducing working time and boosting employment. The trade unions’ proposals are to a certain extent echoed by government policies in the form of legislation transposing the inter-union agreements and putting forward incentive schemes.

From 1995 onwards, and especially after the 1996 Pact for Jobs, the trade unions seemed to be successful in their strategy of building a new framework of regulations to encourage the negotiation of work schedules, make companies more competitive and broaden the scope for reducing hours. A series of gradual but significant measures was introduced: increased overtime pay rates, the incentives laid down in Law No. 196/97 for reducing working time, the social partner agreement on transposing the Community directive, and others. Working time thereby entered government employment policy in its own right, and a more favourable climate was created for bargaining to play an active role.

Matters changed unexpectedly in autumn 1997 when the Prodi government, in an attempt to retain the support of the Communist Refoundation party, was obliged to table draft legislation reducing statutory working time to 35 hours in the wake of similar developments in France. The measure was opposed not only by employers’ organisations: even though the trade unions were in favour of reducing working time, they too (or at least the vast majority of them) criticised the substance and the method of the proposal. The more “reformist” approach supported by most trade unionists clashed with the “radical” approach preferred by those on the far left. To over-simplify, it could be said that the trade unions reproached the government for interfering in the field of bargaining; for using a blunt instrument unsuited to the reality of production structures and post-Taylorist organisation in Italy; and for mortgaging future years’ productivity rises while ignoring the fact that productivity does not grow equally everywhere. In other words, the unions were asserting that bargaining can be a much more effective instrument than legislation in reducing and readjusting work schedules, by introducing the schemes and adaptations best suited to individual cases.
Nor was the draft legislation approved by the government majority which had tabled it. The saga ended with a rapid decline in the attention paid to the issue of working time. This issue had been charged with too much political and ideological significance during the period of conflict; so much so that it was basically shelved thereafter. A few aspects of the earlier planned reforms did come to fruition, in particular the important law on parental and training leave and shop and office opening hours (March 2000), but on the whole a thick veil descended on working time policy. The new topics on the agenda were non-standard employment and flexible employment relationships. Greater use of fixed-term contracts and temporary, part-time and freelance employment was a topic that began to complement and sometimes even replace that of job flexibility (overtime, compensation for short-time working, destandardisation and flexible hours) which had played such an important role in clawing back competitiveness for an economy that was innovating and investing too little.

The downturn which occurred in Europe and in Italy from 2001 onwards was the final straw in turning attention away from working time issues. Employment growth remained at relatively high levels because the ratio of elasticity of employment to GDP rose as a result of wage restraint and increased labour flexibility. However, productivity growth per employee was low and often negative. The Italian production system appeared to have great difficulty in coping with globalisation and lost international market share even when the euro was weak and/or international trade was undergoing strong growth.

That was why, in March 2004, there was talk in the press about one economist's proposal to relaunch GDP by abolishing one week of annual leave. Even though the Prime Minister briefly took it up, this idea of reviving consumption by making people work harder was — fortunately — short-lived. This was no doubt because of its inherent contradictions: there is obviously no point in increasing working hours when plant utilisation rates are low. Furthermore, if the level of consumption is related to personal perceptions of present and future well-being, the loss of something so intrinsically valuable as free time is tantamount to a loss of wealth and, hence, would make consumption not rise but fall. But the lack of enthusiasm for this proposal, even in business circles, was mainly due to the fact that it overlooked the country's real problem: namely, the overall positioning of the production system, on which competitiveness and hourly and per capita productivity trends depend. Emerging from the crisis therefore means boosting Italy's capacity to innovate and conduct research, and promoting a shift into types of production which are more likely to generate growth, within a more growth-friendly European context.

The trade unions now need to refocus their attention on working time policy and to overcome the embarrassment of having shelved it after the controversy over the 35 hour week legislation. The crisis in the Fordist economy has for years brought
about transformations in the workforce, whose nature and needs formerly tended to be homogeneous in nature but whose characteristics and aspirations have latterly become considerably more complex and varied. The trade unions often have difficulty tuning in to this diversification of demands. The main problem today is how work schedules can be better individualised, enabling the employee to choose from various options. Greater flexibility for employees can counterbalance companies' flexibility requirements. Experiments of this kind are not unknown in Italy but are certainly not common. Best practice at company level involves negotiating tailor-made solutions matching each individual employee's specific needs to the company's various production requirements. Heightening the trade unions' capacity to act means moving away from flexible hours in the narrow sense, intervening and mediating at the point where work schedules are determined. This is where the trade unions must make a real commitment to giving employees a voice, by calling on them to take part in designing work schedules which, after all, contribute to a better work/life balance.

12.2. National contractual working time

12.2.1. Data on major economic sectors

As can be seen from Table 12.1, average contractual working time in Italy is roughly 38 hours per week in the manufacturing sector, 37 hours in market services and around 35 hours in the public administration (excluding education). Methods of organising working time and the recourse to reductions differ considerably from one sector or branch to another. Work schedules are longer in manufacturing (1,730 hours per year, equivalent to an average working week of 37.7 hours) and shorter in the public administration (1,458 hours per year; 32 per week). This figure, however, results in turn from annual hours of between 1,570 and 1,600 in most departments of the public administration, roughly equivalent to an average of 36 hours per week, and the 1,170 of schoolteachers, corresponding to approximately 26 hours per week. The service sector falls between the two but lies much closer to manufacturing industry. On average, the entire private sector of the economy has a contractual work schedule of between 37 and 37.5 hours per week.

Annual and weekly work schedules, and even reductions in working time, are managed differently from one sector to another. In manufacturing – as we shall see better below – the contractual working week generally consists of 40 hours, and reductions take the form of days or blocks of hours of paid time-off (or extensions of leave periods); the general starting-point in the public service is a weekly work schedule of 36 hours.
Table 12.1: Annual contractual hours, leave, reduction of hours and weekly schedules (a)

<table>
<thead>
<tr>
<th>Economic sectors and collective agreements</th>
<th>Annual gross contractual working time</th>
<th>Average leave</th>
<th>Other hours deducted from annual total (b)</th>
<th>Net working hours</th>
<th>Weekly average (c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacturing industry</td>
<td>2,065</td>
<td>194</td>
<td>141</td>
<td>1,730</td>
<td>37.7</td>
</tr>
<tr>
<td>Market services</td>
<td>2,025</td>
<td>202</td>
<td>134</td>
<td>1,689</td>
<td>36.9</td>
</tr>
<tr>
<td>Public administration (including education)</td>
<td>1,704</td>
<td>195</td>
<td>51</td>
<td>1,458</td>
<td>32.0</td>
</tr>
<tr>
<td>Ministries, Regions and local authorities</td>
<td>1,872</td>
<td>216</td>
<td>68</td>
<td>1,588</td>
<td>35.2</td>
</tr>
<tr>
<td>National Health Service</td>
<td>1,892</td>
<td>206</td>
<td>77</td>
<td>1,609</td>
<td>35.4</td>
</tr>
<tr>
<td>Education system</td>
<td>1,378</td>
<td>154</td>
<td>53</td>
<td>1,171</td>
<td>25.8</td>
</tr>
</tbody>
</table>

(a) Average annual values.
(b) The table includes not only the paid leave enjoyed by employees as a result of agreements reducing working time over the course of the year, but also the hours of paid leave awarded in compensation for the public holidays abolished by Law No. 54/1977, hours allocated for meetings and time-off for study leave.
(c) Time-off for meetings and study leave were not factored into the reduction of hours when calculating weekly schedules. For sectors where average values are provided, we have assumed that the reduction deriving from meeting time and study leave normally amounts to 50 hours (as in the chemical sector, public admin and other collective agreements).

Source: own calculations based on ISTAT data

12.3. National collective bargaining on working time and flexibility since July 1993

Following the July 1993 Agreement, the prime objective of national collective agreements was to safeguard the purchasing power of pay within the context of tripartite bargaining and incomes policy. The overall aim was to bring down inflation and revive the Italian economy with a view to the country’s entry into Economic and Monetary Union. But national collective bargaining changed too during the 1990s.
12.3.1. Working time flexibility and the management of *de facto* working time: multi-week flexibility and time-banks

National collective agreements have in fact been highly innovative in making working conditions more flexible, especially in respect of:

- working time (with the introduction of time-banks, increased scope for using overtime and multi-week flexibility in work schedules);
- types of contract, with new standards (especially after the legislative changes introduced at the end of 1997 in the Treu package) and increased scope for using contract types which already existed but on which the rules were previously more restrictive (fixed-term, part-time and apprenticeship contracts);
- the introduction of new types of contract, such as for temporary agency work.

The trade unions have been at pains, in collective bargaining on working time, to combine flexibilisation of work schedules with the management and reduction of *de facto* hours. This goal was for example made explicit in the agreements concluded in the chemical and petroleum sectors. Here, in a move sharply criticised at the time by the employers' organisation Confindustria, working time was adjusted in such a way that annual reductions in hours were converted into weekly reductions; at the same time, time accounts and multi-week flexibility were introduced (provided that the weekly work schedule was not exceeded on average over the year). In other collective agreements the task of managing and reducing *de facto* working time has been addressed by setting up time-banks. Bargaining about flexibility and, more generally, managing or reducing the hours actually worked was a typical feature of company bargaining throughout the 1990s (D’Aloia 2003).

All these elements taken together probably helped to curtail the growth in *de facto* working time during the latter part of the 1990s, when overtime amounted to approximately 4-4.5% of contractual hours, while during other growth phases it had amounted to 5.5-6%. The divergence between hours actually worked and contractual working time has thereby been lessened.

12.3.2. Flexible contracts

Over the past decade, national collective bargaining – not least on the basis of the new legislation introduced in 1997 through the Treu package – has universally broadened the scope for using a wide variety of contract types. The normative apparatus (collective agreements and legislation) and labour market trends have thus influenced each other in the search for greater flexibility of access to employment. This has benefited 80% of new entrants to the job market after only a few years. Bargaining has sought to standardise, regulate and halt the trend towards a deregulated labour market, including during the three-year period 2000-2002.
12.3.3. Flexibility and the new rules on working time in national collective agreements, 2002-2004

Bargaining activity has focused on two key objectives over the past three years:

• safeguarding the purchasing power of pay;
• attempting to negotiate on the measures contained in the new Law No. 30 on employment relationships and in the new legislation on working time, part-time work and fixed-term contracts.

Law No. 30/2003 and its implementing decree 276/2003 altered the existing typologies of employment with the aim of satisfying the training requirements of both employees and companies (apprenticeships and training/employment contracts, now replaced by insertion contracts); in addition, they created new types of contracts aimed at meeting the need for flexibility in the use of labour (intermittent work, job-sharing, temporary agency work). Transposition of the new provisions of Law No. 30 has often constituted a stumbling-block which has stalled negotiations for lengthy periods.

As part of these changes, part-time employment underwent a thorough review. Subsequent collective agreements have sought to minimise the effects of the reform and, sometimes, have managed to preserve the measures already in place. In some branches (chemicals, rubber/plastics), efforts are made to discourage a liberal use of flexibility clauses by increasing rates of pay, sometimes by a good deal more than the rates paid for overtime worked by full-time employees: the shorter the notice period – and hence the greater the inconvenience to the employee – the higher the increase.

The chemical sector agreement also established specific pay rises for employees engaged in vertical part-time work whose schedule is concentrated on Saturdays and Sundays (for day-work 35%; night work 50%; more than 20 hours 30%; public holidays falling on Saturdays 35%; public holidays falling on Sundays 100%). In addition, all part-time workers not covered by the contractual rules on reduced working time are entitled to a specific, flat-rate annual amount of compensation.

With regard to supplementary labour (i.e. hours worked longer than those specified in the contract but below a full-time working week):

• some collective agreements (textiles, footwear, graphic art) have stressed the need for the employee’s consent;
• in certain cases (footwear, textiles, commerce) the upper limit is equivalent to the normal working hours of full-time employees; in others (rubber/plastics, chemicals, graphic art) it is set at a maximum percentage of the agreed part-time working hours.
Finally, in order to enable parents to look after their children until they reach the age of three, the renewed commerce sector agreement of 2004 made it compulsory for firms to approve requests from permanent employees for a temporary transfer from full-time to part-time work – but only in respect of 3% of the staff employed in an establishment and depending on the feasibility of replacing the employees concerned. Only one worker per year is entitled to go part-time in establishments with between 20 and 33 employees.

Another very important decree, DL 66/2003, transposing Community Directives 93/104 and 2000/34, substantially altered the rules on working time which were previously contained in Article 13 of Law No. 196/1997, and before that in Royal Legislative Decree 692/1923. The trade unions were highly critical of the method followed by the government, which preferred a legislative decree rather than a social partner agreement and, what is more, found fault with much of the content. It should be pointed out here that the legislation transposed only part of the 1997 Joint Declaration signed between the CGIL, CISL and UIL trade unions and Confindustria, and of the social partners' discussion paper.

The Decree sets normal working time at 40 hours per week, but collective agreements may establish that those 40 hours are calculated as an average over a period of no more than one year. Maximum weekly working time (normal hours + overtime) is set at 48 hours. This maximum duration too is to be calculated as an average, over a period of no more than four months or of between six and 12 months if so agreed through collective bargaining. In such cases, establishments with more than 10 employees must notify the provincial Employment Office every four months. In the absence of any collectively agreed rules, a ceiling of 250 annual hours is placed on overtime. Overtime is permitted in cases of exceptional technical or production requirements, force majeure or special events such as exhibitions and trade fairs, unless collective agreements stipulate otherwise. Overtime must be compensated in the form of pay increases laid down by collective agreement.

Concerning normal working time, DL 66/2003 sets the weekly limit at 40 hours, whereas it abolishes the daily limit of eight hours per day previously laid down by Royal Legislative Decree 692/1923 – which had the obvious intention of protecting workers – unless otherwise negotiated. The trade unions have raised certain criticisms concerning the relationship between legislation and collective bargaining: in particular the likelihood that, since maximum weekly working time can be averaged out over a four-month period even without any input from collective bargaining, weekly working time including overtime might peak at over 48 hours, with the trade unions unable to do anything about it. This problem could have been avoided by virtue of solutions contained in the social partners' discussion paper.

Another stumbling block, which the social partners themselves did not manage to overcome, relates to the obligation to notify instances of overtime. The previ-
ous regulations had stipulated that notification was mandatory within 24 hours, without any periods of exemption, but only for industrial firms; there was no obligation to notify in any other sector. On this point, therefore, the text of DL 66 represents a backward move for the industrial sector but a step forward for other sectors, which have until now been entirely exempt from notification. The trade unions are furthermore calling for the reinstatement of the overtime limit of 80 hours per quarter, previously laid down in the 1997 Joint Declaration, as well as in the most recent negotiations between the two sides and in Law No. 409/1998.

It is also worth noting that, in entrusting to collective bargaining the task of setting all these arrangements, the legislation does not state at what level such tasks should be carried out. The only matters explicitly attributed to national collective bargaining are exemptions in respect of daily rest periods and breaks, night work and maximum weekly working time. In the absence of an overall reform of the bargaining system, allowing the social partners in individual sectors to decide at what level to take action could provoke an excessive fragmentation of regulations governing working time organisation: from the duration of working hours to breaks and rest periods; from the organisation of night work schedules to protection for individual employees.

Nevertheless, the agreements renewed since the decree entered into force seem to confirm the interdependence between the various levels of bargaining: the national agreements in the food and tourism sectors, for instance, have laid down general criteria regarding who is responsible for what, leaving it up to second-tier bargaining merely to determine further details concerning individual local areas or companies.

Not all the agreements signed since its adoption have taken up the references to collective bargaining included in DL 66/2003. The renewed tourism agreement, for example, acted only on the provisions concerning average weekly working time and rest periods, postponing until a later date the job of checking whether or not the collectively agreed rules comply with the decree. In the metalworking sector the rules negotiated in 1999 (on daily and weekly working time, overtime, work on public holidays and at night, etc.) were reconfirmed in a recent agreement (January 2004), aimed at “governing working time and the labour market”. However, in view of the adverse economic situation in the sector, the employers have called during the current renewal of the agreement for a rewriting of the section of the national metalworking agreement on working time: they wish to alter the existing arrangements substantially as concerns annual working time, voluntary overtime, the right to demand multi-week flexibility in cases other than those laid down in the agreement, etc. All three trade unions, CGIL, CISL and UIL, have however stated that they are not pre-
pared to make any structural changes to the existing working time arrangements, not least because the normative part of the existing agreement expires on 31 December 2006.

As far as average weekly working time is concerned, some sectoral agreements cite the statutory norm (reference to a period of no more than four months), leaving it up to second-tier bargaining to identify circumstances in which it could be spread over a longer period (food, tourism); others make provision at national level for referring to a 12 month period (chemicals, rubber/plastics, construction, textiles). Where night work is concerned, the agreements of 24 April 2004 (textiles) and 18 May 2004 (footwear) implement Article 13(1) of DL 66/2003, stipulating that, where a variable work schedule is spread over several weeks and there are no specific rules at company level, the maximum duration of night work (8 hours out of 24) may be averaged out over 12 months. They also establish that, pursuant to Article 17 of the same legislative decree, it may be agreed at company level that the maximum duration of night work (8 hours out of 24) may be averaged out over a period of one or several weeks, with a view to ensuring continuous operation in certain specific activities during the weekend.

12.4. Decentralised bargaining

Decentralised bargaining – otherwise known as second-tier bargaining – at company level (or in some cases at territorial level) plays a significant role in Italy. Company-level bargaining affects approximately 40% of employees in the private sector, or as many as 60-70% if one counts only firms with more than 50 employees. It is therefore very interesting to analyse the trends in bargaining at this level with respect to working time and flexibility.

12.4.1. Working time

The most important phenomena at decentralised level are the flexibilisation of work schedules through the negotiation of annual timetables and the introduction of flexible schedules spread over several weeks, the formation of time-banks (including as a means of negotiating and reducing overtime), and an increase in plant utilisation through the creation of new shifts (nights, Saturdays, Sundays, etc.). Some interesting experiments in reducing working time have also been carried out in this context.

2 See the reports on Italy in the ETUI Collective Bargaining Yearbook of recent years.
3 ISTAT survey on flexibility 1995-96; Bank of Italy survey, various years.
4 This section is based on an analysis of agreements held in the CNEL archive on decentralised collective bargaining (CNEL 2002, D’Aloia 2003).
Agreements concluded in the chemical sector, especially during the period 1999-2000, have focused on implementing the new standards contained in the national collective agreement, particularly as concerns reducing the working week to 37 hours and 45 minutes, managing working time flexibility on a multi-week basis and setting up time accounts. Another important achievement – above all in the metalworking sector – has been the agreement on additional amounts of paid/unpaid leave for purposes of parental leave (childbirth and mourning, but also family assistance) and for specialist medical appointments (with remuneration of the hours required for the appointment and sometimes even travelling time), and even for additional periods of unpaid time-off either for medical treatment or in order to assist family members (children or parents). These can in some instances be regarded as straightforward reductions in working time.

With regard to flexible hours, time-banks and shiftwork, bargaining on these subjects very often overlaps with negotiations about annual timetables. Flexible hours still boil down to entry and exit times in many cases. The most significant phenomenon, however, is bargaining about working time flexibility spread over a period of several weeks and the introduction or use of the time-bank system, sometimes as a result of achievements made in the various national collective agreements. Other elements are the management of overtime and efforts to reduce it, and the use of shiftwork as an additional means of increasing flexibility and boosting plant utilisation.

12.4.2. Flexibility and pay

There is another important factor affecting a significant number of agreements which introduce or extend various forms of flexible, multi-week work schedules, extending or diversifying shiftwork by boosting plant utilisation or making it more flexible in one of several ways. This is the widespread presence of pay elements which, in various ways, provide economic reward for the introduction of those forms of flexibility (e.g. higher rates for flexible hours worked and/or stored in time-banks, bonuses linked to the introduction of new shifts, etc.). Other agreements make provision for additional reductions in working time or further rest-days to compensate for the extra hours worked or for the measures introduced to heighten flexibility or enhance plant utilisation.

Many agreements contain measures to implement or extend the scope for flexibilisation of working time provided for in national collective agreements. Sometimes the additional hours worked are compensated individually by means of the time-bank system. The adjustment of work schedules to market requirements appears to be especially pronounced in firms (e.g. in the typically seasonal food processing industry) which combine seasonal activity with shiftwork (often at night) and the use of working time flexibility provided for in national collective agreements.
Shiftwork introduces further differentiations into work schedules, with various types of shifts comprising different numbers of hours per day or per week (eight-hour shifts and shorter ones, longer shifts subsequently offset by shorter ones, reduced shifts on Saturdays or Sundays etc.).

12.4.3. Reduction of working time

In the chemical/pharmaceutical industry, as we have seen, a large proportion of the bargaining about working time has been devoted to implementing the national collective agreement in respect of reducing working time to 37 hrs and 45 minutes per week (sometimes by way of a multi-week average). The metalworking and textiles sectors are the ones where the greatest number of company-level experiments in reducing working time have been carried out, particularly through agreements to increase plant utilisation (and also to make it more flexible). This has often been done by introducing or – more commonly – extending shiftwork: some firms have introduced 6 x 6 working with three or four shifts per day, totalling 36 or even fewer hours per week.

12.4.4. Non-standard contracts

The two most widespread forms of non-standard contract which are the subject of collective bargaining in all the sectors examined are part-time employment and fixed-term contracts. Bargaining on part-time employment generally seems to relate to the possibility of satisfying requests to move from full-time to part-time work. The two main bargaining elements which emerge in respect of fixed-term contracts are the attempt to stabilise employment relationships and the regulation of fixed-term employment in seasonal businesses, especially in the food sector. Other less common types of non-standard contracts which crop up in collective bargaining are, firstly, the various means of gaining access to employment (apprenticeships and training/employment contracts); secondly, there are certain instances of temporary work and telework, few in number but gaining ground for example in the metalworking sector, and occasionally new types of contract such as job-sharing.

References


See http://www.aiel.it/bacheca/MODENA/Sessione_A.htm. See also P. Casadio and L. D’aurizio.


13. Collective bargaining and working time: Lithuania

Tatjana Babrauskiene

13.1. Labour legislation

13.1.1. Labour law on working time

During the last few years Lithuanian labour law has undergone important changes. A new Labour Code came into effect in January 2003. The Code has replaced a number of separate laws on specific issues. Some superfluous rules, such as a list of detailed grounds for terminating a contract, have been abolished. Nevertheless, the codification of labour laws did not change the nature of the extensive and detailed regulations. It left little room for negotiation between contracting parties, which is the major flaw of strict regulation.

For example, the law requires that labour contracts be concluded in writing, in accordance with a model laid down by law. The law establishes detailed grounds for special-purpose leave and forbids unpaid leave on grounds not specified in the law or in a collective agreement.

The regulation of overtime in Lithuanian legislation is entirely different from that in the EU, being extremely restrictive. Longer hours are allowed only in exceptional cases, as defined by law.

The Lithuanian Labour Code prohibits the conclusion of temporary contracts, except when jobs have a non-permanent nature and in individual cases agreed by collective agreements or in accordance with the law. Such a prohibition is not envisaged in EU Directive 1999/70/EC.

The Lithuanian Labour Code requires that worker representatives be consulted regarding the termination of labour contracts for economic or technical reasons or because of structural changes in the workplace. The Lithuanian provision is broader than that envisaged in EU Directive 98/59/EC.

According to Arts. 144 (1)–144 (3) of the Labour Code, working time in Lithuania may not exceed 40 hours per week or 8 hours a day. Maximum working time, including overtime, must not exceed 48 hours for every 7 days. For employees employed at more than one workplace or having an additional job at the same workplace, daily working time (including breaks to rest and eat) may not exceed 12 hours.
However, the working time of specific categories of employees (health care, child care institutions, energy, specialised communications services and specialised accident containment services, as well as other services that operate under an uninterrupted regime – there is a government-approved list) may be up to 24 hours per day. The working time of such employees may also not exceed 48 hours per seven-day period, however, and the rest period between working days must not be shorter than 24 hours.

Some categories of employee (persons under 18 years of age, persons who work in a dangerous or harmful working environment in which concentrations of hazardous factors exceed the permissible marginal amounts) are entitled to shorter working time. It should also be noted that normally these employees are entitled to full remuneration despite their fewer working hours.

The five-day working week with two rest days is the standard established under the law. A six-day working week with one rest day shall apply to employees in enterprises where a five-day working week is impossible due to the type of production and other conditions. An employee may not be compelled to work two shifts in succession.

13.1.2. Overtime and overtime rates

Generally, overtime work is rather restricted in Lithuania. An employer may introduce overtime only in exceptional cases: for example, the work is necessary for national defence and for preventing accidents or danger; for the elimination of unforeseen or accidental circumstances due to an accident, natural disaster, and so on; when it is necessary to finish work that could not be finished during normal working time because of an unforeseen or accidental hindrance; if the interruption of work may result in the deterioration of production materials or the breakdown of equipment, and so on. Work carried out by administrative officials beyond set working time shall not be deemed to be overtime. A list of such positions shall be laid down in collective agreements or internal regulations.

Overtime shall not exceed 4 hours over two consecutive days and 120 hours per year.

Overtime cannot be assigned to the following: persons under 18 years of age; persons studying at secondary and vocational schools; when various factors in the working environment exceed permitted levels. Disabled people may be assigned overtime provided that this is not forbidden by the committee that established their disability. Overtime can be assigned to the following categories of person only with their consent: pregnant women; women who have recently given birth; women who are breastfeeding; employees who are raising a child under 3 years of age, single parents raising a child under 14 or a disabled child under 16, disabled persons and other persons provided for by law.
Overtime payments shall be at least one and a half times hourly pay (time and a half).

13.1.3. Unlimited and fixed-term contracts of employment

A fixed-term contract of employment may be concluded for a given period of time or for the performance of the work but for no more than 5 years. A seasonal contract of employment shall be concluded for the performance of seasonal work that, due to natural and climatic conditions, is not performed all year round but only during certain periods (seasons) not exceeding 8 months (in a period of 12 successive months) and is included on the list of types of seasonal work. A temporary contract of employment is a contract concluded for a period not exceeding 2 months. The government lays down the list of types of seasonal work, the circumstances under which a temporary employment contract may be concluded and other features of both types of employment contract.

If an employment contract has expired, but employment relations are continuing and neither of the parties has, prior to expiry, requested termination of the contract, it shall be considered to be indefinitely extended.

13.1.4. Special contracts of employment

The Labour Code lists several types of employment contract:

• contracts for additional work (an arrangement to perform additional duties or additional work, not agreed in the contract, at the same workplace);

• contracts for a secondary job (a job at another workplace under a contract of employment with another employer);

• contracts with home workers (work performed at home);

• contracts for the supply of personal services (employee undertakes to supply personal household services to his or her employer).

However, the Labour Code does not go into detail and the government has significant discretion in determining the features of these types of contract.

Nonetheless, the Labour Code lays down rules for wage determination in respect of work performed under extraordinary working conditions:

• overtime and night work shall be compensated at no less a rate than time and a half (Art. 193 (1) of the Labour Code);

• work on rest days or holidays and not provided for in the work schedule shall be paid at least at double time, if not compensated by another rest day during
the same month or adding a day to annual leave (Art. 194 (1) of the Labour Code);
• work on holidays that has been provided for in the work schedule shall be paid at least at double time (Art. 194 (2) of the Labour Code).

13.1.5. Paid leave
Holidays with pay are classified minimum, extended and additional.

Minimum annual holidays with pay amount to 28 calendar days. For the following categories of worker annual holidays with pay amount to 35 calendar days: employees under 18 years of age, single parents raising a child under 14 or a disabled child under 16, disabled persons and other persons provided for by law.

Extended annual holidays with pay of up to 58 calendar days shall be granted to certain categories of employee whose work involves greater nervous, emotional and mental strain and professional risk, as well as to those who work under specific working conditions. The government approves the list of categories of employees who are entitled to extended leave, including teachers, university professors, some categories of medical staff, fishermen, aviators and other related professions.

Additional annual holidays with pay are granted to employees as a result of abnormal working conditions (that is, harmful or hazardous conditions), for long uninterrupted employment at the same workplace or for special work (for example, work performed outdoors).

Annual leave may, at the request of the employee, be taken in parts, but one part of annual leave may not be shorter than 14 calendar days. Recall from annual holiday shall be permitted only at the employee’s consent. Compensation in cash for the unused annual leave is acceptable only, when the employment contract is terminated, irrespective of its term.

13.2. Important issues related to working time in Lithuania

13.2.1. EU enlargement and competitive pressures coming from globalisation
EU membership is having a clear impact on the Lithuanian labour market. The key issues for Lithuania in enlarged Europe are how to cope with the challenges resulting from the continuous transformation of its economy, the modernisation of and society, the full participation in the single market.

According to the World Bank report Lithuania needs to keep its current very high growth rates for many years to come in order to catch up with the current EU
members. Experts notice that this is going to be increasingly difficult if the competition in the single market, and in some instances, global competition, would prove to be too tough for many enterprises to tackle, and if the low-cost manufacturing advantage dissipates through wage cost convergence without a corresponding increase in factor productivity.

Lithuania has been traditionally strong in the global textiles and clothing market. Entry into the single EU market and other external forces, such as liberalisation, present big new challenges. Lithuania is still among the countries specialising in low-tech exports. Labor costs may not stay competitive for too long and organic productivity growth has its limits. To keep its investment climate accommodating and growth oriented, and its global competitiveness strong, Lithuania needs a quantum leap towards higher-tech, higher quality economy. Perhaps the only way to make it happen is through innovation although there is still room to increase the speed and reduce the cost drawing on the experience of global leaders who extend working hours. In this regard, an extension of working time as an option to maintain competitiveness could be a major threat for employees.

13.2.2. EU regulations on working time or EU policy frameworks like the European Employment Strategy (EES)

Analysis of employment regulation in Lithuania and EU directives concerning the labour market shows that Lithuania has consistently applied more rigid rules than those prescribed in EU directives.

In the process of approximation of national legislation with the EU requirements, conditions more beneficial for the employees than the EU law demands were frequently established. For example, the Lithuanian Labour Code sets higher requirements for night shift work than the EU directives. Although such regulation is not interdicted by the EU and may even provide additional security for workers, it can become a competitive disadvantage in the opening global market.

13.3. Collective bargaining on working time

13.3.1. Overview of collective bargaining on working time

In Lithuania, as well as in the other Central and East European countries, the role of the trade unions in working time determination is less important than in most western and northern European countries. One of the reasons for this might be the detailed regulation of employment relations concerning working time, as legislation ensures the protection of employees’ basic rights. We have already mentioned that the laws prohibit differential treatment and that there are upper limits for regular working hours, overtime and night work; workers are granted regular
vacations and other leaves; termination of employment contracts is subject to restrictions – for example, there is an obligation to give advance notice, pay compensation, and so on. On the other hand, though labour legislation says that more favourable conditions for employees may be laid down by collective agreement, collective agreement coverage in Lithuania is below 15%, to the detriment of average working conditions. Both the rate of unionisation and collective bargaining coverage are rather low in Lithuania.

Lithuania has three central trade union organisations and trade union coverage of about 15%. These organisations – the largest is the Lithuanian Trade Union Confederation – do not cooperate and largely keep their distance from one another. The main sectors in which trade unions are active are health care, transportation, construction, railways, agriculture, trade, education and the civil service.

13.3.2. Levels of bargaining on working time

Working time is determined at national level. The popularity of national-level working-time bargaining is due to the traditional coordinating role of the government. National-level bargaining takes place mainly in tripartite bodies. However, even in national-level bargaining the trade unions are rather marginalised and the main function of tripartite bodies is consultative. The main issue for trade unions at present is the signing of a national collective agreement. The main obstacle is the absence of an employers’ organisation responsible for national collective bargaining.

The same problem exists in sectoral level bargaining: weak employers’ associations. The trade unions have been helping to establish employers’ organisations at branch level, presuming that the level of bargaining will develop more when employers organise.

Enterprise-level agreements are the most common in Lithuania. The initiative to bargain is usually taken by the trade unions: employers are not interested in concluding collective agreements but are under a legal obligation to do so if their employees wish it. In practice disputes often arise as employers attempt to avoid signing agreements. Most enterprise-level agreements are concluded in the public sector, in large public enterprises.

As most employees are not covered by collective agreements, the effect of the trade unions on determining working time is currently minimal.

Lithuanian legislation is very helpful in harmonising labour relations. For example, without a collective agreement employees cannot receive extra unpaid leave on grounds not specified in the Labour Code or conclude fixed-term employment contracts, even if they wish to do so. An employer can make an agreement on full liability with specific groups of employees only if those positions are mentioned
in the collective agreement. In practice, the Labour Inspectorate does not yet apply strict sanctions as the problem has been brought into being due to lack of legislation. In due course, however, collective agreements should become almost universal.

13.3.3. Working time reduction or extension

Long working weeks with uncompensated overtime are common in the private sector, and the situation has not changed significantly in recent years. The trade unions are active in only about 5% of private enterprises. Some private companies do not allow trade unions to be established, especially retail chains. Take, for example, VP MARKET, operator of the largest retail network of food and industrial goods in the Baltic States. As of 2004, VP MARKET had created most new jobs and ranked second in Lithuania according to sales and services (source: business daily Verslo Tėvynės, table ‘500 largest in Lithuania’, 5 January 2005). There was a major conflict recently when the ‘youth trade union organisation’ wanted to establish a trade union there. A group of trade unionists were politely asked to leave the Minima shopping centre in Palanga, but a visit by trade unionists to Klaipeda’s Hyper Maxima supermarket ended more dramatically. Security personnel, after noticing some young people giving out leaflets to the supermarket staff, ordered them off the premises and escorted them to the exit, having given them back the leaflets which they had snatched out of the staff members’ hands.

The situation is the same in the third largest retail chain in Lithuania, Rimi Lietuva, which has 3 hypermarkets, 19 supermarkets and 8 stores under such names as Eko, Vikonda, and Sustok ir Pirk, which were re-branded to meet Rimi standards. The number of employees is 2,158. There are also no trade unions in the retail chain operated by Norfa Mazmena, Norfa, which has 101 food stores in Lithuania. Fear of dismissal is the main reason why workers are not active and are afraid to seek trade union membership.

Paradoxically, a clear majority of those who work more than 48 hours a week do so largely from their own choice rather than because of employer compulsion, according to research. In some cases workers work ‘voluntarily’ for 12 hours instead of 8 in order to meet performance standards or fulfil work quotas: in other words, employees are paid for work done, not for number of working hours. For example, at JSC Lelija, which produces clothing for men, women and children work quotas are very high and employees are virtually compelled to work longer hours ‘voluntarily’ in order to meet them. At present, the two trade unions represented at this enterprise are trying to solve this problem.

Many (legal) employees in the private sector who are paid the minimum wage are given additional, untaxed payments for unregistered overtime. Clearly, overtime payments and working time regulations are frequently violated.
Moreover, the shadow economy accounts for between 20% and 30% of the Lithuanian economy. Employees often work as many as 43 hours per week with no overtime payment, while the time sheet states that the employee worked part-time. Such companies are also closed to trade unions. Regular workers sometimes have one or more additional jobs which are not declared. Some firms declare only part of time worked and the benefits are shared between firm and workers.

Between January and October, the Labour Inspectorate conducted 16,691 company inspections. The most numerous abuses were wage arrears, illegal employment (working without a written contract), violation of labour contracts, time off and working time accounting, harmful working conditions, and unsatisfactory investigation of accidents.

A supplementary pension insurance scheme was introduced and cumulative pension funds with tax privileges were established in 2003 in Lithuania, but this has not benefited those on low incomes. Also in 2003 a new procedure for the resolution of labour disputes came into force. However, in most enterprises labour dispute committees have not been formed. In labour disputes brought before the courts, statements given by employees and their organisations are rarely taken into account. In addition, the Supreme Court did not permit employees to be represented by trade union lawyers who did not have advocate status, despite the fact that Article 50 of the Constitution guarantees trade unions the right to represent and defend the interests of employees.

13.3.4. Working time flexibility and flexible contracts

The Labour Code in Lithuania provides possibilities for the development of flexible forms of working based on employment agreements. Flexible forms of work organisation are agreed by individual or collective negotiations or in mutual agreements among employees and employers. Such flexibility can enable employers to reduce labour costs, better adjust to structural changes and better coordinate other interests, both their own and those of employees. However, agreements on flexible work organisation must not subject employees to worse conditions than those laid down by the Labour Code and other legislation.

One measure of labour market flexibility is part-time employment. In 2004, 8.4% of employees in Lithuania were employed part-time. However, more than half of those part-time jobs were involuntary: there is little flexibility for a job seeker if an employer insists, for cost-saving reasons, on part-time employment. This also serves as an indirect indication that full-time employment may be viewed by some employers as unattractive and as a form of labour contract to be avoided in favour of alternative employment forms.

There are a number of different reasons for the low level of part-time working.
For example, it is impossible to attain a reasonable living standard when working part time due to low wages. At the same time, employers sometimes prefer to have a full-time staff. Also, special restrictions and duties apply to public servants, limiting their possibilities for part-time work elsewhere.

All in all, part-time employment is much less widespread in Lithuania than in other EU countries, but temporary and fixed-term contracts are increasing in tandem with changes in working life, especially in the ITC sector.

13.3.5. Working time over the life course

The workforce in Lithuania is ageing. In 1995, the government raised the pensionable age by four months annually for women and by two months for men. The pensionable age will rise to 62 and six months for men and 60 years for women in 2006. This is up from the Soviet standard of 60 and 55 for men and women, respectively.

Many people at that age are still able to work and earn a living, and therefore increasing the retirement age will not constitute a fundamental problem for them; in fact, extended length of service will only increase the size of their pensions. However, it is also possible that a number of pre-pensionable employees will lose their jobs and be unable to find other employment.

In 2002, the special ‘Programme for the renewal of vocational knowledge and practical skills’ was launched, addressed to the long-term unemployed, largely pre-pensionable age persons with low qualifications. The Programme includes special courses organised in labour market training centres, combined with Job clubs and participation in public and subsidised works.

In 2003, by order of the Minister of Social Security and Labour, a special Programme ‘55+’, addressed to senior citizens and including a set of special measures for their better reintegration into the labour market, was drafted.

13.4. Bargaining outcomes

Bargaining in Lithuania has not been particularly effective. We have already noted that the active role of collective bargaining in determining working hours is relatively slight in Lithuania and that collective agreements do not tend to deviate from statutory normal hours (usually 40 hours). Working time reductions do not appear to be very high on the agenda at present.

Due to the weakness of the trade union movement and the weak employers’ associations in Lithuania employees are usually unable to bargain collectively in order to improve the minimum labour standards set by law, to go on strike or to participate in decision-making at enterprise, sectoral or national level. The Labour Code
introduced an additional possibility for workers’ representation through works councils but this system is not yet functioning.

In practice, labour legislation and individual contracts of employment rather than the provisions of collective agreements regulate working conditions (wages, working hours, annual leave, conclusion and termination of contract of employment, and so on).

There are no official data but we can assume that only a very small percentage (approximately 3-5%) of enterprises have a valid collective agreement. It is important to mention the lack of data on collective agreements, however, because until recently collective agreements were not registered in Lithuania.

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14. Collective bargaining and working time in Norway

Håvard Lismoen

14.1. Working time in its economic and political context

14.1.1. Economic background

Over the last decade or so collective bargaining in Norway has taken place under conditions of substantial economic growth and general prosperity. From the mid-1990s economic growth has been interrupted only by a period of short stagnation around the turn of the century. Despite this relative decline the state of the economy is healthy, and growth regained momentum in mid-2003. Considerable oil production, coupled with a high international oil price, low interest rates, low inflation and a weak currency have been the motors of the most recent growth. Economic growth was accompanied by an unprecedented growth in wages during the 1990s. Since mid-2003 it has fallen relative to the growth rates of Norway’s main trading partners, however, developments that have continued into 2005.¹ Labour market figures tend to support this optimistic depiction of the national economic context. Unemployment is low, at 4.5%, but has increased since the late 1990s, in particular in the exposed manufacturing industry.² Yet it has remained below 5% for over a decade (since 1994). Labour market participation has increased steadily over the last 20 years, mainly due to increased participation rates among women. The employment rate is 69.3%.

14.1.2. Flexible working time and flexible contracts

In the past two decades, there have been few major changes to working-time arrangements in Norway. Issues pertaining to working time, including flexible contracts and pensions, have traditionally been dealt with politically, by means of legislation, rather than through collective bargaining. Moreover, during the 1990s the focus of collective bargaining, as well as political debates, was wages and wage moderation,³ and a relatively low unemployment rate prevented a comprehensive debate in Norway on the use of reduced working time as a means of

³ Stokke et al. (2003).
increasing employment. In recent years, however, as the labour market has tightened, and the employers' side has pressed for increased flexibility of various kinds, working time flexibility has become more important on both the political and the social partners' agenda. A change in government in 2001 has also played a role in putting working time on the agenda. Furthermore, trade unions have adopted a more accommodating stance on working time flexibility, recognising the changing nature and diversity of needs and preferences among their own members. Discussions range from more general concerns about the use of overtime, occupational pensions and temporary employment, to branch-related working time arrangements and a myriad of company-level arrangements. The 2004 wage settlement very much epitomises these developments in that collective bargaining dealt not only with wages but also with a number of other issues, including the use of flexible contracts and occupational pensions.

In late 1990 the Confederation of Norwegian Business and Industry (NHO) and the Norwegian Confederation of Trade Unions (LO) published a joint report reviewing Norwegian working time schedules, different aspects of working time and short- and long-term challenges related to flexibility. Developments at EU level – among other things proposed changes to EU working time legislation – were also instrumental in putting working time on the agenda, leading to changes to overtime and annualisation regulations in 2003. It culminated in the setting up of a committee, with representation from all the major social partner organisations, relevant government ministries and public regulatory bodies, to look into the possibility of reforming working life and employment legislation. A committee was also set up to look at the prevalence of part-time work in Norway and to propose measures to reduce the incidence of 'underemployment' or 'involuntary' part-time work.

Against this backdrop the government embarked upon a major revision of the legislative framework, which culminated in June 2005 in a highly controversial proposal to alter the Act on Worker Protection and the Working Environment (AML). It involves changes in the area of working time, temporary employment and employment protection. The revised regulations will make it easier for companies to employ workers on a temporary basis. It also involves the introduction of a

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5 Committee rejects right to increased hours for part-timers: http://www.eiro.eurofound.eu.int/2004/12/feature/no0412102f.html.
7 LO-NHO report on working time schedules: http://www.eiro.eurofound.eu.int/1999/10/feature/no9910158f.html.
8 Important changes made to working time legislation: http://www.eiro.eurofound.eu.int/2003/04/feature/no0304103f.html.
statutory right for part-time employees to extended working hours in situations where companies decide to take on new staff, in addition to a variety of other changes. Parliament also passed changes to the special provisions applicable to civil service employees. All in all, the amendments represent a moderate revision and modernisation of the existing legal framework, adjusting it to a changing working life.

14.1.3. Pension reform

Reform of the national pension system has emerged on the political, as well as the social partners' agenda in recent years. There are several reasons for this. In Norway, all employees are covered by the state pension system through the National Insurance Scheme (NIS). This is a two-tier system with a universal flat-rate pension applicable to all, combined with an additional earnings-related pension. As in other countries, there are worries in Norway about future pension commitments. Estimates suggest that demographic developments (in terms of the ratio between number of pensioners and number of people in the workforce) will pose a significant challenge to the system. To avoid further increases in public expenditure the national authorities thus want to place more of the financial burden on employers and employees by encouraging the establishment of occupational pension schemes. A large number of employees are already subject to such schemes at the workplace. Public sector employees enjoy collective schemes that are considered as relatively favourable. In the private sector, however, there are significant differences between occupational pension schemes. Only one-third of all private sector employees are covered by such schemes at any given time.10 The collective agreement-based early retirement scheme (AFP) has also come under attack in recent years, because with a retirement age of 62 it is seen to encourage too early retirement by many employees and as such is an impediment to keeping people in employment. The scheme is based on a financial contribution from the state as well as from employers. Most collective agreements in the private and public sectors include AFP.

Reform of the pension system was subject to a series of deliberations during the 1990s and pension regulations have been changed in several respects, among other things encouraging the establishment of occupational pension schemes outside the NIS.11 Occupational pensions were also on the agenda during the 2002

10 Controversial pension reform proposed: http://www.eiro.eurofound.eu.int/2004/02/feature/no0402101f.html.
collective bargaining round. Against this backdrop a proposal (White Paper) to reform the present pension system was presented by the government in December 2004. The proposal calls for a system that to a greater degree than today motivates labour market participation and in which, as a consequence, pension payments depend to a greater extent on the labour market participation and income of individuals over their life-span. The government also proposes the introduction of a compulsory occupational pension for all, a promise to which it committed itself during the 2004 collective bargaining round. It further proposes to make changes to the occupational pension schemes of public employees. Finally, it proposes to withdraw government funding from the early retirement scheme. The main principles of a pension reform were approved by the Norwegian parliament in May 2005, as well as a resolution to introduce universal occupational pensions from 1 January 2006.

The proposed reform of the national pension scheme will be one of the biggest reforms of Norwegian welfare institutions in a long time. It is already evident that many of the changes proposed are politically controversial. This is particularly the case for the occupational pension arrangements of public employees and the withdrawal of state subsidies to the AFP. Although the government is not at present proposing any concrete changes to these arrangements, it is nevertheless evident that a weakening of the present rules is envisaged. Not surprisingly, trade unions have warned that they will fight to protect these arrangements.

At present, in the public sector the coverage of occupational pension schemes is 100 per cent, although employees with weekly working time of less than 14 hours are not included. In the private sector approximately one third of employees are covered. Most of these schemes are company-level agreements. The coverage is higher in larger enterprises than in smaller ones. Approximately 40% of private sector companies with five employees or more had an occupational pension scheme (pension study). In companies with more than 200 employees the coverage rate is 80%.

14.1.4. An inclusive working life

Increasing sickness absence rates and mounting social security expenditure have brought the issue of quality of employment to the forefront in Norway. The national sick pay scheme has been subject to significant debate and controversy for a

12 LO wants occupational pensions on bargaining agenda:
   http://www.eiro.eurofound.eu.int/2001/03/feature/no0103125f.html, 2002 bargaining brings high wage increases and few conflicts –
number of years, and there are mounting worries about the costs of the scheme and increasing political pressure for change. To this end in October 2001 the social partners and the national authorities concluded an 'agreement of intent' with a view to creating a more 'inclusive working life'. This is a framework agreement that commits the social partners to, among other measures, efforts to reduce absences due to sickness at the company level. In many ways, the agreement has shifted the debate away from the issue of changing the sick pay scheme towards more action-oriented adjustment efforts at both central and company levels. Although developments have been slow, it now seems that the efforts have proven a partial success. Absence because of sickness has dropped slightly since 2001, with a significant drop in medically certified absence. More important, however, is the fact that attention has been directed towards the causes of absence and the inclusion of disadvantaged groups in working life.

14.1.5. EU enlargement and social dumping
The traditional manufacturing industries in Norway have always been exposed to competition from low-cost countries, and rising production costs have had a significant impact on employment in this part of the national economy. This competition was brought closer to home through EU enlargement on 1 May 2004. There are fears, in particular among the trade unions, of large-scale labour immigration from the Eastern European countries, putting pressure on wage and working conditions in Norway. Others welcome the opportunities generated by low-cost labour from the East.

The debate has centred around the question of whether, and if so, what, measures are to be taken to correct possible negative effects of EU expansion on the national labour market and regulatory regime. Transitional rules ensuring quality of employment and application of national wage and working conditions to foreign workers from the new EU states entering Norway were introduced soon after enlargement. A second measure introduced as a result of EU enlargement is the extension of collective agreements. For the first time since the introduction of this opportunity into the legal framework in 1994 the extension of collective agreements was invoked in autumn 2004, involving the partial extension of three collective agreements at seven onshore petroleum installations in Norway. Extensions also involve working time rules in collective agreements.

14 Transitional arrangements introduced for free movement of workers from new EU Member States: http://www.eiro.eurofound.eu.int/2004/05/feature/no0405105f.html.
A year after enlargement, when the worst-case scenarios have proven ill founded, it is still a contentious issue. The entry of workers from the Eastern European countries has been substantially higher to Norway than to the other Nordic countries. The fact that the free movement of services is not covered by transitional arrangements means that the Norwegian social partners and the authorities will be faced with significant challenges from companies posting their workers temporarily in Norway. Finally, the use of extension mechanisms is a difficult issue for the labour movement because it both represents a break with traditional collective bargaining practices and is a potentially treacherous mechanism that may, in the long run, serve to undermine recruitment to the labour movement.

14.2. Collective bargaining on working time

14.2.1. Developments in collective bargaining

Collective bargaining in the 1990s was characterised by cooperative efforts by the government and the social partners through tripartite social pacts, also known as the ‘solidarity alternative’. The basic aim of this cooperative venture was to increase employment, safeguard welfare arrangements and generally to improve the Norwegian economy. These objectives were achieved by letting the exposed sectors of the economy (mainly traditional manufacturing industry) set the framework for collective bargaining in other sectors, so curtailing excessive wage growth among Norwegian wage earners in general. Although its effectiveness as an incomes policy tool has been questioned, this social pact has served as a reference point for the social partners in subsequent settlements. Several public committees have called for a revitalisation of incomes policy cooperation, and stress the need for coordination and macroeconomic steering of the economy also in the future. Although there still seems to be willingness among the social partner organisations to participate in centralised coordination, a formal structure, similar to that of the ‘solidarity alternative’, are absent today.

The 2004 wage agreement was a so-called main agreement, under which the social partners have the opportunity to completely renegotiate the biannual collective agreements. Bargaining in the private sector was carried out at the industry level, that is, sectoral collective agreements were negotiated separately. Bargaining in the public sector mainly takes place at the central level, with the exception of university-educated staff in the municipal sector. Bargaining was led, by tradition, by manufacturing industry and the result in this part of the economy provided the blueprint for negotiations in other sectors. Most industrial disputes

occurred in the private sector, and involved for the most part unions affiliated to LO.\textsuperscript{17} A majority of these strikes ended without government intervention, although compulsory arbitration was employed on two occasions.

The agreement very much mirrored the economic and political climate at the time. Interest rates and inflation had been decreasing from mid-2003 onwards and wages had increased significantly in the preceding years. Hence, most wage earners would see real wages grow even with only limited nominal wage increases and thus wage growth was kept moderate. More importantly, a number of issues other than wages were included in the negotiations. The work carried out by the committee deliberating changes to working environment legislation, in addition to the government’s own proposal in this regard, was instrumental in putting working time flexibility and flexible contracts on the bargaining agenda. Interest in these issues was further strengthened by preoccupations related to the eastward expansion of the EU in May 2004. Likewise, negotiations over occupational pensions must be seen in the light of the ongoing debate on pensions and the work of the public committee deliberating the future state of the Norwegian pension system.\textsuperscript{18}

14.2.2. Working time and flexible contracts in collective bargaining

Working time, also in its broader conception – that is, including pensions and flexible contracts – is regulated largely through the legal framework and much less through collective agreements. However, this is not to say that bargaining does not matter. In some areas regulation takes place through an interplay between collective bargaining and legislation: that is, the law provides the framework within which collective bargaining takes place and collective agreements are concluded. This is particularly the case with working time flexibility. Within the context of such (sectoral) agreements, in many respects flexibility is sought (and achieved) at the company level. Indeed, collective agreements allow for considerable freedom for the development of more flexible working time arrangements at this level.

There have been few major working time reforms through collective bargaining in Norway since the general working time reduction of 1986. In that year, the social partners agreed to reduce the weekly standard working time from 40 hours (as stipulated by law) to 37.5 hours, which was then incorporated into most collective agreements. In the period 2001-2002, four days of holiday were incrementally introduced in most collective agreements, which means that now employees

\textsuperscript{17} Strikes break out during bargaining round: http://www.eiro.eurofound.eu.int/2004/05/feature/no0405106f.html.
\textsuperscript{18} Controversial pension reform proposed: http://www.eiro.eurofound.eu.int/2004/02/feature/no0402101f.html.
subject to a collective agreement are entitled to 25 days of annual leave (as opposed to 21 days according to the legal framework) (see also the Annex). LO has as one of its long-term goals, however, a general reduction of the daily working time from 7.5 to 6 hours, although no demands to this end have so far been raised. There is no general political support for such a goal and also the employers are generally opposed to any further reduction in standard working time. On the extension of weekly or daily working time there has been even less debate, and it has not been raised as a serious demand by the employer side.

Working time flexibility is often achieved through a relatively extensive use of overtime, by far the single most important working time flexibility measure in Norway. It is not a mechanism desired by the employers, however, because the compensation costs involved are high. Overtime regulations are mainly stipulated in the legal framework. Collective bargaining on overtime is mainly concerned with the rules for compensation.

Discussions between the social partners have mainly centred around the regulation of and compensation for work carried out outside the standard working day. Employers want to see more individual and company-based arrangements, adapted to their specific needs. Among the more important issues are extending the limits of what is regarded as the standard working day, but also others such as increased opportunity for the annualisation of working time, the introduction of time-account schemes, and so on. Trade unions have traditionally been very much opposed to flexible measures that may be seen to jeopardise employees’ wellbeing. However, since the mid-1990s flexibility catering to the individual preferences of the employee has become an increasingly important subject for trade unions. The government has generally abstained from involvement in working time regulation in collective agreements.

Flexible contracts are also seen as a kind of working time flexibility and, as with overtime, are only to a limited degree subject to regulation through collective bargaining. The rules that exist, mainly in basic agreements, concern employee representatives’ right to be consulted on matters pertaining to the use of temporary workers and flexible contracts. It is important to note, however, that there are exemptions from these rules. Some agreements, including the basic agreement in the municipal sector, provide regulations on part-time work, stating that employers should give priority to part-time employees by increasing their hours before

taking on new staff.\textsuperscript{20} This is in line with the new legal rules that will come into force on 1 January 2006.

Greater influence vis-à-vis the use of temporary employment and the employment of temporary agency labour was also raised as a demand by the trade unions. It was one of the issues that led to strike action in the key oil sector. However, it was also raised as a priority at the central level by LO. In short, LO wanted provisions incorporated into collective agreements stating that temporary agency labour and outsourcing may only be resorted to after prior agreement with company-level trade union representatives. They also presented demands for a tightening of the rules regarding the employment of labour from temporary agencies. Thus, the bargaining parties in the private manufacturing sector agreed that companies ought to consult shop stewards on matters concerning the hiring and outsourcing of labour. The social partners jointly emphasised the need to prevent 'social dumping' and to maintain reasonable pay and working conditions for temporary agency workers.

Also in the breweries sector, around 2,500 employees went on strike following the breakdown of negotiations between the Norwegian Union of Food and Allied Workers (NNN) and the Federation of the Norwegian Food and Drink Industry (NBL). The main point of dispute was again the trade unions' demand for new rules regarding the employment of workers from temporary agencies, whereby union influence over when and to what extent such agency labour may be employed would be considerably strengthened. This was regarded by the employer side as an unacceptable attempt to acquire a veto over such decisions. After three days a solution was found, with the employers pledging to cooperate closely with employee representatives on matters concerning hiring practices and a commitment that disagreements at company level on the interpretation of collective agreements, as well as the legal framework, can be brought before the central social partner organisations.

As a result of the above-described processes, collectively agreed weekly working time remains 37.5 hours, the norm in most collective agreements, whilst the legal framework stipulates 40 hours (see also Annex). Most employees subject to a collective agreement saw a reduction in their annual working time as a result of the incremental introduction of 4 additional days of annual leave in 2001 and 2002 and a large number of employees now have 25 days' annual leave. Most employees – approximately 70% – work ordinary daytime hours, that is, between 07.00 and 17.00 (as stipulated by the AML). Yet the number of people working outside

\textsuperscript{20} Committee rejects right to increased hours for part-timers:
the standard working day is increasing, and many also work part-time.\textsuperscript{21} There was a general reduction in the number of overtime hours worked from 1996 to 2003. It now represents 4.4\% of all man-hours worked by full-time employees. One in four Norwegian employees is employed part-time. Part-time work is more common among women than men, and approximately 80\% of part-time employees are women. The number of temporarily employed persons has fallen over the last decade or so, from around 13\% in 1995 to 10\% in 2004. Since 2000 the figure has remained relatively stable at 9-10\%. Approximately one third of employees under the age of 24 are temporary employees, and 60\% are women.\textsuperscript{22} The number of people employed in temping agencies has remained relatively stable, at around 1\%.\textsuperscript{23}

14.2.3. Pension and pre-pension schemes

As regards pensions, the legal framework provides for a basic pension through the NIS, while collective bargaining provides supplementary occupational pensions and the opportunity to retire early through the agreement-based (national) early retirement scheme, the AFP (although in some areas occupational pension schemes have been established outside the scope of collective bargaining). The AFP was introduced in the main agreement of 1988 and became established in most collective agreements in Norway: around 60\% of employees subject to a collective agreement are entitled to retire early through the AFP.\textsuperscript{24} The government wants to change early retirement regulations in order to keep people in employment longer. Trade unions oppose any tampering with the scheme.

In the last two main wage settlements occupational pensions have been an important trade union demand.\textsuperscript{25} Indeed, occupational pensions was probably the most contentious issue in the negotiations and was high on the agenda in both the 2002 and 2004 negotiations. The central trade union demand in the exposed manufacturing sector, led by the LO-affiliated Norwegian United Federation of Trade Unions (Fellesforbundet), was the introduction of an agreement-based universal occupational pension scheme. The trade unions sought to obtain for employees in companies subject to collective agreements a right to occupational pensions, as

\textsuperscript{21} Inkluderende arbeidstid – fleksibel arbeidstid i et IA-perspektiv. Prosjektrapport Rikstrygdeverket 2005.
\textsuperscript{24} EIRO comparative study on ‘Working time developments and quality of work’ – Norway: http://www.eiro.eurofound.eu.int/2001/11/word/no0108142s.doc.
\textsuperscript{25} LO wants occupational pensions on bargaining agenda: http://www.eiro.eurofound.eu.int/2001/03/feature/no0103125f.html.
well as to commit employers to existing schemes. In the 2002 settlement the unions failed to get support from the employers for their demands. They were refused by the employers on the grounds that it would create a competitive imbalance between companies with and without collective agreements, as well as because of the perceived consequences for the more vulnerable industries in the private sector and for small and medium-sized enterprises in the service sector.

Mediation failed to bring the parties closer together, but eventually the employers reluctantly conceded on condition that such pension schemes should be based on a statutory right applicable to all employees (not just those covered by collective agreements). Thus, the social partners sent a joint letter to the government calling for legislative measures in this area. In its reply to the social partners the government stated that a proposal to this end would form part of the more general White Paper concerning the proposed reform of the Norwegian pension system.

Although the occupational pension issue was thought to have been resolved by the government’s intervention early on, conflict nevertheless arose in several areas. In the oil sector strike action was taken by the Norwegian Confederation of Oil Workers’ Unions (OFS) and the Norwegian Organization for Managers and Supervisors (Lederne), not only, as mentioned earlier, to call for tighter restrictions on the use of temporary workers, but also as a result of the employer’s (OLF) failure to accept the incorporation of occupational pension rights into the collective agreements. OLF refused to conclude an agreement with the two unions which departed significantly from the one it had concluded with the other large union in the oil sector, the Norwegian Oil and Petrochemical Workers’ Union (NOPEF). The government later intervened by means of compulsory arbitration to end the strike.

Occupational pensions was also the main issue in the negotiations between the Norwegian Union of Journalists (NJ) and the Norwegian Media Businesses’ Association (MBL). The dispute here was not so much about the establishment of occupational pension schemes, but rather the incorporation of existing schemes into collective agreements in order to acquire some degree of influence over future developments in company-level pension schemes. It was strongly opposed by the employers. Pensions and changes to occupational pension schemes were seen by the employers as falling within the scope of management prerogatives. Following 11 days of conflict, the employers accepted a compromise whereby the newspapers concerned agreed to freeze their pension schemes for the duration of the revised agreement – that is, two years up to 2006. Improved opportunities for company-level pay bargaining for those who do not have occupational pension arrangements was also part of the final agreement.

26 Private sector bargaining produces significant wage increases:
In the public sector, the issue of occupational pensions has also been on the agenda, partly because privatisation and deregulation have generated concerns as to what will become of these pension arrangements, partly because the government has argued that it is necessary for a harmonisation of private sector and public sector pensions,\(^\text{27}\) and partly because there has been disagreement over the transfer of pension schemes from the municipally-owned insurance company KLP to private insurance companies.\(^\text{28}\) One of the results was the creation of tighter monitoring mechanisms for occupational pension providers (in case of transfer of pension entitlement from the public sector to the private sector).

\(^{27}\) Controversial plan for modernisation of public sector: [http://www.eiro.eurofound.eu.int/2002/02/feature/no0202103f.html](http://www.eiro.eurofound.eu.int/2002/02/feature/no0202103f.html).

## Annex

<table>
<thead>
<tr>
<th>Types of contract</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>% employed on full-time open-ended contract</td>
<td>73.7</td>
<td>88.5</td>
<td>56.8</td>
<td>73.4</td>
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<tr>
<td>% employed on fixed-term contract</td>
<td>9.2</td>
<td>9.9</td>
<td>9.4</td>
<td>10</td>
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<tr>
<td>% employed on part-time contract</td>
<td>25.7</td>
<td>11</td>
<td>42.5</td>
<td>26.1</td>
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<tr>
<td>% employed working through temp agency</td>
<td>1.2</td>
<td>1</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>% self-employed</td>
<td>6.7</td>
<td>8.9</td>
<td>4.2</td>
<td>6.7</td>
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### Working hours

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<tr>
<th>Statutory maximum working week (hours)</th>
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<th>40</th>
<th>40</th>
<th>40</th>
<th>40</th>
<th>40</th>
<th>40</th>
<th>40</th>
<th>40</th>
<th>40</th>
<th>40</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory maximum working day (hours)</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
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<tr>
<td>Average collectively agreed normal weekly hours</td>
<td>37.5</td>
<td>37.5</td>
<td>37.5</td>
<td>37.5</td>
<td>37.5</td>
<td>37.5</td>
<td>37.5</td>
<td>37.5</td>
<td>37.5</td>
<td>37.5</td>
<td>37.5</td>
</tr>
<tr>
<td>Average collectively agreed annual number of working hours</td>
<td>1,760</td>
<td>1,760</td>
<td>1,760</td>
<td>1,760</td>
<td>1,760</td>
<td>1,760</td>
<td>1,760</td>
<td>1,760</td>
<td>1,760</td>
<td>1,760</td>
<td>1,760</td>
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</tbody>
</table>
## Working hours

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Men</td>
<td>34.9</td>
<td>34.8</td>
<td>34.6</td>
<td>34.6</td>
</tr>
<tr>
<td>Women</td>
<td>38.5</td>
<td>38.4</td>
<td>38.1</td>
<td>38.1</td>
</tr>
</tbody>
</table>

Examples of usual hours worked per week in three sectors:

- **Oil and Gas:**
  - Usual hours worked per week: 44.5, 45.1, 45.8, 44.1
  - Statutory maximum hours of overtime per year: 200

- **Wholesale/retail, hotels and restaurants:**
  - Usual hours worked per week: 32.7, 32.3, 32.3, 32.5
  - Statutory maximum hours of overtime per year: 200

- **Transport and communication:**
  - Usual hours worked per week: 38.0, 38.4, 38.3, 38.2
  - Statutory maximum hours of overtime per year: 200

## Annual leave

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory minimum annual paid leave (days)</td>
<td>21</td>
<td>21</td>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>Average collectively agreed annual paid leave (days)</td>
<td>2</td>
<td>4</td>
<td>4</td>
<td>4</td>
</tr>
</tbody>
</table>

Sources:

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29 [http://www.ssb.no/emner/06/01/aku/tab-2005-02-02-01.html](http://www.ssb.no/emner/06/01/aku/tab-2005-02-02-01.html).
15. Working time regulation in Poland – recent trends

Jakub Stelina

15. 1. Working time in its national and international context

15.1.1. Introduction

In many EU countries working time regulations have recently become one of the least stable spheres of labour law, arousing strong emotions. Enterprises are increasingly introducing new solutions regarding both the amount and the organisation of working time. One of the main features of this trend is its clear break with the previous direction of economic transformation. Whereas 5-10 years ago Europe was dominated by a trend towards the reduction of working time (perceived as a means of raising living standards and counteracting unemployment), this has slowed down, or even gone into reverse. Solutions aimed at greater labour market flexibility (also as regards working time regulations) are being sought at the same time.

These phenomena are not unknown in the new member states, albeit perhaps to a smaller degree than in the ‘old’ ones. Nevertheless, working time regulations have undergone considerable changes also in the countries which joined the EU on 1 May 2004. Legislative changes, including labour law, have been caused by the need to adopt the acquis communautaire in a relatively short time. In Poland, the relevant amendments adapting working time to European standards were finally made in November 2003, when a bill amending the Labour Code was passed by the Parliament. In Poland some additional circumstances influenced the shape of labour law regulations, including the considerable reduction in statutory working time, although the driving forces were slightly different from those in Western Europe.

15.1.2. International context

As already mentioned, the main factor shaping the legal regulation of working time has been the need to adapt to EU law. In Poland the process was completed relatively late: the relevant legislation was passed by the Parliament only about six months before accession (entering into force as of 1 January 2004). However, a comprehensive bill adapting working time regulations to those of the EU had been prepared as early as mid-2001, but it was vetoed by the President because, alongside the regulations adapting Polish legislation to EU standards, which no one took issue with, there was also a prohibition on work at establishments with more than five employees on Sundays and public holidays. The President found
this inconsistent with, among other things, the principle of freedom of business and refused to sign the law. The legislative process therefore had to begin again and was further delayed by a general election.

Polish labour law is now fully harmonised with that of the EU, including Directive No. 93/104 (EC) of 23 November 1993 on aspects of working time organisation. The most important regulations include: a guarantee of at least 11 hours' uninterrupted rest every 24 hours and 35 hours' uninterrupted rest each week, the introduction of a maximum four-month period of accounting (special cases excepted) and the adoption of the rule that maximum working time, including overtime, shall not exceed 48 hours, on average, every week.

Prior to submitting the bill amending working time regulations to Parliament there were consultations with the social partners.

15.1.3. National context

Besides the factors related to European integration, working time issues were also subject to strong domestic pressures. Two factors in particular should be stressed.

First, in mid-2001 working time was reduced from 42 to 40 hours a week. This was one of the election promises of Akcja Wyborcza Solidarność – AWS [Solidarity Election Campaign], which had its origins in the Solidarity trade union. Besides the political and economic dimension, this implemented the old demand that Saturday be a statutory day off (traceable to the famous strikes of August 1980 which not only gave birth to Solidarity but could be said to have triggered the collapse of the entire political system of Central and Eastern Europe). Regulations adopted on 1 March 2001 reduced weekly working time from 42 to 40 hours (to be reduced by an hour each consecutive year), while keeping the five-day working week. At the beginning of 2003 the last stage of the reform was launched. Since 1 January 2003, the amended Labour Code has required that so-called regular working time not exceed 8 hours daily on average, in the five-day working week based on an 'accounting period' of no longer than four months.

The employers were very hostile to this reduction in working time, although a relatively high percentage of employees (between 30% and 70%, according to different estimates) were already covered by the 40-hour standard under collective agreements and company regulations. According to the employers, the macro- and microeconomic situation did not justify such a move. However, the employers’ frustration would seem to have derived from other sources. They agreed to working time reductions on condition that certain labour law regulations would be made more flexible. In fact, working time was reduced without any clear concessions to the employers. This prompted them to seek new allies among politicians in order to make labour law more liberal.
The other factor was related to the labour market situation. Unemployment has been very high in Poland since the early 1990s, that is, since the beginning of the social, political and economic transformation. Over the last five or six years the problem has become particularly acute (about 20% in 2001-2003 as opposed to about 13% in 1990). In this situation the idea of reducing unemployment by, among other things, labour law liberalisation was regarded favourably, winning the support of certain political circles and the mass media (at that time the trade unions, which were opposed to more liberal labour laws, were being widely blamed for the economic crisis). Employers' associations stirred up emotions while pursuing their own agenda, namely amendments to labour legislation. Particular stress was put on amending, among other things, provisions protecting the employment relationship and working time regulations.

This climate naturally favoured legal solutions meeting the employers' expectations. In spring 2002 an agreement was reached between the employers and one of the two main national trade union organisations (OPZZ). Based on this compromise, a number of provisions making labour law more flexible were introduced into the Labour Code (for example, extending working time accounting periods and reducing overtime wage rates – see below for a more detailed discussion of these amendments).

In exchange for trade union concessions, the employers undertook to limit so-called self-employment (in this sense essentially a means for employers to avoid the costs pertaining to regular employment rather than individuals ‘going it alone’: for example, translators or consultants) in order to maintain regular employment relationships. This should have been achieved by, among other things, a statutory ban on replacing regular employment relationships with civil law contracts.

15.2. Collective bargaining on working time

Social dialogue in Poland is conducted at national, regional and enterprise level. National and regional bargaining takes the form of institutionalised tripartite social dialogue (within the framework of the Tripartite Committee for Socio-Economic Matters), with so-called autonomous dialogue, that is, direct bargaining between trade union central organisations and employers' associations taking place much less frequently (for instance, the abovementioned bargaining between OPZZ and the employers that resulted in the agreement on more flexible labour law). It should also be noted that all-Poland trade union organisations and employers' associations represented in the Tripartite Committee have the right to give a view on all legal acts that come within their purview.

Enterprise-level bargaining almost exclusively covers companies with trade union organisations. This is because under Polish law only trade unions are entitled to
conduct social dialogue aimed at concluding collective agreements. Where there are no trade unions, workers’ representatives are elected whose powers are limited to strictly specified areas (for example, giving an opinion on the rules governing mass lay-offs, drawing up lists of hazardous work or participation in the occupational safety and health committee).

Unless there is a collective agreement, based on negotiations with trade unions, the employer (those with at least 20 employees) determines working conditions (including, for instance, working time systems and schedules, accounting periods, night working time, and so on) in the company (work) regulations. However, trade union influence on the contents of work regulations is limited. By law, the regulations are supposed to be imposed by the employer in agreement with the company trade union organisation, but should agreement not be reached within the period specified by the parties, the work regulations are unilaterally imposed by the employer. Similarly, the regulations are unilaterally imposed by employers where there is no trade union at all.

Sectoral bargaining is not sufficiently developed. A dozen or so sectoral collective agreements have been concluded so far, almost exclusively in the sectors dominated by the state (or at least until recently), for instance, mining, state-owned forests, and so on. Although the main central trade union organisations are seeking to develop sectoral social dialogue, they face a number of barriers that are hard to overcome, such as lack of partners on the employer side. Altogether about one million employees (that is, some 10% of total employment) are covered by sectoral collective agreements.

The status of collective bargaining in Poland is the result of a number of historical factors (a tradition of negotiations with government) and the current strength of the trade unions, as well as the degree to which the employers have organised. It should be noted that there is a constant trend of falling trade union membership: in 1991 about 19% of adults declared themselves trade union members, but this had fallen to 12% by 1997 and a mere 8% by 2001. In addition, with unemployment skyrocketing, the trade unions’ main priority is to safeguard existing jobs, while other issues (such as wages or working time) recede into the background. The employers themselves are unwilling to negotiate terms of employment with trade unions above the level guaranteed by labour legislation.

Another factor sometimes mentioned as an influence on collective bargaining is the extensiveness of labour law. Poland has a Labour Code (enacted in 1974, many times amended) which goes into great detail on the conclusion and termination of employment relationships, working time, holidays, occupational safety and health, and so on. There is additional labour legislation, for example, on mass lay-offs, drivers’ working time, minimum wages, and the like. Generally speaking, such legal provisions are merely minimum standards that can be developed by the
social partners for the benefit of employees in collective agreements. However, since the law is so comprehensive and detailed, the provisions of collective agreements and other company regulations tend to follow the legal text quite closely. The social partners often confine themselves to transposing entire passages of the Labour Code, with only minor modifications, into their collective agreements. This also applies to working time, in relation to which the social partners, with few exceptions (for instance, determination of maximum overtime), restrict themselves to accepting ready-made statutory paradigms.

In sum, the issue of working time is dealt with either in enterprise-level collective agreements or – if there are no trade unions – in work regulations. However, more and more employers are deciding to fix the terms of employment in company regulations and not in collective agreements, if only because the consent of the trade unions is not required. As a result, over the last couple of years the number of enterprise collective agreements has fallen from about 10,000 to around 8,800.

15.3. Outcomes of bargaining

These circumstances limit the role of social dialogue in determining working time. At enterprise level the relevant arrangements are often unilaterally imposed by the employers (in work regulations), but even where there are trade unions and collective agreements are concluded, the contents of the latter do not go much beyond the limits laid down in the legislation. As regards higher levels (mostly national level), social dialogue takes place almost exclusively within the framework of the Tripartite Committee. Direct negotiations between social partners are seldom held, and even less often bring about the conclusion of an agreement.

With regard to working time, attention should be drawn to the abovementioned agreement of spring 2002 concluded between OPZZ and employers’ organisations. It was thanks to the consensus reached at that time (backed by the government) that a bill amending the Labour Code was presented to the Parliament. The law was finally passed on 26 July 2002, and the regulations amending working time provisions became effective from 1 January 2003. The law allowed the employers to extend working time accounting periods from 3 to 4 months, and in the majority of sectors even to 6 months, the new arrangement greatly reducing the number of hours counting as overtime. In addition, the introduction of so-called interrupted working time (a break in working time can be made within 24 hours, lasting no more than 5 hours, during which break employees retain the right to one-third of their regular remuneration) was permitted beyond the transport and communication sectors. Moreover, the law made it possible to introduce one-hour breaks in working time which do not count as working time. Particularly controversial (mostly from the trade union point of view) were the overtime regulations.
Permitted overtime was greatly extended (from 150 to about 400 hours annually), with remuneration for the third and each consecutive hour of overtime on a working day being reduced by half. In addition, the employer was granted the right to decide unilaterally how overtime should be compensated (cash or time off).

Regulations on holidays were also amended at that time. Among other changes, the role of the trade unions was reduced (as regards drawing up holiday schedules). In many instances, it became permissible not to draw up holiday schedules at all. On the other hand, so-called ‘holidays on demand’ were introduced, allowing employees 4 days’ holiday a year on dates of their choice.

These legislative amendments were followed by amendments to collective agreements and other acts at enterprise level (negotiated with the trade unions or unilaterally imposed by the employers). However, as already mentioned, the amendments often consisted in modifications of collective agreements or company regulations which merely reflected the new provisions of the Labour Code.

However, the philosophy behind the amendments to the Labour Code of 2002 was mostly limited to new opportunities offered to employers to abandon strict statutory provisions in favour of more flexible working time systems better adapted to the individual needs of employers. This applies particularly to overtime. As a general rule, the limit is 150 hours per year. However, the amended Labour Code provides that in collective agreements, work regulations or even employment contracts (where the employer is not covered by a collective agreement or does not have to lay down work regulations) an annual overtime limit can be fixed beyond 150 hours. In such cases, however, working time (including overtime) must not exceed 48 hours a week, on average, in the relevant accounting period. As a result, the overtime limit can be raised to about 400 hours a year.

It is important to observe that the employer’s freedom to deviate from statutory regulations is to a certain extent limited by the requirement that such deviations be agreed with the trade unions. This should be enshrined in the collective agreement, if there is one. In the absence of a collective agreement, in the majority of cases the employer is allowed unilaterally to make changes in the working time system (by means of work regulations) or in agreement with the employees (in employment contracts). This may diminish the role of collective agreements, as employers are no longer interested in concluding them, perceiving them as barriers to efficient management.

Finally, it should be noted that some of the amendments in question were not favourably received by the population, particularly the reduction of overtime payment rates. The general view is that wages, already very low, have been cut even further, and demands on employees have been increased. On the other hand, the
raising of the overtime limit was greeted favourably as an opportunity for increasing earnings.

### 15.4. Developments on the labour market

Last year (2004) again saw high economic growth (about 5.4%), with optimistic forecasts for coming years, too. At the same time, the long expected breakthrough in the labour market situation did not take place. A very high unemployment rate persisted, although the rising trend seems to have halted. As of the end of 2004 the rate of registered unemployment was 19.1% or 2,999,600 people without a job, 51.9% of whom were women (in the third quarter of 2004 unemployment fell to 18.2%). This is a slight improvement on 2003 when the unemployment rate was as high as 20%. It is also worth noting that for the first time for a number of years the number of registered unemployed fell below the 3 million level.

As already mentioned, high economic growth has not yet translated into increased employment, since it was mostly due to growth in labour productivity. It has been estimated that labour productivity in Poland is now roughly 60% of that in Germany, compared to only 39% in 1993. In some sectors, (services and commerce) labour productivity is higher than in Germany. However, average wages in Poland are roughly one quarter of those in Germany.

The socio-economic context has a crucial impact on the situation of employees. For the last couple of years, increasing efforts have been made to find flexible legal solutions to make the labour market more dynamic, particularly the use of so-called ‘self-employment’ (replacement of regular contracts with civil law contracts) or the conclusion of fixed-term contracts (the share of such contracts has risen from about 5% to more than 20% in recent years). Low wages mean that part-time work remains a rarity, however. The legislation legalising temporary work agencies came into force only on 1 January 2004, so no conclusions can yet be drawn about their activities. Unfortunately, the grey economy keeps on growing, particularly in relation to unregistered employment (so-called ‘moonlighting’).

Finally, it should be stressed that despite the greater flexibility of the working time regulations introduced in 2002, the labour market situation has not changed much.

Tables 15.1 to 15.3 present basic information on types of employment and working time standards.
<table>
<thead>
<tr>
<th>Year</th>
<th>Men</th>
<th>Women</th>
<th>Total</th>
<th>Men</th>
<th>Women</th>
<th>Total</th>
<th>Men</th>
<th>Women</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>14,983,000</td>
<td>55%</td>
<td>3,305,000</td>
<td>49%</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>2002</td>
<td>15,744,000</td>
<td>55%</td>
<td>3,154,000</td>
<td>45%</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>2003</td>
<td>15,744,000</td>
<td>55%</td>
<td>3,154,000</td>
<td>45%</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>2004</td>
<td>15,744,000</td>
<td>55%</td>
<td>3,154,000</td>
<td>45%</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
</tbody>
</table>

**Table 15.1: Types of contract**

- **Employed persons**
- **% employed on full-time, open-ended contracts**
- **% employed on part-time contracts**
- **Self-employed**
- **% self-employed**

Notes:
- **Including those employed in agriculture.

Collective bargaining on working time: recent European experiences
**Table 15.2: Working hours**

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Statutory maximum working week (hours)</strong></td>
<td>42</td>
<td>41</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td><strong>Statutory maximum working day (hours)</strong></td>
<td>8*</td>
<td>8*</td>
<td>8*</td>
<td>8*</td>
</tr>
<tr>
<td><strong>Average collectively agreed normal weekly hours</strong></td>
<td>40</td>
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<tr>
<td><strong>Usual hours worked per week</strong></td>
<td><strong>Total</strong></td>
<td><strong>Men</strong></td>
<td><strong>Women</strong></td>
<td><strong>Total</strong></td>
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<td>43.1</td>
<td>45.7</td>
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<td>42.9</td>
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<tr>
<td><strong>Statutory maximum hours of overtime per year</strong></td>
<td>150</td>
<td>150</td>
<td>ca. 400</td>
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<tr>
<td><strong>Average collectively agreed maximum hours of overtime per year</strong></td>
<td>150</td>
<td>150</td>
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</tbody>
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Notes:
* Daily amount of working hours can be extended:
  - up to 12 hours in the equivalent working hours system (provided the time is balanced to an average of 40 working hours per week in the accounting period);
  - up to 16 hours when supervising facilities (provided that the time is balanced to an average of 40 working hours per week in the accounting period);
  - up to 24 hours when guarding property or protecting people (provided that the time is balanced to an average of 40 working hours per week in the accounting period).
Table 15.3: Annual leave

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<th>2001</th>
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<th>2003</th>
<th>2004</th>
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<tbody>
<tr>
<td>Statutory minimum annual paid leave (days)</td>
<td>18 days – after a year's service</td>
<td>18 days – after a year's service*</td>
<td>18 days – after a year's service*</td>
<td>20 days – where the employee has been employed for less than 10 years*</td>
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<tr>
<td></td>
<td>20 days – after 6 years' service*</td>
<td>20 days – after 6 years' service*</td>
<td>20 days – after 6 years' service*</td>
<td>26 days – where the employee has been employed for at least 10 years*</td>
</tr>
<tr>
<td>Average collectively agreed annual paid leave (days)</td>
<td>As above**</td>
<td>As above**</td>
<td>As above**</td>
<td>As above**</td>
</tr>
</tbody>
</table>

Notes:
* Length of service on the basis of which holidays are calculated also includes number of years, specified by law, of completed education (for example, 3 years for completion of vocational school, 8 years for graduation from a secondary school).
** In collective agreements provisions on length of holidays are often copied from the law.
16. Collective bargaining on working time in Portugal

Reinhard Naumann

16.1. Working time in its national and international context

Collective bargaining in Portugal has been in a structural crisis for decades. In the context of revolutionary workers’ mobilisation during the period of democratic transition and subsequent democratic institution building (1974-1975 and afterwards) a conventional framework was created that inverted the ‘logic’ of labour relations under Fascism. The new unions obliged employers to accept agreements with detailed regulations on workers’ rights, work organisation and workers’ tasks. It was a kind of ‘Taylorist revenge’ for decades of employer unilateralism, tying companies to a Fordist model of work relations that had already been put into question in the advanced economies.

During the 1980s and 1990s the trade union movement lost members and mobilisation capacity and the power relations at company and branch level changed substantially. At the same time, employers felt growing pressure to adapt work regulations to new challenges, with particular incidence in manufacturing industry.¹ In this context, employers demanded with growing intensity the revision of the ‘revolutionary’ collective agreements. However, for a broad set of reasons unions and employers were unable to reach a compromise and collective bargaining was in deadlock. As labour legislation stipulated that an existing agreement would only run out if it was replaced by another one signed by the same parties, unions were able to reject employers’ demands for concessions. Thus, the qualitative part of most branch-level agreements (Contrato Colectivo de Trabalho/CCT, which is the dominant level in the bargaining system) has been largely unaltered for decades. In contrast to this general inertia, those companies who regulated their work relations in particular agreements (Acordo de Empresa/AE) managed to make considerable changes in their regulatory framework. Most of these firms belonged to the public sector and were privatised during the 1990s.

Under these circumstances collective bargaining at the dominant branch level was largely restricted to pecuniary issues. With regard to working time this meant that

¹ Textiles, ship-building and ship repair, steel production, and so on, belonged to the first group of important branches affected by growing competition on the world market. In recent years pressure on manufacturing in general has grown considerably.
the unions made little progress in their efforts for a reduction of weekly working time, while employers were unsuccessful in introducing more working time flexibility. The tripartite agreement of 1990 (Acordo Económico e Social/AES) tried to stimulate collective bargaining on working time reduction combined with flexibility, but it had little effect in bargaining and in 1996 the signatories of the AES decided to sign a new agreement (ACSCP 1996) to resolve the problem by law. The process of legislation and the implementation of the law gave rise to a series of conflicts (see Report 1996-1997) and resulted – in combination with other factors – in a fundamental change in government strategy vis-à-vis macro-level concertation.

The inability of the social partners to reach a compromise on the revision of a large part of collective agreements transferred the responsibility for change to the government. Thus, the regulation of work relations depends heavily on the political situation. This was the case in 1997 when the Socialist Labour Ministry implemented the law on working time reduction and flexibility in a way that favoured trade unions, and it happened again – though in the opposite direction – after the victory of the centre-right coalition in the 2002 elections.

The new Labour Code (Código do Trabalho) adopted in 2003 changed the ‘rules of the game’ in collective bargaining and introduced numerous amendments to working time regulations. According to the new Code, an agreement that is not renegotiated for a number of years runs out and is replaced by general labour law. This new rule might theoretically be understood as a stimulus for serious negotiations because it forces all parties to take into account the demands for change formulated by others. However, in its present form this new rule acts as an instrument for the simple abolition of collective agreements and in 2004 Portuguese employers made extensive use of it. Due to the employers’ boycott of negotiations, the number of workers covered by renewed agreements fell from 1.5 million (2003) to 600,000 and the way is open for a large number of agreements to become null and void. At the beginning of 2005 employer and union confederations signed a bilateral agreement for the revival of collective bargaining, and the new Socialist government (in office since March 2005) will start tripartite talks on resolving the problem.

With regard to working time the 2003 modifications to the Labour Code enlarged the bandwidth for flexibility and reduced limitations on working time extension. The new Socialist majority in Parliament has committed itself to a partial repeal of

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2 The AES was negotiated by both trade union confederations, UGT and CGTP-IN, but only UGT signed the agreement.
3 Renewal is largely limited to pecuniary issues.
these modifications. Changes directly related to working time that may be expected according to the Socialist election programme (2005) and the Socialists’ proposal for Labour Code amendments in Parliament (2003) aim at repealing in part the enlargement of the bandwidth for flexibility.

The room for positive changes (from a trade union point of view) in working time regulation seems limited, however. The advance of neo-liberal ideology found its most significant expression in the landslide victory of the liberal-conservative PSD in 1987 (repeated in 1991) and the victory of the centre-right coalition of the PSD and the neo-conservative CDS-PP in 2002. The Socialist Party is committed to a liberal economic policy and to the consolidation and modernisation of the welfare state. The present deep crisis in the economy and in public finance limits the government’s ability to stick by its commitment to welfare and workers’ rights. Unemployment has grown in recent years. Closure and relocation of factories in manufacturing (for instance, shoes, clothing and electronics) are frequent and result in further job losses. Low salaries and low quality of employment were the central comparative advantages of traditional industries. Since the 1990s public debate and policies have focused on adapting the labour force and labour relations to the new challenges of competition, but all parties (employers, unions and government) agree that progress is far too slow.

16.2. Collective bargaining on working time

16.2.1. The approach of the principal trade unions

The Portuguese trade union confederations CGTP-IN and UGT converge in the aim of establishing a 35-hour week for all workers, but there are important differences in their approaches to working time. At its most recent congress (2004) CGTP-IN criticised the current trend towards flexible working time:

Working time as it is negotiated in collective bargaining is an expression of the difficult equilibrium between companies’ need for a flexible organisation of production and the workers’ need for schedules in accordance with their personal and family lives. Employers insist increasingly on working time arrangements that are exclusively adapted to production flexibility, allowing the increase of daily and weekly work duration without extra pay. The changes in labour legislation under the Labour Code are based on this regressive approach: working time is subordinated to the organisation of production, with negative consequences in terms of working life and the conciliation between work and personal and family life, and labour costs are cut by introducing flexible working time and by the legal reduction of night work from 11 to 9 hours.
CGTP-IN will struggle for a more balanced working time organisation that allows workers to have significant control over their working time.\(^4\)

CGTP-IN sees flexibility in the first place as a negative factor in working life and in explicit opposition to it aims to reduce working time (35 hours, more holidays) and to increase workers' control over working time organisation.\(^5\)

UGT does not share CGTP's fundamentally negative approach to flexibility. UGT aims at collective agreements with a 'gradual' working time reduction and new arrangements regarding working time organisation that favour work and private/family life. In UGT's approach gender equality is a particular area in which flexibility is seen as an opportunity for positive changes. Thus, the Confederation is committed to promoting 'effective reconciliation' between work and private life by struggling for 'collective agreements and legislation that allow a more adequate organisation of working time and the voluntary and reverse adoption of new forms of work organisation (part-time, adaptability)'.\(^6\)

16.2.2. Collective agreements and working time

Collective bargaining coverage is high in Portugal. According to the most recent data published by the Labour Ministry, 2.3 million workers are covered by collective agreements, corresponding to a coverage rate of about 92%.\(^7\) Two million workers are covered by branch agreements (Contrato Colectivo de Trabalho/CCT), and fewer than 200,000 by company and multi-company agreements (Acordo de Empresa/AE and Acordo Colectivo de Trabalho/ACT, respectively). Branch-level agreements settle basic salaries and gains of about 90% of the total average and fix a weekly working time of 39 hours (1 hour less than the statutory working week). Stipulations in company and multi-company agreements are generally more advantageous for workers. Remuneration fixed in company and multi-company agreements is much higher than the total average\(^8\) and the average weekly working time settled by company agreements is 35 hours.\(^9\)

Company and multi-company agreements tend to suffer fewer delays in their renegotiation than branch agreements and they are responsible for a disproportionately high share of the changes in the non-financial part of agreements. In the peri-

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\(^6\) UGT, IX Congress, Programa de Acção, Lisbon, October 2004.
\(^7\) The same source counts 2.5 million employees in private companies. See Quadros de Pessoal (2002).
\(^8\) Average salaries and gains in company agreements correspond to 150% and 180% of the total average, respectively (multi-company agreements: 180% and 220%). See Quadros de Pessoal (2000).
\(^9\) See Quadros de Pessoal (2000).
From 2003–first half of 2004 the Labour Ministry published 392 agreements, 103 of them with changes in the non-financial part. Company and multi-company agreements had a share of 33% in the total number of agreements, being responsible for 50% of the total number of amendments referring to non-financial aspects and 60% of the amendments regarding working time.

Looking at the amendments referring to working time registered during 2003, the Labour Ministry counts 21 agreements covering 112,000 workers (first half of 2004: 7 agreements, 26,000 workers), that is, less than 5% of total employees covered by collective agreements (first half of 2004: 1.1%). In 2003, working time arrangements with the broadest coverage referred in the first place to the reduction of weekly working time, flexibility of weekly working time and the regulation of night work. During the first semester of 2004 two agreements stipulated an annual maximum of 200 hours overtime, making use of a new Labour Code rule that allows individual or collective agreements to exceed the legal standards. According to labour law, annual maximum overtime must not exceed 175 hours in small enterprises and 150 hours in medium-sized and large companies. These two agreements were also the only ones with stipulations regarding part-time work.

Collective agreements in Portugal cover the greater part of employees and include stipulations on a broad set of issues. The problem is that collective bargaining as a process is stagnating. The antagonistic positions of unions and employers have increasingly limited negotiations to wages and a few other questions. Bargaining is neither conflictual nor consensual but formal and 'sterile'. This is a bad environment for innovative solutions. The Labour Code (2003) opens the way to overall deregulation by the simple ‘expiring’ of collective agreements, as mentioned above. Tripartite negotiations with the new Socialist government may bring a solution that keeps some pressure on unions to make concessions to employers but at the same time avoids the complete loss of the existing agreements. The government seems inclined to introduce a mechanism of effective obligatory arbitration that puts pressure on unions and employers and that guarantees a balanced solution.

16.2.3. The exceptional case of the agreement at Volkswagen/AutoEuropa

The most important case of an arrangement on working time flexibility is the Volkswagen plant in southern Portugal. Volkswagen AutoEuropa started to operate in 1995 and became a very important factor in the Portuguese economy. As

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10 Legislation lays down that salaries are generally negotiated each year, non-financial aspects every second year.
11 See the quarterly reports of the Labour Ministry on collective bargaining (Relatório Trimestral Contratação Colectiva). The most recent available report refers to the 2nd quarter of 2004.
the one and only car model produced at AutoEuropa aged a transitional period of lower activity before the launch of a new model had to be prepared. In 2003, management and the AutoEuropa works council (Comissão de Trabalhadores) negotiated an agreement on working time flexibility covering several years. The agreement is based on a mechanism that allows working time reduction without loss of income during the period of lower activity, and a corresponding increase of working time without higher pay after the start of production of the new model. With this deal workers gain job security and the company increases its capacity to adapt working time to market needs.

AutoEuropa is one of Portugal’s most advanced companies in terms of technology, work organisation and HRM. The Volkswagen Group has an exceptionally positive approach towards social dialogue and its World Works Council is particularly effective in making social dialogue work in each plant of the group. Furthermore, the AutoEuropa Works Council and the shop stewards committee of the dominant trade union at the plant (the metal workers’ federation FEQUIMENTAL which belongs to CGTP-IN) are committed to a process of negotiated change with innovative solutions. These and other reasons make it difficult to ‘transpose’ the AutoEuropa agreement to other companies or sectors. A further indication of the exceptionality of the case is the fact that the agreement was not negotiated by the trade union but by the works council. Thus, the agreement does not have the status of an official company agreement (Acordo de Empresa) signed by a union and published in the Labour Ministry’s Bulletin (Boletim de Trabalho e Emprego).

The stagnation in the bargaining process implies that changes in work relations tend to be conceived and implemented by companies without union participation (or even in the face of their resistance). In the context of decreasing organisational power at the shopfloor level, unions have lost the ability to enforce collective agreements in companies. Thus management has been able to implement changes irrespective of existing conventional stipulations. The social partners’ incapacity to adapt collective agreements to the new realities has shifted responsibility to the government and parliament, making unions more vulnerable to the political cycle.

16.3. Collective bargaining and the labour market

Considering the characterisation of collective bargaining and industrial relations given above, the effective regulation of work relations by agreements (and also by law) must be questioned. According to the present Labour Minister, José Vieira da Silva, there is a large gap between the comparatively rigid legal norms and reality in Portuguese working life. Despite the regulatory rigidity, the system is very
flexible. ‘Any shaking of the economy has immediate consequences, unemployment rises rapidly, wages are affected, the flexibility of the [Portuguese] economy is one of the highest [in Europe], some compare it with the USA.’

What have been the outcomes of this contradictory situation in the labour market? The share of full-time employees with open-ended contracts is decreasing (from 80% in 2000 to 76% in 2002), while the percentage of fixed-term and part-time workers is growing (see Annex). Official statistics indicate an effective working week of 37.1 hours (2000), but there are branches with a considerable number of employees doing unregistered (and often unpaid) overtime.

In closing, it is important to point out that, despite the limited capacity of collective bargaining to shape the current changes in working life, the importance of existing agreements in guaranteeing a set of minimum rights must not be underestimated.

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Links

www.cgtp.pt

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### Annex

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<td></td>
<td>Total</td>
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| working week (hours)    |           |       |       |       |       |       |       |       |       |       |       |       | 13
| Statutory maximum       | 8         | 8     | 8     | 8     | 8     | 8     | 8     | 8     | 8     | 8     | 8     | 8    |
| working day (hours)     |           |       |       |       |       |       |       |       |       |       |       |       | 14
| Average collectively    | 38.6      |       |       | 38.35 |       |       | 38.33 |       |       |       |       |       |
| agreed normal           |           |       |       | (1st three quarters) |       |       | quarters) |       |       |       |       |       |
| weekly hours            |           |       |       |       |       |       |       |       |       |       |       |       | 14

13 The 40-hour week and the 8-hour day are average standards with the possibility of variations in a determinate reference period.

14 There are no statistics on working hours agreed in collective bargaining. The values presented here are the ‘normal work period’ registered by companies. The source is a kind of ‘Census’ carried out by the Labour Ministry, the so called ‘Quadros de Pessoal’. All companies are obliged to answer.
17. Collective bargaining on working time: Romania

Lucian Vasilescu

17.1. Working time in its national and international contexts

Elections took place in Romania at the end of 2004, both presidential and general. As a result, a liberal government was formed which has gathered fragile parliamentary support due to a number of alliances with smaller parties.

The new government’s first action was to introduce a flat tax rate. This amounts to a shift from a progressive to a regressive system. As a result, budgetary revenue fell by more than ROL 30,199.8 billion. The trade union confederation’s analysis concluded the following:

- This fall in budgetary revenues is reflected in an increase in gross employee earnings, but very inequitably: the higher earnings of employees on gross incomes of up to ROL 10 million a month represent only 6% of the total (ROL 2,222.8 billion), the remainder (ROL 27,977 billion) going to the 329,221 employees with gross monthly incomes of more than ROL 10 million; in fact, the 82,592 employees with monthly incomes of ROL 20 million or more receive as much as ROL 25,711.6 billion or 70% of the total remaining with the taxpayer after the introduction of the flat tax rate.

- It is clear that this measure has disproportionately benefited a small number of employees, at the expense of everyone else: for example, the wages of state employees have been frozen, and the prices of electrical energy, gas and thermal energy have risen, as have taxes on a range of consumer goods (all with a view to covering the ROL 30,199.8 billion deficit because the IMF did not accept an increase in the budget deficit).

The second measure introduced by the liberal government was the imposition on the social partners of a Labour Code amendment. On the pretext of the urgency of greater labour market flexibility and improving Romanian enterprise efficiency in the context of possible EU accession in 2007, the Ministry of Labour, Social Solidarity and Family has modified the provisions of the Labour Code to the advantage of the employers, increasing their power in the employment relationship.

In an attempt to give the impression of social dialogue between employers and employees, the government instigated negotiations within a very tight schedule (1 month).
From the beginning, the trade union confederations did not agree to the modification of the Labour Code, not to mention the imposed timetable for negotiations and the proposals for changing particular items. All representative national trade union confederations are now involved in a broad trade union action programme under the slogan ‘Save the Labour Code’, its first success being the rescheduling of the timetable imposed by the government for negotiations on amending the Labour Code.

Among other things, the proposed amendments seek to exclude from the Labour Code the provision on open-ended employment contracts and make it possible for employers to conclude fixed-term contracts, too.

The stated aim here is labour market flexibility, but it is clear that such a change would mean that it would be impossible to organise trade unions for employees on such contracts or to negotiate collective agreements for them. We would like open-ended individual employment contracts to represent the rule and fixed-term contracts to be the exception. Another modification concerns part-time employment contracts, with a proposal allowing contractors to conclude a convention rather than an employment contract for jobs which exceed 2 hours a day, as stipulated in the Labour Code, thereby relieving the employer of responsibility for part of the social and pension insurance contributions in respect of that employee.

There are also proposals to change the rules on overtime, including increasing the maximum number of hours of overtime above the current 8 hours per week, and abolishing the current provision, which requires the employee’s agreement to overtime, with one allowing the employer to impose overtime in order to meet some urgent need. The problem of overtime has caused a great deal of discontent among the employers, even after the adoption of the new Labour Code in January 2003. The previous Labour Code, dating back to 1973, stipulated a limit of 120 supplementary hours which could be exceeded only with the approval of the trade union (a formal agreement which often was not even sought), but up to a maximum of 360 hours per year. The revision of the current Code would make it possible to seek a higher number of supplementary hours. Theoretically, an employee might work 8 supplementary hours per week for a year, a total of 380 supplementary hours (not including holidays). The limit of 8 supplementary hours a week demanded by the trade unions and included in the current Labour Code is based on Directive 88/EC/2003 on certain aspects of working time organisation. By limiting supplementary hours the hope is that jobs will be created and unemployment reduced. The new Labour Code enables employers to exceed the 48 hour working week (40 regular hours plus 8 supplementary ones) in the case of shift work, on condition that average working hours not exceed 48 hours a week over a 3 week period. The employer would
be able to distribute the 24 supplementary hours according to his needs: for instance, 12 supplementary hours in each of the first two weeks and none in the third.

The negotiation of collective agreements at national level started at the end of 2003 and continued until April 2004 when agreement could not be reached on the national minimum wage, which in the end was established by government decree (ROL 2,400,000 gross) for public workers. Private sector employees were subject to a different minimum wage laid down in the national labour agreement. This minimum wage represents the basis for wages at branch level: often the branch-level minimum wage is higher than the one laid down at national level in the collective agreement. Consensus could not be reached on this minimum wage at national level, although it had been negotiated up to ROL 3,000,000 gross. It was eventually set at ROL 2,800,000 for 2004 by the government because one of the trade union confederations had held out for ROL 3,100,000. For this reason the National Collective Agreement was not signed and the provisions of the former agreement were prolonged. The Law stipulates that if, at the end of the negotiations, one of the parties does not sign, the agreement cannot be concluded.

One consequence of this failure to reach agreement was that a number of trade union federations in the private sector which use the national minimum wage as a basis when negotiating the branch minimum wage were unable to increase wages by ROL 200,000 as they had hoped. At the end of 2004, negotiations started on a new national agreement, to cover 2005-2006, with the prospect that in September 2005 the following chapters will be renegotiated: minimum wage and other financial incentives, training, the contribution quota for medical treatment and holiday vouchers.

17.2. Collective bargaining on working time

Negotiations commenced on the basis of the national collective agreement for 2004, which had been negotiated but not concluded, and which reflected the provisions of the new Labour Code.

The national collective agreement was signed by the social partners and ministerial representatives at the end of December 2004 and was presented for registration to the Ministry of Labour, Social Solidarity and Family at the beginning of January 2005. The new liberal government prolonged the registration of the new agreement until February, when it was finally published in the *Official Monitor*.

Given the abovementioned Labour Code proposals we can conclude that the delayed registration was detrimental to the trade unions who would have been
able to negotiate, in some branches, a higher minimum wage. The national minimum wage established by the government for 2005 is ROL 3,100,000, while the negotiated minimum wage under the – delayed – national agreement is ROL 3,300,000.

The chapter on working hours in the national collective agreement for 2005-2006 maintains the provisions of the new Labour Code as regards working time: 8 hours a day and 40 hours a week, but with the opportunity to negotiate a working week at branch or enterprise level of 36-44 hours, on condition that the monthly average remain at 40 hours per week, and changed working schedules be announced one week in advance. Generally, it is possible through negotiations at enterprise level, taking into account the specific nature of the work or production, to divide up weekly working hours unevenly, though without exceeding 10 hours a day.

A working day of 12 hours must be followed by a 24-hour break. At the request of a number of trade union federations in response to the situation at various enterprises and the pressure being exerted by the employers’ organisations, a provision was included in the national collective agreement to the effect that maximum working time cannot exceed an annual average of 48 hours a week, including supplementary hours. This provision was accepted by the trade union confederations in order to maintain the 100% wage bonus for supplementary hours, which the employers had wanted to reduce to 75%, as provided in the Labour Code.

Among the proposals presented by the government for modification of the Labour Code is a move away from the current working time accounting period of 3 weeks, over which working time must average 48 hours a week, including supplementary hours. This was based, when the Labour Code was negotiated, on ILO Convention 1 (1919) on working time. The new proposal is that collective agreements at branch level can establish a reference period of between 4 and 12 months. To this end the Ministry of Labour has invoked EU Directive 2003/88/EC of 4 November 2003 (although this document lays down a reference period of no longer than 4 months).

The employers’ organisations, of course, welcome this proposal and have also proposed a modification of legal maximum working time, raising it to an average of 60 hours a week over a 4 month period, including supplementary hours.

The trade union organisations were partially opposing to the proposals of the government and the employers’ organisations, particularly in view of the fact that Romania will accede to the EU in the not too distant future (in a view to the provisions of EU’s Directive No.2003/88/EC), and maintain that the working time reference period should not exceed 4 months.
By partially accepting the government proposals, the trade union organisations want to obtain the opportunity to negotiate the reference period at branch level, but not to exceed the provisions of European directives in this area.

Another proposed amendment concerns overtime which, under the current Labour Code, requires the employee’s agreement. The government is proposing that, besides instances of force majeure or urgent action required for the prevention of accidents or repairing the consequences of accidents, when overtime can be imposed by the employer without any need for the employee’s agreement, there should be an additional category of ‘forced overtime’ when there is an urgent need to meet production deadlines, deliver services, or meet other obligations. The employers’ organisations have welcomed the proposed new regulations which satisfy a number of demands which they have long made. The trade union organisations, on the other hand, are opposed to these proposals, for the following reasons:

- Overtime imposed against the employee’s will is nothing more than forced labour: the employee’s contract binds him only during normal working time.
- If employees refuse, for whatever reason, to work overtime imposed on the basis of the new Labour Code provisions their individual labour contract will be put in jeopardy, even if employees have a good reason for refusing overtime.
- Under the current Labour Code, an employee’s refusal to work overtime cannot be subject to disciplinary action.

In practice, under the current Labour Code provision requiring employee agreement for overtime employees are willing to work extra hours, especially when they are paid double time.

From the chapter ‘Working time and holiday time’, in the ‘Labour Norms’ section of the current Labour Code, the government has proposed to eliminate the provision which says that labour norms are valid for all employees. The employers’ organisations agree and even the trade union organisations say that they could accept it, given that not all activities can be measured. At the same time, the government is proposing that henceforth labour norms may be established by the employer after merely consulting with the trade unions and the employees, in contrast to the current situation in which their agreement is required. This excludes the possibility that these labour norms will be renegotiated in the collective agreement. While again the employers’ organisations welcome these proposals, the trade union organisations reject them because it is obvious that the consultation referred to will be merely formal: employers will generally speaking impose the terms and conditions of work which suit them. An already existing
example of what might happen if this proposal goes through is in the textile industry where the labour norms are so high that even the best workers are unable to meet them within a normal 8-hour working day, in which case they are required to remain at work until they have completed their quota, on penalty of docked wages. As a result, working days are often nine or more hours’ long rather than eight.

A chapter on working time can be found in all collective agreements, at every level. At local level this influences the individual labour contracts of trade union members. The law on collective agreements states that the national collective agreement shall affect all employees nationwide. For this reason, the national collective agreement is very important as a source of rights for both trade union members and non-members. This means that non-union members can invoke provisions of the national collective agreement before a court. In practice, however, very few non-trade union members are aware of these provisions.

The provisions of the national collective agreement serve as minimum standards for the branch, group, enterprise and establishment levels; branch and group level agreements have the same relation to local level. Trade union members must conclude individual labour contracts in conformity with the provisions of the collective agreements existing at local level. In this context, national level negotiation of the chapter on working time is particularly important because it lays down general rules which must be reflected at branch, group, enterprise and establishment level.

National level negotiations take place between the representatives of the most important trade union confederations, the employers’ organisations and ministries.

With such diverse interests negotiations are often difficult and consensus is hard to attain. Negotiations have not yet led to labour conflicts, however, since the relevant legislation makes strike action difficult. At branch and group level, the ‘Working time’ chapter can be modified, as already mentioned, in accordance with the specific features of a particular branch or group.

Take the collective agreement in the construction sector, in which the employees agreed to working time of 10 hours a day during the most active months of April to October, with a reduced working time during the rest of the year, as a result of which average weekly working time will not exceed 48 hours over a year, including overtime. This agreement is the only one which exceeds the working time of 8 hours a day, 40 hours a week for at least part of the year.

Even at this level negotiations did not generally take on a conflictual character. Strike action was only rarely a pressure factor in the enforcement of demands, especially financial. There was some strike action, however, especially in budgetary sectors: health care, education and public administration.
At local level the collective agreement applies the regulations established at national, branch or group level. As far as working time is concerned, especially the determination of when employees begin and finish work, penalties for lateness or absence are included in the internal regulations laid down by the employers in consultation with the trade union or employees’ representatives. The internal regulations can be determined by employers more or less unilaterally since they need only consult the trade union or employees’ representatives; having said that, internal regulations cannot infringe employees’ rights laid down in a collective agreement or the law, on penalty of legal action.

Local level negotiations often generate conflicts: the majority of conflicts which lead to strike action are at this level. Few such conflicts concern working time, the majority of them being related to wages and other financial issues. Most conflicts at enterprise level take place in the private sector where the trade unions are more demanding.

17.3. Outcomes of bargaining

The national collective agreement has always had a significant influence on labour legislation. Until the adoption of the new Labour Code in January 2003 the provisions of the national collective agreement transposed European labour legislation at national level. This was necessary because the former Labour Code, in force since March 1973, was no longer relevant. Therefore new regulations tended to appear in the national collective agreement, which were later included in the new Labour Code. Such regulations included provisions on working time, such as the one on the 48 hour week, including overtime. In the former Labour Code, overtime did not have a weekly limit. The reduction of daily working hours for employees in workplaces with difficult or dangerous conditions, without loss of earnings, was another provision which was later enshrined in government legislation. The establishment of flexible working hours for women with children up to 6 years of age, as well as the possibility to work part-time without affecting their employee’s rights, served as the basis for the law on the protection of maternity. Other contractual provisions which were later introduced into the law on the protection of maternity include the possibility for pregnant employees to take time off for medical check-ups without loss of earnings, and the reduction by 2 hours a day of the working time of women employees who renounce their holiday entitlement to care for children up to 2 years of age, without affecting their basic wage.

At present, the trade unions are struggling with the liberal government to maintain existing rights through the collective agreement and to have its provisions enshrined in the Labour Code. Both the employers and the liberal government wish to modify working time, for example, by increasing regular working time or
The trade unions launched a major campaign at national level in February 2005 in order to stop the modification of the Labour Code.

The first trade union action, under the slogan ‘Save the Labour Code’, took the form of picketing the Prefecture’s Office in the main towns of every region, for two weeks. A second phase of trade union action at national level took the form of major trade union rallies in groups of five districts each day over a period of two weeks. As a result of the widespread trade union action, together with a determined press campaign, the government has, at least for the moment, delayed modification of the Labour Code.

17.4. Collective bargaining and the labour market

The main objective of the current government is to flexibilise the labour market and to increase the freedom to negotiate collective agreements. This principle, announced in the government programme, is totally at odds with the government’s actions, which include the six-week delay in registering the national collective agreement, an attempt to impose on the social partners major changes in the Labour Code and to allow only a short period of negotiations, an attempt to control social dialogue by imposing the topics and terms of negotiation despite the fact that, through a PHARE programme, the European Commission has earmarked significant funds for strengthening autonomous social dialogue.

A struggle is now going on to maintain existing rights in the new Labour Code. The employers together with the liberal government would like to increase weekly working time, including overtime; impose overtime without needing the employees’ agreement; establish working conditions without trade union agreement; increase the proportion of fixed-time individual employment contracts.

The trade unions are against all these changes.

At present, few Romanian workers are working on flexible employment contracts, which suggests that the Romanian labour market does not need them. However, it may be that they are underreported.

Working time is 40 hours a week in most agreements. Exceptions include teachers, at 18 hours, and university lecturers, at 6 hours a week (this represents time actually in the classroom, of course); doctors and nurses (working in radiology, laboratories, and so on), at 7 hours a day; construction workers, at 10 hours a day, April-October.

Overtime is an important issue for employers’ organisations in relation to production fluctuations, while for employees it is important because it can be a supplementary source of income, given that it is paid double time.
The number of employees who can benefit from pre-pension schemes and early retirement is increasing due to the new pension law, which stipulates an increase in the retirement age. The relevant data are presented in the table 17.1.

Table 17.1: Participation in early retirement 2001-2004

<table>
<thead>
<tr>
<th></th>
<th>Average number of pensioners</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Early retirement</td>
<td>Partial early retirement</td>
</tr>
<tr>
<td>2001</td>
<td>991</td>
<td>8 948</td>
</tr>
<tr>
<td>2002</td>
<td>6 083</td>
<td>61 967</td>
</tr>
<tr>
<td>2003</td>
<td>9 766</td>
<td>92 231</td>
</tr>
<tr>
<td>2004</td>
<td>11 582</td>
<td>106 025</td>
</tr>
</tbody>
</table>
18. Collective bargaining on working time: Slovakia

Ludovít Cziria

18.1. Political and economic background

In 2004 Slovakia became a member of both the EU and NATO and the first elections to the European Parliament were held. A new president, Ivan Gašparovič, was also elected. Although the government lost its overall majority in the Parliament, it was able to complete the pension reform and prepare the health care reform in 2004. The government also obtained parliamentary approval of the state budget for 2005. Since January 2005 flat taxation and the second pillar of the new old-age pension system have been implemented.

The Slovak economy did better than analysts had expected in 2004. Worries about less efficient tax collection due to the VAT increase in 2004 were not borne out: the state budget collected the tax revenue anticipated by the Ministry of Finance.

A relatively stable political climate and an amenable business environment attracted much foreign direct investment in the course of 2004. Most was aimed at development of the automotive industry. PSA Citroën-Peugeot and Hyundai-Kia investments led to the establishment of several dozen production units and subcontractors which will produce different car components for them. While investors were mostly EU-based companies, there were also investors from the USA and Japan. According to the available information (Daily SME, 28 December 2004) foreign direct investment in Slovakia reached SKK 70 billion (around EUR 1.8 billion). It is expected that the new investments will create around 14,000 new jobs, twice as many as in 2003.

Recently published data on economic development in 2004 show that GDP growth was relatively high again, at 5.5%. There was also positive development, at last, in real wages: nominal wages increased by about 10% in comparison to 2003, the highest wage increase since 1998: average gross monthly wages in 2004 reached SKK 15,825. Despite relatively high inflation – almost 8% – caused mostly by energy price deregulation, real wages increased by 2.5% (in 2003 real wages decreased). Household income increased by about 1%. Household consumption also increased, influenced by falling interest rates and increasing access to bank loans. The Slovak koruna/euro exchange rate fell continuously in 2004, a trend which continued (and even accelerated) in the first quarter of 2005.

There were no significant changes in the collective bargaining system and sectoral negotiations still played an important role in 2004. In total, 46 new sectoral
collective agreements, including supplements to such agreements, were registered by the Ministry of Labour, Social Affairs and Family. According to the Trexima 2004 sample survey on working conditions\(^1\) there are almost 200 national works councils in Slovakia; about 180 of them are established in non-unionised companies.

On 1 October 2004 the monthly minimum wage was increased by 6.2% to SKK 6,500, which served as the basis for wage negotiations for 2005 collective agreements. The government once again increased the minimum wage unilaterally because trade unions and employers were unable to reach agreement. Arguing on the basis of the large wage disparities between the richest and poorest regions, the employers are still demanding the implementation of regionally differentiated minimum wages.

Since 1 January 2004, Act No. 453/2003 Coll. on state administrative bodies in the area of social affairs, family and employment services has created a legal framework for the establishment of new labour market and social affairs institutions. Act No. 5/2004 Coll. on employment services and on the amendment and supplementation of certain laws made possible the implementation of new employment services from 1 February 2004. The tripartite National Labour Office was abolished and a new state body – the Centre for Employment, Social Affairs and Family – was established. Act No. 5/2004 also regulates, among other issues, the implementation of temporary agency work in Slovakia.

The Federation of Employers’ Associations (AZZZ SR), the only peak representative body for the employers, split and a new national-level employers’ organisation, the National Union of Employers (RUZ SR), was established in late March 2004. Approximately half the members of AZZZ SR moved over to RUZ SR. The establishment of RUZ SR introduced a new feature into industrial relations in Slovakia: plural peak representation for the employers. This caused some temporary problems in the representation of the social partners on the tripartite Economic and Social Concertation Council (RHSD). However, the split of the employers’ peak organisation did not impact on sectoral collective bargaining in Slovakia.


18.2. Working time in its national and international contexts

According to the new Labour Code, the standard working week is 40 hours. Maximum weekly working time in two-shift operations is 38.75 hours, with 37.5 hours for three-shift operations and continuous shifts. Working time regulation has been carried out in accordance with the relevant international documents, for example, EU Directive No. 93/104/EHS, the European Social Charter and ILO Convention No. 153. Working time arrangements must provide employees with at least 12 hours’ rest time in each 24-hour period.

According to the previous Labour Code (valid until 31 March 2002), maximum weekly working time was 42.5 hours. However, the nominal reduction of 2.5 hours did not mean an actual reduction in net working time because the 40 hours do not include a 30 minutes lunch break.

According to the amendment to the new Labour Code, employers must provide employees with a 30-minute break if the working day (shift) lasts more than 6 working hours. Previously, employees had been entitled to a break every 4 working hours. This break is not included in working time (unlike formerly).

Employers’ representatives, supported by the current government (right-oriented and often implementing neo-liberal measures), continue to demand more flexibility in employment conditions. It is obvious that globalisation and Slovakia’s EU membership have increased the pressure on enterprise competitiveness. The current Labour Code allows the application of different forms of employment contract and work organisation, enhancing flexibility at work, but the employers still demand further flexibilisation of employment conditions.

Flexible working time is found most frequently in services: daily or weekly flexible working time covered about 35% of employees in 2002-2004. Flexible organisation of working time is often used by employees to reconcile work and family duties. The Labour Code allows employees to work part-time, although this form of working time is rare – affecting only 2-3% of employees – mostly because employees cannot afford it. About three times more women than men work part-time. Annual working time accounts are used only exceptionally.

The Slovak Republic’s official position on the Commission’s proposal on the Working Time Directive was rather critical. Representatives of the employers (and of the government) argued that the initiative to limit working time might work against the increasing demands for greater flexibility of employment conditions.

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According to the available information, there were no special demands from employers to extend standard working time. The employers' demand for longer working time was satisfied by the extension of the overtime limit. Employees at workplaces with occupational risks do not have to work overtime. According to the last amendment to the Labour Code, weekly working hours including overtime should not usually exceed 48 hours. The new Labour Code limited maximum overtime to 150 hours a year. For additional overtime (a further 150 hours a year) the employer had to seek the permission of the National Labour Office. The maximum possible annual overtime was therefore 300 hours. However, on 1 July 2003 the Labour Code was amended to allow even more overtime: the basic limit of 150 hours remained the same, but additional overtime was increased to 250 hours, that is, an overall total of 400 hours.

As far as the flexibility of employment contracts is concerned, open-ended contracts are still preferred by employees. However, several employers prefer to sign fixed-term contracts, especially for so-called non-core employees. The Labour Code allows them to do so, but the number of employees employed on fixed-term contracts is still relatively low, at about 5%. Fixed-term contracts allow greater flexibility because employers can terminate employment more easily and at lower cost – for example, there is usually no redundancy payment.

The new Labour Code assumes the establishment of the employment relationship exclusively on the basis of a written employment contract, comprehensively regulates working time and its structure, and increases the flexibility of the employment relationship by providing some employees with the possibility of performing the work at home.

The new Act on employment services, in force since 1 February 2004, allows temporary agency work. The intention here was to improve services for the unemployed and help them to find a job as soon as possible. Agencies for temporary work provide services for the unemployed free of charge. Any legal or physical person, including the self-employed, may establish an agency for temporary work. Applicants interested in providing such services require a licence from the Centre for Labour, Social Affairs and Family (ÚPSVR). The licence is provided for a fee and is valid for a maximum of 5 years, although it may be prolonged on request. In case of infractions of the law and/or improper activities an agency can lose its licence. Temporary agency work is not restricted to particular sectors of the labour market, although the licence specifies the territory and scope of occupations of the agency's activities. The conditions under which agency workers are employed are

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4 Act No. 5/2004 Coll. on employment services and on changes and supplement of some laws.
regulated (apart from the abovementioned Act on employment services) by, for example, the Labour Code and Law on occupational health and safety. Labour law ensures agency workers the same employment conditions as other employees. According to the ÚPSVR’s information, in total 46 licences had been issued for agencies for temporary work by October 2004. The majority of agency workers were posted to companies in the Slovak Republic and the Czech Republic. About one third of all agency workers were employed in the territory of Bratislava. Both domestic and foreign companies use agency workers.

According to trade union representatives, agency workers are often employed for less than six months. In such cases the legislation allows employers to pay agency workers lower wages than regular employees. Moreover, the wages of agency workers are often at the minimum wage level and paid by the agency.

On 1 January 2004 new legislation on social insurance \(^5\) came into force. This act stipulates the first pillar’s function concerning old-age pension insurance, within the framework of a pay-as-you-go system. According to the new amendment, the retirement age will be increased step by step from 60 years to 62 years. Early retirement is now permitted again and employees taking an old-age pension can continue to work full-time on the basis of an open-ended employment contract. This new arrangement supports implementation of the European Employment Strategy (EES) with regard to increasing the employment rate and promoting the employment of older workers (both these figures in Slovakia are currently below EES targets).

18.3. Collective bargaining on working time

The Labour Code lays down a maximum weekly working time of 40 hours. Working time reductions (while maintaining wages) are subject to collective bargaining. Negotiations on working time are a usual part of sectoral and, especially, enterprise collective agreements. Sectoral collective agreements lay down the maximum working time which must be respected in enterprise collective agreements. Although the decentralisation of collective bargaining to local level is a general trend, sectoral collective bargaining still plays a very important role in Slovakia.

Weekly working time used to be differentiated for single-shift, double-shift and three- and continuous shift operations. According to sample surveys of collective agreements in various sectors of the Slovak economy \(^6\) the average weekly working time in single-shift operations ranged from 37.17 hours for employees covered

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5 Act No. 461/2003 Coll. on Social insurance.
by collective agreements in the metallurgy sector to 40 hours for employees covered by collective agreements in the river transport sector in 2004. In two-shift operations working time varied between 32.38 hours for employees covered by collective agreements in the energy sector and 38.41 hours for employees in the river transport sector. In some collective agreements – for example, in the railway sector for 2004-2005 – the 30-minute break for refreshments is included in regular working time (this was the case before the new Labour Code reduced the statutory working time from 42.5 to 40 hours a week).

There are practically no substantial distinctions as regards working time between the private and the public sector. Sectoral collective agreements for the civil service and public service employees for 2003, 2004 and 2005 allowed the reduction of statutory working time from 40 hours to 37.5 hours a week (in two-shift operations to 36.25 hours and in three-shift or non-stop operations to a maximum of 35 hours). Collective agreements extended paid leave for civil and public servants by one week over the labour law standard.

Table 18.1 presents data from the abovementioned sample survey on the development of collectively agreed average weekly working time in all sectors.

Table 18.1: Average weekly working hours and flexible working time, Slovakia, 2002–2004

<table>
<thead>
<tr>
<th>Indicator</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single shift</td>
<td>38.93</td>
<td>38.43</td>
<td>38.73</td>
</tr>
<tr>
<td>Two shifts</td>
<td>37.97</td>
<td>37.36</td>
<td>35.45</td>
</tr>
<tr>
<td>Three shifts</td>
<td>37.79</td>
<td>36.88</td>
<td>32.94</td>
</tr>
<tr>
<td>Continuous shifts</td>
<td>38.41</td>
<td>36.72</td>
<td>34.15</td>
</tr>
<tr>
<td>Use of flexible working time (%)</td>
<td>36.45%</td>
<td>33.08%</td>
<td>34.13%</td>
</tr>
</tbody>
</table>

The data indicate a relatively stable average weekly working time in single shift operations. In multi-shift and continuous operations a clear decline is registered, however. The application of flexible working time patterns is fluctuating, although with an overall downward trend.

Trade unions usually take the initiative to commence collective bargaining, presenting management with a draft collective agreement. Collective bargaining in general is not conflictual and all collective disputes regarding the conclusion of
collective agreements or implementing their provisions have so far been successfully settled by mediation and arbitration. No strike has yet been caused by a conflict over a collective bargaining issue. According to the available data on collective labour conflicts working time issues were not subject to dispute in 2000–2003.

18.4. Bargaining outcomes

According to the above quoted Trexima 2004 sample survey, about 37% of organisations were covered by sectoral collective agreements. Collective bargaining did not play an important role in the amendment of working time regulations, focusing instead on wages. The minimum wage of SKK 6,080 a month served as the basis for wage bargaining in 2004. Nevertheless, according to the available information, in about 80% of sectoral collective agreements a higher minimum wage than the national standard was agreed.

The survey also shows that on average sectoral collective agreements provided nominal wage increases of 7% (the average gross nominal monthly wage increase in 2004 was around 10%). The highest sectoral wage increases were agreed by the trade unions in communication (OZ SPOJE) (13%) and metallurgy (OZ Metalurg) (9%). The lowest wage increase of 3% was agreed by the trade union organisation at the Slovak Academy of Science.

At the end of 2003 government and trade union representatives concluded sectoral collective agreements for civil servants and public workers for 2004. New collective agreements confirmed the reduction of standard weekly working hours to 37.5 and an increase in paid leave of one week above the statutory limit. Collective agreements laid down a 7% wage increase.

Since January 2004 collective bargaining in the civil service has also been allowed at local level. The opportunity to bargain collectively at the local level in civil service organisations arises from the amendment to Act No. 551/2003 Coll. on the civil service, which also amended the Act on collective bargaining. The scope of local-level bargaining in civil service organisations is specified by sectoral collective agreements; however, it is relatively narrow.

The most recent amendment to the Act on collective bargaining (in force since 1 December 2004) requires the consent of the employer for the extension of a collective agreement.

18.5. Collective bargaining and the labour market

Weekly working time in Slovakia is among the longest in the EU-25, although below average working time in the new-member EU-10. Employees in Slovakia
are mostly on open-ended contracts (about 94%) and work full-time (about 97%). According to these indicators, employment flexibility is very low in comparison with employees in the EU-15. Fixed-term employment contracts and contracts for part-time work are rare – about 5% in 2003 and 5.8% in 2004 – and involve more men than women. Even fewer employees work part-time: 2% in 2003 and 2.7% in 2004. More women than men work part-time. A slight increase can be identified in the application of atypical forms of employment contract and working time organisation in the last two years.

The trade unions and the employees do not like atypical forms of employment, for two reasons in particular. Fixed-term contracts provide less job security for employees than open-ended ones. The employer can immediately terminate a fixed-term employment contract without stating a reason. Employers usually offer fixed-term contracts to employees in case of a temporary increase in labour demand, for example, seasonal work in agriculture, forestry, the food industry and construction. Fixed-term contracts can be agreed, prolonged or renewed for a period of three years. Part-time work is rare because of low average wages. The normal weekly working time of full-time employees has been more or less stable over the last four years, amounting to 40.8 hours in 2002 and 40.6 hours in 2004. There has been a slight decline in part-time work, from an average weekly working time of 23.3 hours in 2002 to 21.8 hours in 2004.

Overtime has become an important issue, especially in the last two years. An employee may be required to work overtime up to a total of 150 hours a year. An employer can also, on good grounds, agree overtime with employees beyond this limit, up to a further 250 hours. According to the available information from the trade unions employers are interested in increasing the annual overtime limit. Employees complain that management often ask them to work overtime without compensation. However, no reliable statistics are available on the amount of overtime, for example, average annual overtime in Slovakia. There are some indicative figures in labour force sample surveys issued by the Statistical Office. Nevertheless, Table 2 presents an estimate of average overtime hours worked per year and per employee.

The new old-age pension system allows early retirement once again. Since 2004 an employee who fulfils the criteria for early retirement (minimum years worked and minimum value of early retirement pension) may exercise this option. Some employees who lose their job a few years before statutory retirement age choose this because they have little chance of finding another job at this age. On the other hand, in this case the pension is lower: the old-age pension is reduced proportionally according to the number of working years short of the statutory retirement age. According to the Report on the Social Situation of the Population of the Slovak Republic, as of 30 June 2004 there were 811,527 old-age pensioners in
Slovakia, of whom 1,356 had taken early retirement. The trade unions often agree to application of the selective dismissal principle in collective agreements: if, for example, two parents – breadwinners – in the same family are due to be made redundant one of them is spared.

The new old-age pension system favours employees willing to work beyond retirement age because they receive their pension and can continue earning wages at the same time. In this case, the old-age pension is annually upgraded by 0.25% for each month worked beyond the statutory retirement age. If an employee works beyond the statutory retirement age without claiming an old-age pension their pension is annually upgraded by 0.5% for each month.

Tables 18.2 and 18.3 present more statistics on various working time indicators.
Table 18.2: Employment and working time indicators

<table>
<thead>
<tr>
<th>Types of contract (in ‘000)</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Men Women</td>
<td>Total Men Women</td>
<td>Total Men Women</td>
<td>Total Men Women</td>
<td></td>
</tr>
<tr>
<td>% employed on full-time open-ended contract</td>
<td>97.9</td>
<td>98.7</td>
<td>96.9</td>
<td>98.1</td>
</tr>
<tr>
<td>% employed on fixed-term contract</td>
<td>5.1</td>
<td>5.1</td>
<td>5.1</td>
<td>4.8</td>
</tr>
<tr>
<td>% employed on part-time contract</td>
<td>2.1</td>
<td>1.3</td>
<td>3.1</td>
<td>1.9</td>
</tr>
<tr>
<td>% self-employed</td>
<td>8.3</td>
<td>11.2</td>
<td>4.8</td>
<td>9.1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Working hours</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory maximum working week (hours)</td>
<td>42.5</td>
<td>42.5</td>
<td>42.5</td>
<td>40.0</td>
</tr>
<tr>
<td>Statutory maximum working day (hours)</td>
<td>9.5</td>
<td>9.5</td>
<td>9.5</td>
<td>9.0</td>
</tr>
<tr>
<td>Average collectively agreed normal weekly hours</td>
<td>40.90</td>
<td>–</td>
<td>–</td>
<td>38.93</td>
</tr>
</tbody>
</table>

Examples of collectively agreed normal weekly hours in a number of important sectors or branches

| Education | 42.5 | – | – | 40 | – | – | 37.12 | – | – | 37.86 | – | – |
| Wood industry, forestry and water supply | 40.14 | – | – | 37.35 | – | – | 37.63 | – | – | 37.53 | – | – |
## Collective bargaining on working time: recent European experiences


### Table: Usual hours worked per week, full-time employees

<table>
<thead>
<tr>
<th>Year</th>
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<th>Women</th>
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</thead>
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<td>-</td>
<td>-</td>
</tr>
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<td>-</td>
<td>-</td>
</tr>
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<td>39.33</td>
<td>-</td>
<td>-</td>
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<tr>
<td>2004</td>
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### Table: Usual hours worked per week, part-time employees

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<thead>
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<td>-</td>
<td>-</td>
</tr>
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<tr>
<td>2003</td>
<td>40.4</td>
<td>40.9</td>
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<tr>
<td>2004</td>
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<td>40.0</td>
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### Table: Examples of usual hours worked per week in a number of important sectors (if differences exist):

<table>
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<td>41.4</td>
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<td>41.7</td>
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<tr>
<td>Hotels and restaurants</td>
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<td>41.8</td>
</tr>
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<td>Education</td>
<td>39.8</td>
<td>40.0</td>
<td>39.8</td>
<td>38.5</td>
</tr>
<tr>
<td>Hotel and restaurants</td>
<td>39.8</td>
<td>40.0</td>
<td>39.8</td>
<td>38.5</td>
</tr>
<tr>
<td>Statutory maximum hours of overtime per year</td>
<td>150</td>
<td>150</td>
<td>150</td>
<td>250</td>
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<tr>
<td>Average number of hours overtime worked per year, per employee (approximate)</td>
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<td>-</td>
<td>-</td>
<td>(63)</td>
</tr>
<tr>
<td>Statutory minimum annual paid leave (days)</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>In 16% Coll. agreem. +5 days</td>
</tr>
<tr>
<td>Average collectively agreed annual paid leave (days)</td>
<td>In 15% Coll. agreem. +5 days</td>
<td>-</td>
<td>-</td>
<td>In 25% Coll. agreem. +5 days</td>
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<td>Labour Code</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Labour Force Surveys of 4th quarters of 2001, 2002, 2003 and 3rd quarter of 2004</td>
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<td>Statistical Office of the Slovak Republic</td>
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<td>-</td>
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<tr>
<td>Official data on overtime worked per year and per employee (own calculations in brackets)</td>
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Table 18.3: Atypical forms of work

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<th></th>
<th>2004</th>
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<tbody>
<tr>
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<td>Women</td>
<td>Total</td>
<td>Men</td>
<td>Women</td>
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<td>18.8</td>
<td>15.1</td>
<td>19.5</td>
<td>21.9</td>
<td>16.6</td>
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<tr>
<td>Nights</td>
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<td>15.4</td>
<td>9.2</td>
<td>14.1</td>
<td>17.7</td>
<td>9.7</td>
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<td>21.7</td>
<td>23.5</td>
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</tr>
<tr>
<td>Sunday</td>
<td>16.0</td>
<td>17.8</td>
<td>13.8</td>
<td>17.3</td>
<td>19.9</td>
<td>14.3</td>
</tr>
<tr>
<td>At home</td>
<td>2.6</td>
<td>2.1</td>
<td>3.3</td>
<td>2.7</td>
<td>2.0</td>
<td>3.6</td>
</tr>
</tbody>
</table>


Bibliography

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Act No. 453/2003 Coll. on state administrative bodies in social affairs, family and employment services.
Act No. 461/2003 Coll. on social insurance.
Act No. 551/2003 Coll. on civil service.
Act No. 5/2004 Coll. on employment services and on the amendment and supplementation of some laws.
19. Collective bargaining and working time in Slovenia

Andrej Kobont

19.1. Working time in its national and international contexts

19.1.1. Working time extension

In the context of increasing globalisation, national standardised working hours provide some protection against international competition among employers to drive down standards. At the same time, increased globalisation is putting more pressure on the dismantling of nation-based protective standards governing labour norms, including working time. The absence of international working time standards may promote international competition over working time, especially in industries in which there is pressure and the possibility to drive down labour costs. As the pressures mount to become more competitive globally (rather than just nationally), and as production becomes more standardised and skill levels more generic, the locus of competition shifts to competition between workers in different countries (Heinricks 1991, in Heiler 1998: 268).

Heiler (1998) presents a number of conditions under which longer working days are becoming more common:

- **Longer operating hours.** First, we can get some sense of whether longer working days are likely to be present by looking at the hours of operation of workplaces: where workplaces operate for longer than 12 hours a day, there is greater scope for extended hours. Workplaces operating 24 hours per day provide the preconditions for longer shifts.

- **Globalisation.** Increased competition between workers and employers at both national and – increasingly – international levels is generating pressure to drive down labour costs. Pressure to reduce labour costs and costs associated with the utilisation of plant and equipment leads to pressure for the extension of operating hours and increasing the duration and intensity of the working day.

- **The ‘cascade effect’.** Deregulation of one service/sector puts pressure on the operating hours of other services/sectors.

- **Inter-industry effects.** Conditions lost by one union or set of unions drives a breakdown in the regulation of hours which then spills over to other industries.
• **Job insecurity.** A high level of unemployment and associated perceptions (real and imaginary) of job insecurity increase managerial prerogatives and capacity to secure the working time arrangements most beneficial for the management.

• **HRM and organisational culture.** Managerial expectations of long hours are often mistakenly equated with employee commitment. Longer hours as a way of employees demonstrating their commitment then becomes entrenched in the workplace culture.

• **The rhetoric of flexibility.** The genuine need that many employees have for flexibility is being inappropriately substituted by longer, unpaid hours. We are seeing increased flexibility of employees at the expense of flexibility for employees.

• **Decentralised bargaining.** As bargaining shifts to workplace level, the combination of the above factors can be seen in the shift of bargaining strength away from workers towards management. The asymmetry in the bargaining relationship means that it is easier for management to remove the protective conditions surrounding working hours.

Among the factors mentioned above, only three are unambiguously practiced in Slovenia: (i) longer operating hours, (ii) globalisation and (iii) the rhetoric of flexibility, which concur with EU regulations on working time, EMU criteria and unemployment (especially within the young population).

**EU regulations on working time or EU policy frameworks such as the European Employment Strategy**

The EU working time directive limits weekly working time, including overtime, to 48 hours and states exceptions for longer working time. The conditions under which workers can work more than 48 hours should be made even stricter by the new regulations of the European Commission. The willingness of a worker to have an extended working day will not be part of the employment contract but will have to be declared separately in writing and be valid for no more than one year, though with the possibility of further extension. In no case will it be permissible for workers to work more than 65 hours a week. EU member states can decide on an extension of working time, in accordance with the new regulations, only if there is a relevant collective agreement or an agreement among the social partners.

Some regulations represent a potential threat to workers’ rights. The so-called opt-out that gives member states the possibility to exceed the working week limitation if the worker agrees, and is provided by the law, remains unchanged. The employer appears to be subject to the constraint that the worker’s agreement in writing is required; however, what is to stop employers pressuring workers to agree? The directive also envisages lengthening the reference term – the period during which the exceeded regular working time is still acceptable – from the current four months to one year.
The trade unions in Slovenia are certain that the suggested changes tend to achieve better competitive positions on basis of longer working time, as they extend the working time and introduce new exceptions. Therefore they expressed their strong opposition against these proposals.

*Monetarism and the euro entry criteria, which underline the need for balanced budgets and reduced state spending*

In November 2003, the Slovenian government adopted a programme aimed at entry into ERM 2 and subsequent introduction of the euro, possibly in 2007. All the social partners support this move. However, ERM 2 and eurozone entry will mean changes to current pay and social security benefit indexation systems, and there is considerable debate about how to protect the poor and low-wage workers, with a forthcoming tax reform proving particularly controversial.

Although the Slovenian unemployment rate is relatively low in comparison with some other EU countries, unemployment affects the situation on the labour market and gives more power to the employers. It should also be mentioned that unemployment is growing in the textile and leather industry in which the common answer to increased competition has been intensification of work.

**19.1.2. Working time**

Working time is regulated by the Employment relationship act (ERA) of 2003. It determines that a full working week shall not exceed 40 hours. Collective agreements may stipulate a working time shorter than 40 hours a week, but not less than 36 hours a week. Exceptionally, the law or other regulation (in accordance with the law) or collective agreement may provide a full working week of less than 36 hours for jobs where there is a greater risk of injury or damage to health.

At the employer's request, workers shall be obliged to perform work beyond full working hours – that is, overtime – in the following cases:

- an exceptional increase in the workload of the enterprise;
- if a continuation of work or the production process is required in order to prevent material damage or a threat to life and health;
- if this is necessary to avert damage to work equipment that would otherwise result in suspension of work;
- if necessary to ensure the safety of people, property or traffic;
- in other exceptional, urgent or unforeseen cases provided for by the law or by the branch collective agreement.
The employer must order overtime in writing, as a rule, and in advance. Should it not be possible, due to the nature of the work or the urgency of the overtime, to order the overtime in writing and in advance, the overtime may also be ordered orally, although a written order must be given to the worker subsequently, no later than the end of the working week after completion of the overtime.

Overtime may not exceed eight hours a week, 20 hours a month and 180 hours a year. A working day may not exceed 10 hours. Daily, weekly and monthly time limits may be regarded as averages over the accounting period stipulated by law or collective agreement, which may not exceed six months.

On the other hand, overtime may not be imposed if the work can be performed within normal working hours by means of the appropriate organisation and distribution of work or working time, the introduction of new shifts, or the employment of new workers. An employer may not impose overtime in the following cases: female workers during pregnancy; male workers with parental responsibilities under the Act; older workers; workers under the age of 18; workers whose health could, in the opinion of a health commission, be aggravated as a result of such work; workers whose full working week is less than 36 hours due to work involving higher risks of injury or damage to health; and workers working part-time in accordance with the regulations on pension and invalidity insurance, health insurance, or other regulations.

The distribution and conditions for the temporary redistribution of working time shall be defined in the employment contract in accordance with the law and the collective agreement. Before the beginning of a calendar and/or business year, the employer shall fix an annual distribution of working time and notify workers and trade unions accordingly. The employer must also notify the workers in writing concerning the temporary redistribution of working time no later than one day before the redistribution of the working time of an individual worker and three days before the redistribution of the working time of more than ten workers. In case of an even distribution, full working hours may not be distributed over fewer than four days in a week. Due to the nature or organisation of the work or the needs of users, however, working time may be distributed unevenly. In the case of uneven distribution and temporary redistribution of full working hours, working time may not exceed 56 hours in any given week and full working hours must be taken into account as an average work obligation over the accounting period, which must not exceed six months.

19.1.3 Flexible contracts

All regulations on atypical forms of employment are dealt with in the Employment relationship act in the chapter on the employment contract (in a subchapter on the ‘particularities’ of the employment contract). The Employment relationship act
regulates the following atypical forms of employment: fixed-term employment; temporary agency work; public works employment; part-time employment; and home work.

With regard to part-time work, the Employment relationship act provisions do not differ substantially in their contents from the previous rules, but they are now set out in a more clear and precise way.

Figure 19.1: Percentage of employees in flexible employment in Slovenia, 1991–2001

Part-time work is relatively rare among Slovenian employees: only 6.6% of the active population worked part-time in 2001 (Figure 19.1). It is not popular among people looking for work, either. One of the main reasons for the low level of part-time work among both women and men is that a full-time income is generally necessary to achieve a decent standard of living in Slovenia. The draft National Active Policy for 2004, issued in November 2003, includes a measure to promote part-time work. The provisions of collective agreements on part-time work repeat the Employment relationship act provisions to a certain extent, although in some cases they also refer to the reconciliation of work and family life. For example, it might be provided that the distribution of working time is to be determined by agreement between worker and employer where a worker is working less than full time due to child care commitments: for example, when the parent of a child of up to 17 months is working half time.
Andrej Kobont

This type of employment is used primarily as a transition to retirement for older employees and as a way of employing the disabled. In 2001 the percentage of part-time employees by gender was as follows: 44.4% men and 55.6% women. There is some flexibility in the Slovenian labour market, but it is only showing a weakly increasing trend (approximately 2% among the active population over the last decade). The reason why this type of employment is not well developed in Slovenia is that the development of the labour market, production, social security and other factors has not been oriented towards part-time employment.

Slovenia has a traditional labour market structure and it would be impossible to change it in a short time. Structural changes and the growing dominance of the service sector cannot change the attitudes of employers and employees overnight. Both (especially employees) still have cultural frameworks characteristic of the time when full-time, open-ended employment was the norm. This also applies to women, who account for the bulk of part-time employment in other European countries. Therefore there is neither the economic 'push' nor the social 'pull' required to establish this type of employment in society. On the other hand, social policy does not support such employment, either.

19.1.4. Retirement age and pre-retirement

Within the framework of the European labour market and employment reform the European Council has decided that, due to population ageing, by 2010 half the population of Europe aged 55-64 years must be employed. The retirement age must thus be raised by approximately 5 years, on average. The EU has already started to introduce so-called 'active ageing', according to which Europeans are to work five more years than hitherto. Although this policy is a logical response to population ageing, the question arises as to what the lengthening of employment time will mean for the life quality of older employees. Will it really lead to higher living standards and greater social involvement on the part of the elderly? What will lengthened employment time mean for physical workers in particular, those who have been employed in hard labour all their lives?

In 2000, retirement reform in Slovenia reduced pensions under the obligatory retirement and disability insurance and introduced stricter retirement conditions. Besides the inter-generational financing of pensions (current contributions of employees are transformed into the pensions of the retired) the Act introduces the 'capital-based' way of financing pension insurance (the individual saves for his own pension). The insured person is granted the right to retire at the age of 58 after a fixed period of employment (38 years for women and 40 years for men). The pension is based on 72.5% of the average monthly salary (in the case of those paying their own insurance contributions) received in the person’s 18 best paid consecutive years (after 1 January 1970). The most important changes made to obligatory retirement insurance are: gradual increase of retirement age (the low-
est full retirement age depends on length of employment); gradual increase in the number of years serving as the basis of calculation for pensions from 10 to 18 consecutive years; reduction of percentage of average wage paid as pension from 85% to 72.5%.

19.2. Collective bargaining on working time

Sectoral collective agreements generally provide for a normal 40-hour working week, as laid down in the Employment relationship act.

The Economic and Social Council deals with the wider questions (national budget, fiscal and price policy, the economic system, and so on).

The rights and obligations of employment relationships are determined by representatives of employers and employees in collective agreements. These are, on the one hand, civil-law instruments and, on the other, legal norms because collective agreements are inclusive and affect a population much wider than the parties to the agreement. The present collective bargaining structure is highly centralised.

Within the framework of tripartite social and pay policy agreements, there is a general collective agreement for the whole private sector, to which collective agreements for specific sectors (and then enterprise collective agreements) are subordinate. Rights arising from collective agreements constitute minimum standards for rights in individual employment contracts.

The Free Trade Unions of Slovenia (ZSSS) concentrates approximately half the trade union membership in Slovenia. The Chamber of Commerce and Industry (GZS) and the Chamber of Crafts (OZS) have obligatory membership, while the Slovenian Employers’ Association (ZDS) and the Craft Employers’ Association (ZDOD) have voluntary membership.

Slovenian workers have relatively strong participation rights and participatory agreements at enterprise level, constituting a channel through which they may influence restructuring and job security. In addition, the Slovenian system of corporate governance may be seen as an ‘insider’ system, although workers can in many cases influence corporate decision-making as co-owners (one of the consequences of the Slovene privatisation model is that in a number of companies at least one-third of the workforce are co-owners).

19.2.1. The case of Kolektor, Idrija

In August 2004 Kolektor, a metal company, instigated the idea of a longer working day. Slovene legislation, in the opinion of the Kolektor management, does not promote productivity growth or improvements in production structure. The main obstacles are limits on overtime and fixed-term employment, shorter effective
working time compared to a number of other European countries and high taxes on overtime.

They suggested amending the legislation to allow employers to extend working time in exceptional situations by 120 hours a year in total. The first 60 hours would not be paid and the remaining 60 would be paid gross. Employees would not have to pay social security or personal income tax contributions. The employer, on the other hand, would not have to pay tax on the wages but would pay the social security contributions on the gross assessment. The payment for the extended working time would not be included in either workers' taxable income or the sum used to calculate their pension.

Kolektor claims that extended working time would be introduced only in extraordinary circumstances with the prior agreement of the Ministry, and would not last more than five years. Lengthening this period would then be discussed at enterprise level and require the agreement of the trade union.

The Kolektor management explains that the introduction of extended working time would in due course increase work efficiency and so productivity, bringing more added value to products, as required by the price pressures of global competition. Most of Slovene industry, according to Kolektor, will not be able to compete in the long run with countries with lower labour costs without increasing efficiency, notwithstanding the further automation of production processes.

According to Stojan Petrič, CEO of Kolektor:

As sellers on the world market we constantly face customers insisting on price reductions of 10% every year. The company is looking for solutions in production automation and improved technological processes, as well in increased quality. But this is not enough to meet customer demands for price reductions. Customers can get lower quality products that still meet their requirements from our Chinese competitors at prices that are 30% lower. We will either have to start reducing our prices or get ready to lose customers and orders, and that means redundancies. Without increasing efficiency, enabling us to produce items with higher added value, the majority of Slovene industry will not be able to compete with countries with lower labour costs, despite the further automation of production processes. (Ivačič and Mekina 2004: 4)

19.3. Trade union reactions to working time extension

According to the Metal and Electro Industries Trade Union of Slovenia there is no reason to lengthen working time. The leader of the union, Drago Gajzer, told the
Slovenian Press Agency that current legislation and collective agreements are already flexible enough as far as working time is concerned: for instance, they allow the restructuring of working time, additional part-time employees, and so on. The initiative was considered and discussed by the trade union, but Mr Gajzer has made it clear that the trade union is working hard to reduce working time and envisages increased efficiency arising from improvements in technology and additional employment.

The Free Trade Unions of Slovenia does not think that extending working time is the right way to increase industrial productivity. According to Dušan Semolič, the union president:

The Free Trade Unions strongly oppose lengthening working time. This is in no way the right answer to the modern challenges of globalisation and to the ever stronger demands exerted by competitiveness on the Slovene economy and enterprises. The solution to these difficult questions is not to be found in the employees working even harder, if I may say so, but in increasing the knowledge of employees and management. Our products must be given more added value, making them more attractive to customers. Extending working time is a nineteenth-century answer to the dilemmas of the twenty-first century. … some German companies [have been cited as] extending their working time from 35 to 40 hours per week, but we already have a 40-hour working week. According to EU statistics, our workers work longer hours than average. If we lengthened working time, we would also breach the Employment relationship act. Above all, extending working time will mean more absences due to illness and more disability retirements. It will also hinder the employment of younger workers, who expect a reasonable quality of life and free time.

According to the union the Employment relationship act already allows flexible working time adjustments, for example, within the framework of collective agreements, but the employers do not use this possibility. The secretary general of the Free Trade Unions, Metka Roksandič, also warns that Slovene employers who rely on extending working hours do so partly in imitation of the recent agreement between employers and employees in Germany, but overlook the fact that the employees in Germany also benefit: at Siemens, for example, longer working time was agreed – though only in two factories, employing 6,000 out of a total workforce of 200,000 – but at the same time the employees were assured by the management that Siemens will not move production lines from these two companies over the next 10 years. Dušan Semolič added that companies such as Volkswagen and Deutsche Telekom have reduced working time in order to avoid redundancies.
Representatives of the Ministry of Labour, Family and Social Affairs see no need to change the 40-hour working week instituted by the Employment relationship act of 2003 and accepted by the social partners.

19.4. Collective bargaining and the labour market

If we look at the various types of flexible contract (although the data are very limited) we see that in 2003, 65.9% of Slovenian workers were employed on full-time, open-ended contracts, while 12.3% of employees were employed on fixed-term contracts, still a relatively low figure. It must be stressed, however, that alongside the stabilisation of the Slovene economy – and a gradual increase in the number of jobs on the labour market – the percentage of new fixed-time employment is increasing: about two thirds of new employment is fixed-term. This represents a certain flexibility on the labour market from the standpoint of the employers. The employees affected are mostly younger people (aged 15-24) without extensive experience of full-time, open-ended employment and so more flexible about accepting fixed-term employment: 37.9% of fixed-term employees are aged between 15 and 24 years, accounting for 42.9% of total employment in this age group (Kanjuo-Mrcela and Ignjatovic 2004).

The proportion of employees on part-time contracts increased from 6.1% in 2003 to 10.1% in 2004. On the other hand, the proportion of self-employed decreased: in 2001 and 2002 the self-employed accounted for around 11.8% of employment, falling to 9.8% in 2003 and 9.6% in 2004. The percentage of self-employed women has fallen from 7% in 2001 to 2.4% in 2004. Despite this, the number of self-employed is fairly high, close to the EU average. It is seen as a way of avoiding unemployment and new job creation through active employment policy measures, but is also characteristic of societies with underdeveloped labour markets, that is, without a developed service sector enabling part-time employment which guarantees longer term employment.

One problem attaching to further promotion of self-employment is that while in the short run it might reduce unemployment, in the long run it would change the structure of the labour market and possibly limit the development of other flexible employment forms (Kanjuo-Mrcela and Ignjatovic 2004).

As already mentioned, working time is regulated by the Employment relationship act which lays down a maximum working week of 40 hours, that is, 8 hours a day. The average collectively agreed normal weekly hours are in line with the Act. Annual collectively agreed working hours are 1800 for both men and women. In fact, in 2003 men worked an average of 40.9 hours and women 39.3 hours. Working time is longest in industry and agriculture.
The Employment relationship act allows 180 hours of overtime a year, confirmed by collective agreements. Statutory minimum annual paid leave – also collectively agreed – is 20 days. Unfortunately, no data are available for annual overtime actually worked.

19.5. Conclusion

We have looked primarily at working time extension in Slovenia, an issue which has only recently begun to receive attention. We have presented the reasons for working time extension presented in the literature and added some which in our view are more specific to Slovenia. We have also presented in detail the views of the employer Kolektor and of the trade unions.

We have looked at the legislative framework, working time data, different types of contract (full-time, open-ended, fixed-term, part-time, self-employment) and the labour market.

We believe that both sides in the bargaining process should be aware of the importance of competitiveness and should try to find ways to improve it.

Bibliography

Employment relationship act (Zakon o delovnih razmerjih).


### Annex

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<td>Average collectively</td>
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<td>working hours</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Usual hours worked per</td>
<td>40.5</td>
<td>41.1</td>
<td>39.9</td>
<td>40.4</td>
</tr>
<tr>
<td>week, full-time employees</td>
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</tbody>
</table>

Examples of usual hours worked per week in a number of important sectors

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Men</td>
<td>Women</td>
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</tr>
<tr>
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<td>41.6</td>
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<tr>
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<td>41.1</td>
<td>40.3</td>
<td>40.7</td>
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<tr>
<td>Services</td>
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<td>41.1</td>
<td>39.8</td>
<td>40.3</td>
</tr>
<tr>
<td>Statutory maximum hours</td>
<td>180</td>
<td>180</td>
<td>180</td>
<td>180</td>
</tr>
<tr>
<td>of overtime per year</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</table>
## Collective bargaining on working time: recent European experiences

<table>
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<th>2002</th>
<th>2003</th>
<th>2004</th>
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<tbody>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Men</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Women</strong></td>
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### Average collectively agreed maximum hours of overtime per year

<table>
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<th>Men</th>
<th>Women</th>
</tr>
</thead>
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<td>2001</td>
<td>180</td>
<td>180</td>
<td>180</td>
</tr>
<tr>
<td>2002</td>
<td>180</td>
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<tr>
<td>2004</td>
<td>180</td>
<td>180</td>
<td>180</td>
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### Annual leave

<table>
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<th>Women</th>
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</thead>
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<tr>
<td><strong>Statutory minimum annual paid leave (days)</strong></td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>2001</td>
<td>20</td>
<td>20</td>
<td>20</td>
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<tr>
<td>2002</td>
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<td>20</td>
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<td>2003</td>
<td>20</td>
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<td>20</td>
</tr>
<tr>
<td>2004</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Average collectively agreed annual paid leave (days)</strong></td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>2001</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>2002</td>
<td>20</td>
<td>20</td>
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</tr>
<tr>
<td>2003</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>2004</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
</tbody>
</table>
20. Collective bargaining and working time in Spain

Amaia Otaegui Fernández and Elena Gutiérrez Quintana

20.1. Introduction

The election victory of the Spanish Socialist Party (PSOE) in 2004 has led to a resumption of dialogue with the social partners and to a recognition of their role, a welcome change from the contempt shown towards them during the latter stages of the Popular Party government. Barely three months after the socialists came to power, the Spanish prime minister and the leaders of the two trade unions (UGT and CC.OO.) and the employers' associations (CEOE and CEPYME) signed the 2004 Declaration on Social Dialogue, sending out a clear message to society that the government was committed to working with the social partners. The Declaration's three aims are promotion of competitiveness, stable employment and social cohesion. To this end, it tackles key issues with regard to the labour market, collective bargaining and the role of the state, presenting a common framework for autonomous bargaining at lower levels.

The Declaration establishes a number of issues to be tackled through social dialogue, virtually all of which involve the government, trade unions and employers, with the exception of collective bargaining, which only involves the trade unions and the employers. To date, agreements have been concluded on such matters as the Subsidiary Regulation to the Immigration Act, the minimum wage and the Regulation on the Extension of Collective Agreements, which still awaits publication. As far as the bipartite dialogue between employers and trade unions is concerned, two agreements have been reached: the 2005 Intersectoral Agreement on Collective Bargaining and the Agreement on Out of Court Settlements.

Successful negotiations have also led to the drawing up of a Bill that would enable collective agreements to contain clauses allowing an employee's employment contract to be terminated when he or she reaches the standard retirement age established by Spain's social security legislation, as long as such clauses are consistent with the collective agreement's employment policy goals (improving job stability, converting temporary contracts into permanent contracts, maintaining employment levels, recruiting new staff, or any other measures aimed at improving the quality of jobs). Employees should have paid social security contributions for the minimum period or for a longer period if stipulated by the collective agreement and should meet all the conditions required by Spanish social security legislation for entitlement to a contributory retirement pension. The Bill...
is currently being considered by Parliament and should be passed in the near future.

Social dialogue in Spain is now characterised by a commitment to tackle problems related to employment, the labour market and social welfare. The two main problems of the Spanish labour market remain the insufficient volume of work and the high number of temporary jobs. As to the latter, figures from the Labour Force Survey show that the use of successive fixed-term contracts continues to be a major problem. Out of a total of more than four million temporary workers, a million indicated that they had been working continuously for the same company for a period longer than the time that had elapsed since they signed their most recent contract or contract renewal. In other words, these people are being given successive temporary contracts by their employers.

Solving these problems will require the development of a new model of production that treats the creation of good quality jobs as a competitive advantage that contributes towards a more productive economy. Significant change is taking place in company-level industrial relations owing to the fact that management practices are beginning to recognise the key role of human resources and the fundamental importance of employees acquiring new skills. A far less progressive trend, however, is the increased lobbying by employers seeking to weaken the European Union’s industrial relations regulations.

20.2. Collective bargaining and working time in 2004

Working time is a central issue in collective bargaining in Spain. Working time reduction continues to be a key trade union objective, which serves the three aims of creating jobs, improving working conditions and implementing existing regulations on work/life balance. Working time reduction and the regulation of working time distribution are a priority matter for the social partners and something that the trade unions are constantly demanding of employers’ associations and businesses.

The Intersectoral Agreements on Collective Bargaining signed in 2002 and in subsequent years by the trade unions and employers’ associations (CC.OO., UGT and CEOE-CEPYME) stressed the need for a major effort to improve working time management. They recognised that the duration and distribution of working time are key to determining employees’ working conditions and have a major impact on their social and personal lives. Furthermore, the duration and distribution of working time and the way in which it is managed are also key in influencing labour productivity and machine capacity utilisation.

Indeed, the most recent Agreement on Collective Bargaining signed by the trade unions and the employers’ associations stresses the general goal of increasing
efforts to improve working time management and to address the duration and redistribution of working time in order to meet the shared aim of squaring workers’ needs with business requirements. In addition, it stated that ‘the use of flexible working time arrangements should be accompanied by the conditions necessary for their implementation, and these should be negotiated via the appropriate channels’.

For the unions, collective agreements are one of the main instruments for achieving working time reductions and increasing the number of hours by which working time is reduced, with a view to gradually moving towards a 35-hour week. Table 20.1 presents the key results achieved in this respect over the past few years.

### Table 20.1: Working time reduction through collective bargaining, Spain, 2004

<table>
<thead>
<tr>
<th>Year</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Percentage of agreements in which working time was reduced</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agreements including a reduction of working time</td>
<td>28.4</td>
<td>29.6</td>
<td>28.1</td>
<td>26.9</td>
</tr>
<tr>
<td>Agreements not including a reduction of working time</td>
<td>71.6</td>
<td>70.4</td>
<td>71.9</td>
<td>73.1</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td><strong>Percentage of workers who got a working time reduction</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agreements including a reduction of working time</td>
<td>34.7</td>
<td>31.1</td>
<td>36.9</td>
<td>31.1</td>
</tr>
<tr>
<td>Agreements not including a reduction of working time</td>
<td>65.3</td>
<td>68.9</td>
<td>63.1</td>
<td>68.9</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td><strong>Average agreed number of annual working hours</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agreements including a reduction of working time</td>
<td>1,762.20</td>
<td>1,761.60</td>
<td>1,759.70</td>
<td>1,760.20</td>
</tr>
<tr>
<td>Agreements not including a reduction of working time</td>
<td>1,758.90</td>
<td>1,755.50</td>
<td>1,754.60</td>
<td>1,753.30</td>
</tr>
<tr>
<td>Total</td>
<td>1,760.10</td>
<td>1,758.30</td>
<td>1,756.40</td>
<td>1,755.80</td>
</tr>
</tbody>
</table>

Source: Figures compiled by UGT and CC.OO. based on Ministry of Labour and Social Affairs data.
In line with trade union objectives, an overall reduction of average annual working time was agreed in collective agreements in the period 2001-2004. This is a result of the fact that every year a working time reduction is agreed in over a quarter of all collective agreements, affecting some 31-37% of workers covered by collective agreements. In terms of working time flexibility, collective agreements in Spain usually regulate the distribution of working time and its flexible organisation on an annual basis. However, to prevent companies from taking unilateral decisions concerning the distribution of working time, many agreements include participation mechanisms which give workers and their representatives a voice on this issue. The traditional full-time job based on a certain number of hours per day and a certain number of days per week continues to be the most widespread working time arrangement. However, alternative arrangements are being negotiated at sectoral and company level, involving new forms of working time distribution and new ways of implementing them: for example, annualised working hours, new systems for holiday allocation, and so on.

Collective agreements are thus gradually beginning to incorporate more complex working time regulations. They now cover matters such as the number of working hours and how they are calculated (that is, on an annual, monthly, weekly or daily basis), the negotiation of annual work schedules, the regulation of time off and holiday allocation. All these matters are negotiated on the basis of the relevant legal regulations regarding the maximum number of working hours, statutory daily breaks and weekly time off, restrictions on night work and child labour. The Workers’ Statute stipulates that working time may be calculated on a weekly or annual basis and that, when calculated on an annual basis, the statutory working week may not exceed 40 hours. In other words, Spain continues to have a 40-hour week with a maximum working day of 9 hours, a statutory break of 12 hours between any two working days and a minimum of one and a half days off per week. Collective agreements can modify these regulations and establish variable and uneven working time distribution over the course of a year.

As far as overtime – that is, hours worked over and above the maximum working day – is concerned, in principle it is voluntary, but in practice the company may require employees to work overtime if they have signed an agreement to this effect or if it is stipulated by the collective agreement. It may also be required if it is necessary to prevent accidents or repair damage requiring urgent attention or caused by exceptional circumstances, that is, instances of ‘force majeure’. The statutory maximum is 80 hours overtime per year; however, this does not include overtime worked in cases of force majeure or cases where the worker took time off in lieu within 4 months of performing the overtime. Overtime is prohibited for employees under the age of 18 and for people who normally work night shifts,
that is, between 10 p.m. and 6 a.m. Overtime pay or time in lieu are determined either by mutual agreement between management and workers or by collective agreement, and overtime rates may not be lower than the standard hourly rate of pay.

The flexibilisation of working time has become an important issue for companies adjusting to changes in the economy and wishing to reduce labour costs. From an employer’s point of view, annualised working hours offer the advantage of enabling them to reduce overtime and costs related to temporary contracts, as well as providing greater operational flexibility, making it easier to achieve continuous production and to adjust staffing levels in response to changing requirements. In short, it helps them to increase productivity.

As far as the workers are concerned, annualised hours have an impact on basic issues such as pay, overtime and shift bonuses. They also raise the question of the conditions governing how and when accrued hours may be taken off. Furthermore, they can lead to work/life balance difficulties, especially when, as is often the case, management gives workers very short notice about when they can take their holidays or which shifts they have to work. It is important for workers to know in advance when they will be working because without this information it is hard for them to plan their leisure time and the time spent with their families.

For the trade unions, collective bargaining – at the different levels at which it takes place – should seek to ensure a balance between the implementation of flexibilisation measures within companies and greater levels of employment protection for workers, avoiding (wherever possible) job insecurity and the use of successive temporary contracts, and endeavouring to increase the security and quality of jobs. In line with this, the 2004 Agreement on Collective Bargaining includes, for example, measures to prevent the use of successive fixed-term contracts, as well as the definition of minimum conditions to be met by companies if they decide to outsource work. As far as subcontracting is concerned, this year’s collective bargaining round continued to place strong emphasis on promoting security for subcontracted workers by establishing clauses obliging companies to keep the same temporary workers on in the event of them changing from one subcontractor to another.

CC.OO. and UGT have also emphasised the need to increase employment and to create better quality jobs. Spain continues to experience low levels of employment and high levels of temporary employment, with two areas giving particular cause for concern: the low number of women in work and the high percentage of young people, women and immigrants on temporary contracts. These are long-standing problems that cannot simply be put down to the current economic situation. They are in fact directly linked to the nature of Spanish industry and the approach to competitiveness taken by Spanish businesses. The poor quality of jobs in Spain,
the prevalence of temporary contracts and the lack of job security are to a large extent a consequence of the lack of investment in new technologies and training and the tendency for companies to compete solely on the basis of low labour costs. Jobs continued to be created during 2004, but the rate at which they were created slowed down. According to the annual average recorded by the Labour Force Survey, 69.5% of the jobs created in 2004 were permanent jobs. This represents a marked decrease with regard to previous years when permanent jobs accounted for approximately 80% of new jobs. At the same time, the number of temporary jobs is growing twice as fast, and part-time work is also increasing, as is the number of jobs performed by immigrants. Furthermore, more than half the jobs created last year were medium to high-skilled jobs. In summary, the jobs that are being created lack a solid industrial basis and are overly dependent on the economic cycle. This, together with employers’ failure to make proper use of the existing forms of employment contract, is preventing a reduction in both the number of temporary workers and indeed the number of accidents at work.

Following the above, on the insistence of the unions, job creation or the preservation of jobs has played an important role in collective bargaining in recent years. In 2004, 44% of collective agreements (covering 57% of workers) contained clauses on job creation. The most common measure is the so-called hand-over contract (contrato de relevo) that creates jobs by allowing workers to take partial retirement with a new part-time employee filling the hours vacated. This measure was negotiated in 15% of collective agreements (covering 23% of workers). The second most widespread measure was the conversion of temporary contracts into permanent contracts which was stipulated by 13% of agreements (covering 22% of workers). Eight percent of new agreements (covering 8% of workers) contained provisions on maintaining staffing levels. As for the most direct expression of companies’ commitment to promoting employment, measures concerning net job creation figured in 3% of collective agreements (covering 6% of workers).

20.3. Trade union objectives and strategies

The trade unions have defined a number of objectives and strategies concerning working time issues for the coming years. First of all, the aim is to continue to work towards a reduction in working time and to ensure that when flexible working conditions are introduced they are accompanied by legal and contractual guarantees of job security. Secondly, unions aim to make it a priority to achieve greater trade union involvement in the establishment of working time arrangements with a view to promoting greater job security, ensuring that real working hours do not exceed negotiated working hours, influencing the organisation of work, and ensuring that the need for an appropriate work/life balance is met. Thirdly, trade unions aim to establish instruments for trade union participation in and monitor-
ing of management decisions regarding work organisation and to be involved in the development of corporate policies concerning the introduction of new technologies and environmental management. Unions also want to be involved in ensuring the correct implementation of such policies and to ensure equal treatment and conditions for all staff. Fourthly, unions set out to evaluate the impact of the working time measures introduced on women and young people as well as on competitiveness, productivity and employment. Fifthly, unions want to limit the reasons for which workers can be required to do overtime and to introduce measures to limit overtime as much as possible. Finally, the Spanish trade unions consider, in view of the growing importance of the European level for working time issues, as well as the attempts at European level to reduce worker protection in this respect, that an effective response to this threat will require working with the ETUC – at European, national and sectoral level – on the action plan concerning the proposals for the review of the Working Time Directive, in order to prevent a lengthening of the minimum working day and to ensure that time on call is counted as working time.
## Table 20.1A: Types of contract

<table>
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<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
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<tbody>
<tr>
<td>% of workers with permanent contracts</td>
<td>68</td>
<td>70</td>
<td>66</td>
<td>69</td>
<td>71</td>
<td>67</td>
<td>69</td>
<td>71</td>
<td>67</td>
<td>69</td>
<td>71</td>
<td>66</td>
</tr>
<tr>
<td>% of workers with fixed-term contracts</td>
<td>32</td>
<td>30</td>
<td>34</td>
<td>31</td>
<td>29</td>
<td>33</td>
<td>31</td>
<td>29</td>
<td>33</td>
<td>31</td>
<td>29</td>
<td>34</td>
</tr>
<tr>
<td>% of workers with part-time contracts</td>
<td>8</td>
<td>3</td>
<td>17</td>
<td>8</td>
<td>2</td>
<td>17</td>
<td>8</td>
<td>2</td>
<td>17</td>
<td>9</td>
<td>3</td>
<td>18</td>
</tr>
<tr>
<td>% of workers employed by temporary employment agencies</td>
<td>4</td>
<td>4</td>
<td>5</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>% of self-employed workers</td>
<td>19</td>
<td>22</td>
<td>16</td>
<td>19</td>
<td>21</td>
<td>15</td>
<td>18</td>
<td>21</td>
<td>15</td>
<td>18</td>
<td>21</td>
<td>14</td>
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</table>
Table 20.2A: Collective bargaining in Spain, 2004

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<th>Level</th>
<th>No. of agreements</th>
<th>No. of employees</th>
<th>No. of companies</th>
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</thead>
<tbody>
<tr>
<td>Company-level agreements</td>
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<td></td>
</tr>
<tr>
<td>Interprovincial</td>
<td>350</td>
<td>394 345</td>
<td>350</td>
</tr>
<tr>
<td>Provincial</td>
<td>2 744</td>
<td>400 185</td>
<td>2 744</td>
</tr>
<tr>
<td>Sectoral agreements</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>National</td>
<td>63</td>
<td>1 991 522</td>
<td>134 956</td>
</tr>
<tr>
<td>Interprovincial</td>
<td>22</td>
<td>43 003</td>
<td>105</td>
</tr>
<tr>
<td>Autonomous community</td>
<td>58</td>
<td>453 499</td>
<td>50 772</td>
</tr>
<tr>
<td>Provincial</td>
<td>928</td>
<td>4 500 124</td>
<td>712 256</td>
</tr>
<tr>
<td>Local</td>
<td>14</td>
<td>17 018</td>
<td>1 665</td>
</tr>
</tbody>
</table>

Source: Figures compiled by UGT and CC.OO. based on Ministry of Labour and Social Affairs data.
Table 20.3A: Clauses concerning working time negotiated by collective bargaining, 2001–2003

<table>
<thead>
<tr>
<th>Clause</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
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<tbody>
<tr>
<td></td>
<td>% collective agreements</td>
<td>% workers covered</td>
<td>% collective agreements</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>With clauses concerning working time</td>
<td>81.2</td>
<td>82.3</td>
<td>83.3</td>
</tr>
<tr>
<td>Uneven distribution throughout the year</td>
<td>24.9</td>
<td>45.5</td>
<td>26.8</td>
</tr>
<tr>
<td>Working day exceeding 9 hrs</td>
<td>6.8</td>
<td>18.9</td>
<td>7.6</td>
</tr>
<tr>
<td>Continuous working days of 6+ hrs where statutory breaks are considered working time</td>
<td>47.5</td>
<td>31.7</td>
<td>50.2</td>
</tr>
<tr>
<td>Daily time off accrued over periods of 14 days</td>
<td>13.6</td>
<td>17.7</td>
<td>13.4</td>
</tr>
<tr>
<td>Shift work</td>
<td>8.8</td>
<td>7.4</td>
<td>9.6</td>
</tr>
<tr>
<td>Working time reduction owing to night work, shift work, arduous or dangerous work or work with toxic substances</td>
<td>–</td>
<td>–</td>
<td>3.6</td>
</tr>
<tr>
<td>Break of less than 12 hrs between working days for jobs consisting of short periods of work separated by breaks</td>
<td>–</td>
<td>–</td>
<td>2.6</td>
</tr>
<tr>
<td>Fixed period during which annual holidays to be taken</td>
<td>–</td>
<td>–</td>
<td>52.6</td>
</tr>
</tbody>
</table>

## Table 20.4A: Average working hours negotiated by collective bargaining

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sectors:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Industry</td>
<td>1,722.9</td>
<td>1,716.7</td>
<td>1,705.8</td>
<td>1,695.6</td>
</tr>
<tr>
<td>Construction</td>
<td>1,783.4</td>
<td>1,777.2</td>
<td>1,766.5</td>
<td>1,761.0</td>
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21. Collective negotiations and working time in Switzerland

Ewald Ackermann

21.1. Introduction

Working hours in Switzerland are among the longest in Europe, with an average working week of 41.7 hours. There has been little or no change in recent years with regard to the daily or weekly number of hours worked: the length of the average working week declined by just 13 minutes in the 10 years from 1993 to 2003.\(^1\) Compared to many other European countries, working time – and in particular working time reduction – is less at the centre of collective bargaining in Switzerland. Conversely, it is also true that the occasional flaring up of discussions about working time extension in the export sector, fanned by the employers, is not really making much impact. The main exception in this rather static field is early retirement. In the construction sector, after a long conflict that culminated in a national day of strike action, the trade unions won a spectacular victory, which made it possible to take early retirement from the age of 60. Since then, the trade unions have been trying to push through collective agreements modelled on this agreement in the various ancillary building trades – here, too, there has been conflict, and this will continue.

21.2. Working time: positions, conflicts and outcomes

21.2.1. Working time reduction

Since the 1980s, when the printing and mechanical engineering industries achieved a breakthrough with the introduction of the 40-hour week (which seemed anachronistic by European comparison), the Swiss trade unions have not managed to make much progress in reducing weekly working hours. Essentially, trade union demands in the other sectors have concentrated on slowly and gradually moving towards the 40-hour week. The Swiss Trade Union Confederation (SGB) tried to speed up this process by launching a people’s initiative in the mid-1980s in favour of the across-the-board introduction of the 40-hour week.

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However, the subsequent referendum (December 1988) rejected the initiative by a clear majority (65% against).²

During the crisis-prone 1990s, this situation did not change much. The sectors covered by collective agreements started to take tiny steps towards the 40-hour week. Various groups within the SGB, each with different motives, demanded that another attempt should be made to get an across-the-board reduction in working hours. At the end of the 1990s, therefore, the SGB launched another people’s initiative, demanding the introduction of a 36-hour week, and made provision for the orderly flexibilisation of the working week. This initiative, too, failed to find favour with the population. In spring 2002, it was rejected by a majority of nearly 75%. Hence, the statutory maximum working week remains at 45 hours per week for all employees in industry, offices, technical and other employees and sales staff in large enterprises; and at 50 hours per week for all others.

The scale of the defeat showed clearly that both trade union members and employees not in trade unions did not feel very strongly about reducing weekly working hours. Trade union attempts to raise people’s awareness came to nothing.³ However, the fact that the simultaneous campaign of the Swiss trade unions for proper minimum wages (‘at least CHF 3,000 net a month for everyone’) met with a positive response and much success among the population, proves that, when they tackle the right issues, the trade unions are certainly able to mobilise people successfully. In other words, a real need to reduce weekly working hours has been articulated in the last 20 years only in those sectors where working hours are well above average. Here, some small successes have been negotiated.

A similar conclusion can be drawn when it comes to the length of holidays. When asked about their priorities in terms of a reduction in working hours – that is, whether they want longer holidays or a reduction in weekly hours – a majority of employees prefer the former. Collective agreements in this area have achieved a slightly better result: holiday entitlements do not compare quite so badly with international standards. The statutory minimum annual paid leave amounts to 4 weeks from age 20 and 5 weeks up to age 20. However, in most collective agreements annual paid leave is set at a minimum of 5 weeks, at 6 weeks starting from age 50 and at 7 weeks starting from age 60.

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² A referendum is designed to veto a change to a legal provision. If 50,000 people sign a request for a referendum, then a popular ballot is held on the law.

³ In the Swiss system of direct democracy, the purpose of launching a people’s initiative is in many instances not the direct enforcement of the issue concerned, but rather a – albeit not cheap – way of raising the topic in the public mind. In other words, success is attained elsewhere than at the constitutional level.
Looking at the most recent rounds of collective bargaining, in 2004–2005, in addition to a few minor successes in terms of the broadening of the coverage of collective agreements, it is worth mentioning cleaning services in German-speaking Switzerland. As of 1 January 2005, weekly working hours are being reduced in this sector in two stages, from 44 to 42 hours/week. In the cleaning service sector in French-speaking Switzerland (also from 1 January 2005), weekly working hours are being reduced to 43 hours/week.

In the previous year, the trade unions had been able to reduce working time in a number of branches through collective agreements:

- Swiss Federation of Roofing Companies (SVDW): from 43.25 to 42 hours.
- Book trade from 41 to 40 hours.
- Ancillary building trade, Canton of Geneva: for all trades 41 hours (= 1 hour less for certain trades).
- Metalworking: from 40.5 to 40 hours.

As a result of collective bargaining, the average collectively agreed normal weekly hours are estimated to be just below 41 hours per week.

Still, working time is under pressure in Switzerland, as evidenced in spring 2005 when negotiations started to renew the collective agreement in the mechanical engineering and metalworking industry. Here, the President of the Employers’ Federation publicly demanded a lengthening of working time. The relevant trade unions immediately made it clear that they would not accept this. However, it would seem that the attack by the President of the Employers’ Federation was probably of a tactical, ideological and prestige-oriented nature. Against the backdrop of similar discussions in neighbouring countries, he needed to present himself as a tough employer. This would also send a signal of ideological resolve to the national conservative section of his own followers who see the alliance of convenience between a large proportion of employers and the trade unions as treachery.

Finally, there is the question of precarious part-time work. There has been a steady increase in part-time jobs in Switzerland, which should not be considered as a matter of course as involuntary, and those who work part-time should not

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4 Collective agreements cover just over 50% of the workforce. This is likely to increase slightly in the near future. At the 2002 SGB conference, the trade unions expressed their determination to implement new CLAs in sectors previously not covered. Since then, this has been successful in the quantitatively significant contract cleaning sector and in some small sectors.

5 This concerns the accompanying measures on the freedom of movement of persons, which stipulate that where jobs are filled by recruits from the EU area, the usual wages be paid.
automatically be considered as being worse off. In fact, only a minority of part-time workers want to work more hours. As a rule, in recent years the trade unions have included under collective agreements part-time workers working 50% or more of full working time. The problem here are the small part-time jobs by which the employers try to make savings by imposing dumping-type terms and conditions. The same is true of the increasing number of jobs with capacity-related variable working time. Particularly in the retail trade, the trade unions are reporting that jobs are increasingly being split up and offered only in small portions and on call. This de facto undermines the protection provided under the collective agreements which the trade unions have signed with major retailers Migros and Coop for employees working up to 50% of full working time. Similar examples are known in the cleaning services sector. Here, the collective agreement includes a compulsory hospital per diem allowance for all employees with a workload of more than 12 hours a week. Certain enterprises now offer only a maximum workload of 11 hours a week for new recruits. The trade unions are responding with protest actions and information.

21.2.2. Working time flexibility

On the question of the flexibilisation of working time, the trade unions have frequently made concessions in collective agreements in recent years. Increasingly, this involves replacing rigid working times with variable systems of scheduling working hours. This has, on the one hand, benefited the employers in that they have been able to adapt work more effectively to orders in hand and thus avoid paying overtime. On the other hand, in most cases the trade unions have managed to push through clauses which ensured that workers’ representatives had a right to consultation and a veto in the practical application of such systems. On the part of employees, positive views were expressed about these slightly more flexible systems. They said that it helped them to reconcile work and individual preferences or duties (family compatibility).

Hence, in most collective agreements a model of controlled flexibilisation of working time can be observed. Two good examples of such controlled flexibility are the agreements for mechanical engineering and for construction. In mechanical engineering, the collective agreement sets a normal working week of 40 hours. Based on this average the enterprise can propose annualised working time arrangements where the weekly hours worked can go up to 45 hours. Such arrangements require

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6 The underemployment rate in 2004 was 9.1% (2001: 8.3%). For women, it is significantly higher (15.6%) than for men (3.7%) (Swiss Federal Statistical Office, Swiss Labour Force Survey 2004).

7 In the 2nd quarter of 2004, the Federal Statistical Office recorded 6% of all employment relationships as characterised by variable working time (4% for men, 8% for women).
the agreement of the works council, however. Similarly, in the construction sector the collective agreement sets the working week at 40.5 hours. Based on this average the enterprise can propose annualised schemes in which weekly working hours can range from a minimum of 37.5 hours to a maximum of 45 hours per week. Again, the agreement of workers’ representatives is required. The collective agreement for the construction industry also reduces overtime requirements. Statutory maximum overtime amounts to 170 hours per year for employees with a maximum working time of 45 hours per week and to 140 hours for employees with a maximum working time of 50 hours per week. However, the collective agreement puts maximum overtime at 15 hours per month (and 75 hours per year). The actual number of hours overtime worked per year in construction stood at 32 hours, compared to 51 hours per year for the whole economy.

In the construction industry this agreement has recently been questioned by the employers who no longer consider the present system adequate. In the collective bargaining process they have been demanding that the maximum 45 hours a week be scrapped, and at the same time want the option of reintroducing Saturday as a normal working day. At least in theory, this results in possible working times of up to 60 hours a week or more. The trade union Unia is not willing to accept such changes, which would put working time regulations back to the stone age of capitalism. Because the employers have not dropped this demand even in the second round of negotiations, mass meetings are being held on construction sites to mobilise members.

Two other working time issues that are important in the Swiss debate are working on Sundays and night work for young people. The traditionally work-free Sunday is under threat. There is a push from several directions to get a radical relaxation that will allow workers to be deployed on Sundays. In winter 2004, the SGB initiated a referendum against the first such initiative at parliamentary level. The aim of the initiative is for all shops and service enterprises in the larger railway stations and airports to be allowed to employ staff on Sundays. Previously, shop opening and the employment of workers at railway stations was tied to the ‘needs of travellers’. The referendum is likely to take place at the end of 2005. It will set a precedent on the question of Sunday working. Dealing with the other attempts to attack the work-free Sunday in different ways has been adjourned until the referendum.

Finally, the SGB is also fighting against any watering down of the protection of young people against night work. In the current legislation, young employees may be allowed to work at night only from the age of 19 and young apprentices from the age of 20. This threshold is now to be lowered to 18. The SGB is opposing this, but has so far been unsuccessful in challenging it in the Council of States. In the summer, the matter is likely to be discussed in the National Council.
21.3. Pensions and early retirement

For 15 years, a dispute has been ongoing on the AHV, the state-run, mandatory pension scheme based on the pay-as-you-go principle. The dispute centres on the question of the retirement age. The current legal retirement age for men is 65 and for women 64. In a referendum in 2004, the trade unions managed to defeat a proposed revision that would have provided for a retirement age of 65 for both men and women and a reduction in benefits. Despite the devastating defeat (68% voted no), the right-wing parties are determined to force through cuts and want to introduce a retirement age of 67 for all by the year 2012. By contrast, the SGB has decided to launch a people’s initiative this year which introduces the right, from the age of 62, to a full or proportional AHV retirement pension for anyone who gives up his gainful employment either fully or partly. A tough fight can be expected on this issue in the coming years.

Early retirement is also playing an important role in collective bargaining. In the construction sector, an agreement on early retirement was reached in March 2002 after difficult negotiations. The agreement states that by 2006 all construction workers who wish to do so can retire at the age of 60. Their pension will be 80% of their last gross wage, but is limited to a maximum of CHF 64,000 per annum. Funding (roughly 5% of the wage bill) is guaranteed by a foundation with equal representation, to which the employers contribute 4% and the employees 1%. The Swiss trade unions have welcomed this as a milestone in trade union history.

However, after concluding the agreement the employers distanced themselves from the modalities of implementation set out in the agreement. The Industrial and Construction Workers’ Union (GBI) was not ready to put up with this backtracking. After a number of local work stoppages and a nationwide construction workers’ strike in late 2002 – the biggest strike in more than 50 years – the employers were forced to give in. Some enterprises tried to get around the agreement in the course of 2003 by withdrawing from the Employers’ Federation and thus from the agreement. On each occasion, the trade union immediately organised a strike and forced the dissident enterprises to adhere to the agreement. On the other hand, the unions have so far made little progress in extending the same or a similar solution to other sectors. Only in the ancillary building trade in French-speaking Switzerland was a similar model enforced. This model allows early retirement at 62 and its costs for the employers are lower. In German-speaking Switzerland, similar models in various ancillary building trades are currently being blocked or disputed.

8 In contrast to German-speaking Switzerland, all ancillary building trades in French-speaking Switzerland are covered by a single CLA.
Early retirement is also under discussion for painters and plasterers in German-speaking Switzerland, and subject to a lot of disputes. So far, it has not been possible to renegotiate the collective agreement that ended in spring 2004. Early retirement was, and continues to be, the trade union’s clear priority. It has organised numerous protest campaigns, including a strike, to break down the employers’ refusal – so far without success. Because of this situation, without a signed agreement and thus a lack of opportunities for intervention, there is a danger that the sector will sink into neglect because of the increasing availability of labour (free movement of persons). In spring 2005, the trade union called on the State Secretariat for Economic Affairs to intervene. Early retirement is also currently subject to disputes among cabinet makers in carpentry workshops. Here, too, no agreement exists and further conflicts are expected for the near future.
22. Collective bargaining on working time: the UK

Richard Exell

22.1. Working time in its national and international context

22.1.1. Introduction

Under the long-running Conservative administration of the 1980s and 1990s, the UK became a byword for deregulation, with many workers' rights simply being abolished. The present Labour government (1997-) has taken a different tack, combining a strong enthusiasm for market solutions with a narrative of 'fairness at work'. Since 1997, the government has delivered a modest degree of re-regulation of the labour market, including:

- a right to request flexible working arrangements (currently limited to working parents);
- the National Minimum Wage;
- the improvement of maternity and other parental leave rights;

Unfortunately, the effect of the WTD has been severely constrained by the government's insistence on retaining provisions that allow all UK workers to opt out of the 48-hour average limit on weekly working time. The latter provision has been abused in the UK to such an extent that it has severely limited the impact of the directive. Nevertheless, when the new legislation is combined with trade union efforts to negotiate away long hours and a greater awareness amongst managers of the problems that are associated with excessive working time, the net effect has been to halt the upward trend in working time and the average hours of full-time workers, whilst the number of employees working more than 48 hours has fallen. This is a welcome development, but the TUC is concerned that, whilst the opt-out from the 48-hour week remains, progress will remain achingly slow.

The TUC is also concerned that the focus of the UK government is now firmly on extending labour market flexibility for employers. The government intends to use the UK presidency in the latter half of 2005 in order to lecture other member states on the dangers of over-regulation. One domestic expression of the government's hardening focus is a provision that means that each new regulation must be matched by the repeal of an existing one.
22.1.2. The historical context

Over most of the last century the UK accrued a patchwork of legislation on working time which set different rules for different groups of workers. The first working time legislation set an 8-hour daily limit for mineworkers (1908). The first legislation to give some workers paid holidays was introduced in 1938. The old network of legislation usually gave extra protection to women and children.

However, the Thatcher and Major Conservative governments repealed all of this legislation. Whilst presiding over the two biggest recessions that the UK has suffered since the 1930s and massive job losses, these administrations argued that less regulation would create more jobs.

It was therefore no surprise that the Conservative government sought an opt-out from the Social Chapter legislation and the Working Time Directive. John Major’s Conservative government also lost an ECJ case that tried to prove that the Working Time Directive was not a health and safety measure (ICR 443, 1997).

In contrast, the Labour Party made a commitment in the 1997 General Election to sign the Social Chapter and transposed the WTD into UK law as the Working Time Regulations (1998).

However, the government was concerned about the social and economic impact of the legislation so it made use of nearly all of the derogations. Most notably, it introduced provisions that allow individual workers to opt out of the 48-hour limit on average weekly working time.

22.1.3. The British debate about the Working Time Directive

Unsurprisingly this provision has been widely abused where there are no unions. The most recent government research suggests that at least 17% of long-hours workers have been pressured to sign away their rights, and that some 75% of long-hours employers are not complying with the UK legislation.1 The TUC believes that the government’s research understates the extent of the abuse.

The opt-out has also led to low awareness of the other WTD rights amongst both employers and workers. A TUC poll found that only 7% of adult workers knew about the legal right to an in-work break.

Furthermore, the UK enforcement regime is very weak and is split between the individual worker and a number of agencies. Rest breaks and holiday entitlements can be enforced only by the worker taking a case to an employment tribunal (an

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informal Labour Court), whilst the working time and nightwork limits are enforced in most cases by the Health and Safety Executive (a government agency), by local authorities in a number of sectors, including retail, and by specialist agencies for goods, vehicle and coach drivers, inland waterway workers, mobile aviation workers and seafarers. As a result, awareness of how rights are enforced is low. Enforcement is also severely under-resourced: the Health and Safety Executive (HSE) only investigates working time issues on receipt of a complaint from a worker. The HSE employs only seven people to deal with working time issues.

The main impact of the WTD in the UK has so far been to extend the right to paid annual leave. Some 6 million workers in the UK gained extra entitlement when the UK regulations were introduced, including 2 million who had previously had no paid holidays at all.

The right to paid leave has been a major benefit for UK workers, but there is still widespread law-breaking on this issue. Paid leave is the most common subject for employment tribunal cases in the UK, and government statistics suggest that some 750,000 UK workers have less holiday than they are entitled to.

UK Prime Minister Tony Blair has hardened his position on the WTD, which he has described as being one of the worst pieces of European legislation. The UK government has been pivotal in blocking the revision of the Working Time Directive.

The UK’s response to the European Commission’s consultation on the review argued that the reference period for the 48-hour week should be extended to 12 months, the opt-out should be retained and the ‘inactive’ part of on-call work should not count towards the working time limits in the directive. The government’s response also indicated that they would be willing to consider some measures to tackle abuses, but these were much weaker than the amendments proposed by the European Commission. The UK government proposed the following changes:

• the opt-out agreement must be made in writing;
• it must not be signed at the same time as the contract of employment;
• it must either be time limited and renewable or contain a statement of the worker’s right to opt-in.

The UK government consulted on abuses of the opt-out before the EC opened its consultation. The TUC put forward a series of measures that would be the minimum needed to ensure that the opt-out was genuinely voluntary. Unfortunately, the government’s response to the Commission closely mimics the Confederation of British Industry’s view rather than that of the trade unions. Despite consulting on abuses of the opt-out in 2003, the government has not yet taken any action to amend the UK regulations to address this problem and has no plans to do so.
Rather, the government has invested considerable resources, including hundreds
of civil servants, in assembling a blocking minority in the Social Affairs Council to
ensure that the review of the directive is not concluded. Clearly the government’s
tactic is to hold up the review for long enough for other member states to be
forced to adopt the opt-out in order to deal with the on-call issue.

In maintaining its position for political reasons, the UK government is contradict-
ing both its own research and the conclusions of the Parliamentary Committee
responsible for scrutinising the impact of regulations on the economy:

There was no sign that the extent of sustained long hours working was system-
atically associated with the business and financial needs of workplaces …
workplaces have organisational choice and are able to reduce the need for sus-
tained long hours should they choose to do so.\(^2\)

With the WTD only aiming to limit the working week to an average of 48
hours, it would seem to us that there is plenty of scope for particularly long
hours to be reduced without encountering the problems that these economies
are facing. Consequently we are not convinced of the necessity of maintaining
the opt-out.\(^3\)

22.1.4. Theoretical underpinning of the UK government’s approach

The government’s position is that technological change and integration of markets
are both accelerating; these processes are restructuring the economy, shifting the
industrial and geographical distribution of inputs (both labour and capital). The
finance ministry repeatedly states that, while EU expansion may be bolstering the
case for flexibility, it is globalisation which is the main force.

Firms, in their view, will be able to take advantage of these shifts only if they can
respond quickly, and this means that workers must be trained to a high standard
and willing to change the tasks they perform and their patterns of work. Gordon
Brown, the finance minister, recently expressed this view in a speech to leading
figures in finance:

business context of long hours working’, University of Warwick Institute for Employment Research,
\[\text{\footnotesize 3} \text{ House of Commons Trade and Industry Select Committee (2005) Labour market flexibility and
To be fully equipped for the global economy, Europe must itself become global: more open, more outward looking, and then more flexible, more competitive and more committed to reform to enable us to compete worldwide and move to full employment again. And the pace of globalisation requires us to push ahead with greater determination and greater urgency a set of comprehensive economic reforms.4

It would not do to overstate the importance of neo-liberal ideology. Free-market ideas undoubtedly continue to be important in modern British politics, but it is important to note that, under New Labour, this philosophy is tempered by a concern for social cohesion.

In his speech to the European Parliament, for instance, the Prime Minister sought to demolish ‘the idea that Britain is in the grip of some extreme Anglo-Saxon market philosophy that tramples on the poor and disadvantaged’ and pointed to his government’s investment in employment programmes and public services, and the partial re-regulation of the labour market.

It is typical of the Third Way, however, that this claim was combined with the insistence that a modern European social model should not include ‘regulation and job protection that may save some jobs for a time at the expense of many jobs in the future’.5

Current UK policies thus express an acceptance of many of the givens of neo-liberal discourse, tempered by an attempt to ameliorate them with as generous a set of minimum standards as possible. In this context, ‘voluntary’ flexible working – especially when it is the workers’ preferred option – is to be welcomed and encouraged.

22.1.5. The trade union response

The TUC’s response has been to welcome the introduction of minimum standards – the previous Conservative government believed in deregulation without any such protection. However, it remains critical of the notion that social security, employment protection legislation and collective bargaining should be viewed primarily as restrictions on the free market, and believes that macroeconomic policy is a more important determinant of employment than labour market structures.

However, the unions have to get the balance right between opposing harmful reductions in workers’ rights and supporting greater flexibility for workers with

4 ‘Global Britain, global Europe: a Presidency founded on pro-European realism’, Mansion House Speech, 22.06.05.
regard to working time, working patterns and contracts of employment. They oppose deregulation, but do not oppose flexibility.

The unions have called on the government to extend the right to request flexible working arrangements to all workers, with an extension to all parents and informal carers as an interim measure. A mutual-gains approach to flexibility can help address the strains that would otherwise result from greater gender equity and the changing role of men in the home. The TUC has invested in practical projects (notably the ‘Time of Our Lives’ project at Bristol City Council) that have demonstrated that, where both managers and employees are engaged in identifying problems and finding solutions, flexible working can bring measurable benefits to all concerned, increasing enthusiasm for innovative working amongst both employees and managers.6

In a forthcoming ‘Equality Audit’ of unions, prepared for the TUC by the Labour Research Department, it is revealed that two-thirds of unions set national bargaining priorities on equality issues, and that one of the key issues for unions is work–life balance and flexible working: 88% of unions have produced material on some aspect of these subjects, and 67% report some negotiating successes in these areas. In addition, more than half of all unions have negotiated on adoption leave, parental leave and dependency leave.

Indeed, the TUC would argue that a key difference between positive and negative flexibility in working time arrangements is the involvement of unions and the development of a collective response to the organisation of working time. In its view, the most successful flexible working arrangements are developed in the context of a broad agreed policy on flexible work that has strong employee support.

22.1.6. Employment, unemployment and atypical work in Britain

The number of jobs in the UK grew by 197,000 (0.8%) during the three years to autumn 2004, taking employment to record levels. Over the same period, ILO-measure unemployment fell from 5.2 to 4.8%, which was the lowest level for 26 years.

Against this backdrop, there was little movement in the aggregate figures on working time. The only changes of note were a very slight increase in the share of part-time jobs and self-employment in the UK economy, and a welcome 5% fall in the quantity of long hours.

6 The ‘Time of Our Lives’ project at Bristol City Council, backed by the TUC and council trade unions, succeeded in developing innovative working patterns that helped improve Council services, while at the same time enabling employees to enhance their work-life balance. ‘Time of Our Lives’ succeeded because everyone involved was committed to a mutual-gains solution, joint working and a partnership approach.
The common assumption that all forms of atypical work are more common in the UK is mistaken (see Annex). Part-time work has not been a major area of growth for nearly a decade, but it is still much more common in the UK than in most other European countries. Self-employment, on the other hand, is stable, as is temporary employment, which is less common than in the rest of Western Europe. Key trends in the UK labour market include the following:

- Part-time work has grown steadily in every decade since the start of the 1970s, an increase associated with the growth in women’s employment (despite the inferior pay and promotion benefits on offer) and more part-time work among students. The UK’s figure is above the EU-15 average, and higher than in any other EU-15 nation except the Netherlands (44%).
- Self-employment has ranged between 3.3 million and 3.6 million employees over the past decade, and is increasingly dominated by white-collar professional jobs.
- Temporary employment has stabilised at 1.5 million employees (6%). If we compare the situation with that in France, often conceived as a polar opposite to the UK, the changes over time are illuminating. Twenty years ago, in 1985, the UK had a higher proportion of temporary workers, 6.9%, compared with 4.7% in France. Since then, the UK proportion has consistently been in the range 5-7%. For fifteen years the proportion grew in France; since 2000 it has come down a bit, but the most recent Eurostat data still show a level twice that in the UK: 12.3%.
- Second jobs have become slightly less common since 1997.
- Homeworking – about 2.5% of employees work from home, well below the EU-15 average (3.8%).
- Teleworking cuts across various forms of employment and is replacing more traditional forms of homeworking, but fewer than 1% of workers engage in it.

An important paper from the Economic and Social Research Council,\(^7\) suggested that flexible working practices (not just flexible working time arrangements) are widespread, but that they are at a plateau: at least under current conditions, the spread of flexible labour ‘is running out of steam’. A number of factors may explain this:

- employees’ resistance to providing endless supplies of expendable labour in a booming labour market;

• declining attractiveness for employers, as temporary and part-time employees are given more rights in employment law;

• the fact that employers are becoming convinced that ‘the best flexibility is that of well-trained, motivated and adaptable employees’.

22.2. Collective bargaining on working time

There are two strands of bargaining activity in the UK. One comprises attempts to persuade the government to introduce more favourable legislation. The other is the regular round of bargaining between trade unions and management. In the private sector, bargaining is highly decentralised and occurs largely at the level of the individual plant. There is national bargaining in each part of the public sector, but some issues are determined locally, and a few individual local authorities and other public sector bodies have opted out of national bargaining.

The TUC believes that:

• workers should have more control over their hours and patterns of work, within safe limits;

• there should be a statutory basic working week of 35 hours;

• working time should not exceed 48 hours per week on a regular basis.

The 48-hour limit should be supported for a number of reasons in addition to the well-known health and safety considerations. It is also the case that persistent excessive working time undermines labour productivity, discriminates against women, harms family life and parenting and squeezes out lifelong learning.

At the moment, 14.6% of UK employees regularly work more than 48 hours (see Annex). Consequently, the TUC’s highest campaigning priority is that the number of long-hours workers in the UK should be reduced considerably. This goal will be achieved within a reasonable time frame only if the provisions that allow individuals to opt out of the 48-hour week end.

The TUC’s own surveys suggest that roughly 1 in 4 employees has satisfactory flexible working time, 35% have some flexibility and 4 out of 10 have no flexibility.

Trade union bargaining on working time has been conducted in a context that is somewhat mixed. On the one hand, the UK government, the Confederation of British Industry and the other employer organisations have all said that retaining the opt-out is essential for continued economic success. On the other hand, the
government has made a commitment to reducing working time in the UK and has enacted positive legislation aimed at improving the work-life balance.

The Employment Relations Act 2003 increased maternity leave to 26 weeks paid plus 26 weeks unpaid, and introduced:

- 26 weeks’ paid adoption leave;
- 13 weeks’ unpaid parental leave for those with children up to the age of 6;
- 2 weeks’ unpaid paternity leave;
- the right to request change of working pattern for the parents of children up to the age of 6;
- the right to time off for domestic emergencies.

During the 2005 General Election, as a result of trade union lobbying, the Government also promised to increase paid maternity leave, and to end a loophole in the regulations that allows employers to count public holidays as part of the 4 weeks’ leave guaranteed by the WTD.

The Government has not yet properly assessed the right to request flexible working, as their initial evaluation does not distinguish between pre-existing informal arrangements and cases in which the law has been used to gain flexibility. However, the TUC’s own calculations suggest that an extra 1% of those eligible have successfully changed their working patterns using the 2003 Act.

The uncertainty over the outcome of the European Commission’s review of the WTD has also had a somewhat mixed effect (on balance mostly negative). The most common response has been that employers in unionised workplaces have been reluctant to conclude collective bargaining deals ahead of the end of the review. However, in some cases, uncertainty about the future of the opt-out and increasing employer awareness of the negative effects of excessive working time have led to agreements that are mutually satisfactory.

Such deals usually involve a reduction in working time whilst retaining all or most of current pay levels. In exchange, work organisation is reorganised, and this is often accompanied by increased investment and training. In a number of cases the employer has been most interested in increasing the number of hours when production is carried out or when the service is available to the public, which means trading a shorter working week for the introduction of shift work.

The public sector unions have been involved in significant initiatives to reduce long hours in the National Health Service (NHS) and in teaching. In the context of the introduction of a new NHS pay scheme, the NHS employers’ organisation has agreed clear targets for complying with the 48-hour week and has made significant progress towards meeting them. This has meant putting more resources into
some areas of work, and rearranging working practices in order to cut excessive
time and on-call work. The ‘Hospital at Night’ pilot project replaces on-call
medical care with shift work. The Teachers’ Workload Project aims to cut exces-
sive hours by reassigning some of the administrative tasks away from teachers. 
This initiative has been controversial, with only two of the three main teachers’
unions supporting it. The third union is concerned about the impact that the ini-
tiative might have on teachers’ professional standing.

In the private sector, the TUC has worked with the government and the CBI on a
best-practice initiative that brings together a number of the organisations in which
unions have recently succeeded in increasing productivity and cutting long working
hours with organisations that are contemplating such a change in a series of semini-
ars around the UK. The case studies used as good examples include the following:

- Rolls Royce’s Inchinnan plant is on target to achieve a 30% increase in produc-
tivity. This has been brought about by increased investment and the develop-
ment of a high performance culture based on a 37-hour week. The Amicus and
GMB unions negotiated a performance culture focused on outputs rather than
hours worked. Overtime has now been reduced to 0.5% of working time and
productivity milestones have been met.

- British Nuclear Fuels (BNF) now runs its closed Sellafield site as a contractor for
the Nuclear Decommissioning Authority. To meet new business demands the
GMB, TGWU, Amicus and Prospect unions negotiated new working practices,
hours and benefits. Flexi-time and annualised hours were introduced for all
staff, blue- and white-collar pay structures were merged and multiskilling intro-
duced across the organisation. These changes have helped BNF to move from
a culture where overtime averaged 10-15% of working time to one in which
there has been no overtime for 5 years. In terms of business success, the last
three years have also been the organisation’s best on record.

- Unilever’s Purfleet site is the world’s largest margarine factory, running a 24-
hour, 7 days a week operation. To meet heightened competition in the product
market unions negotiated 7 days a week continuous shift working, annualised
hours and the abolition of overtime. The changes led to a pay rise of 30% across
the board, with the cost met from huge reductions in overtime pay. As a result,
operational efficiency rose from an average of 40-50% to 65-70%.

These working time-productivity bargaining cases reflect one strand of trade union
work. There is also a number of cases in which bargaining has led to small reduc-
tions in the basic working week.

However, despite all the good news reported above, the net impact of bargaining
has been modest. There has been a slight fall in the average actual working time
of full-time workers, whilst the number of employees regularly working more than
48 hours per week has declined from 3.9 million in 2001 to 3.6 million in 2004. This trend is a welcome one, but progress is far too slow. Trade unions are concluding good deals, but they only affect a minority of the UK workforce.

One reason for this is that collective bargaining agreements in the UK apply only to the enterprise or section of an enterprise in which they are concluded. Therefore the majority of UK enterprises are not subject to collective agreements but only to the minimum statutory standards. That is why the TUC is very insistent that the opt-out from the 48-hour week should end as soon as possible.

Bargaining on work-life balance (WLB) issues has been slightly easier than bargaining on long hours. The government sees a great deal of value in WLB, particularly as it wants to increase still further the number of women in employment. Furthermore, many of the better employers can see a business case for extending flexible working measures.

The TUC gives support to trade union bargaining work on this issue in a number of ways, including undertaking some hands-on consultancy work in the public sector and running trade union education courses on improving the work-life balance for both union representatives and trade unionists who are managers.

There was a modest increase in the availability of work-life balance measures between 2001 and 2004. The results of the government’s survey of employees are shown in Table 22.1.

<table>
<thead>
<tr>
<th>WLB Measure</th>
<th>Availability 2004 (%)</th>
<th>Change since 2001 (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change to part-time work</td>
<td>58</td>
<td>+8</td>
</tr>
<tr>
<td>Temporarily reduce hours</td>
<td>41</td>
<td>+7</td>
</tr>
<tr>
<td>Annualised hours</td>
<td>13</td>
<td>+2</td>
</tr>
<tr>
<td>Flexi-time</td>
<td>42</td>
<td>–</td>
</tr>
<tr>
<td>Job-sharing</td>
<td>32</td>
<td>–</td>
</tr>
<tr>
<td>Term-time-only working</td>
<td>25</td>
<td>–</td>
</tr>
<tr>
<td>Home working</td>
<td>20</td>
<td>–</td>
</tr>
</tbody>
</table>

Table 22.1: Availability of work-life balance measures, 2004

As to the outcomes of collective bargaining, the government statistics reported in Table 22.2 show that those in trade unions are considerably more likely to take up flexible working measures than non-members. Trade-union take-up of flexi-time, annualised hours and term-time-only working increased between 2001 and 2004, whilst take-up of job-sharing and compressed-hours 9-day fortnights\(^\text{10}\) fell. The right-hand column of Table 2 shows the extent to which trade union members are more likely to have access to flexible working compared to non-members. This ‘flexibility mark-up’ has increased in recent years.

Table 22.2: Trade union members taking up flexible working practices, 2001–2004

<table>
<thead>
<tr>
<th>Flexible Working Measures</th>
<th>Number of trade union members taking up flexible working measures 2004 (000)</th>
<th>Change since 2001 (%)</th>
<th>Amount by which the percentage of trade union take-up of flexible working exceeds the percentage of non-union take-up (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flexi-time</td>
<td>1 035</td>
<td>+6.2</td>
<td>+11.0</td>
</tr>
<tr>
<td>Annualised hours</td>
<td>449</td>
<td>+5.3</td>
<td>+10.2</td>
</tr>
<tr>
<td>Term-time working</td>
<td>523</td>
<td>+17.7</td>
<td>+20.5</td>
</tr>
<tr>
<td>Job-sharing</td>
<td>50</td>
<td>−10.3</td>
<td>+4.6</td>
</tr>
<tr>
<td>9-day fortnight</td>
<td>31</td>
<td>−6.0</td>
<td>+19.7</td>
</tr>
</tbody>
</table>


\(^\text{10}\) Nine-day fortnights have been used in the UK since the early 1980s as a way of increasing time flexibility – the hours that would normally be spread over two weeks of 5 days each are now spread over one week of 5 days, followed by another week of 4 days.
The UK’s individual opt-out provisions allow all workers to opt out of the 48 hours set by the Working Time Directive. The proposals are widely abused and have effectively neutered the directive in the UK. One year after the introduction of the UK legislation the number of workers regularly exceeding 48 hours had only fallen from 4.0 million to 3.9 million.

### Annex

<table>
<thead>
<tr>
<th>Types of contract</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>% employed on full-time open-ended contract</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>71.6</td>
<td>87.5</td>
<td>53.9</td>
<td>71.0</td>
</tr>
<tr>
<td>Men</td>
<td>87.1</td>
<td>87.1</td>
<td>54.1</td>
<td>87.1</td>
</tr>
<tr>
<td>Women</td>
<td>54.1</td>
<td>53.8</td>
<td>71.2</td>
<td>54.9</td>
</tr>
</tbody>
</table>

| % employed on fixed-term contract                     |      |      |      |      |
| Total                                                 | 3.3  | 3.2  | 3.3  | 3.2  |
| Men                                                   | 3.1  | 3.1  | 3.2  | 3.2  |
| Women                                                 | 3.3  | 3.1  | 3.2  | 3.2  |

| % employed on part-time contract                      |      |      |      |      |
| Total                                                 | 25.2 | 8.4  | 42.9 | 25.4 |
| Men                                                   | 9.2  | 42.7 | 25.9 | 43.2 |
| Women                                                 | 42.7 | 25.9 | 43.2 | 26.1 |

| % employed working through temp agency                |      |      |      |      |
| Total                                                 | 1.2  | 1.3  | 1.2  | 1.2  |
| Men                                                   | 1.4  | 1.3  | 1.1  | 1.5  |
| Women                                                 | 1.1  | 1.2  | 1.0  | 1.0  |

| % self-employed                                       |      |      |      |      |
| Total                                                 | 11.8 | 16.3 | 6.9  | 12.0 |
| Men                                                   | 16.3 | 16.3 | 7.3  | 17.6 |
| Women                                                 | 6.9  | 7.3  | 7.3  | 7.3  |

| Working hours                                          |      |      |      |      |
| Statutory maximum working week (hours)11              | 48   | 48   | 48   | 48   |
| Statutory maximum working day (hours)                 | 13   | 13   | 13   | 13   | 13   | 13   | 13   | 13   | 13   | 13   | 13   |

11 The UK’s individual opt-out provisions allow all workers to opt out of the 48 hours set by the Working Time Directive. The proposals are widely abused and have effectively neutered the directive in the UK. One year after the introduction of the UK legislation the number of workers regularly exceeding 48 hours had only fallen from 4.0 million to 3.9 million.
### Figures for full-time workers only. The average part-time agreement is 20.5 hours.

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Men</td>
<td>Women</td>
<td>Total</td>
</tr>
<tr>
<td><strong>Working hours</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average collectively agreed normal weekly hours</td>
<td>37</td>
<td>37</td>
<td>37</td>
<td>37</td>
</tr>
<tr>
<td>Collectively agreed normal weekly hours in three sectors</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mining, quarrying, agriculture and forestry</td>
<td>39</td>
<td>39</td>
<td>39</td>
<td>39</td>
</tr>
<tr>
<td>Public sector</td>
<td>37</td>
<td>37</td>
<td>37</td>
<td>37</td>
</tr>
<tr>
<td>Finance</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
</tr>
<tr>
<td>Average collectively agreed annual working hours</td>
<td>1,702</td>
<td>1,702</td>
<td>1,702</td>
<td>1,702</td>
</tr>
<tr>
<td>Usual hours worked per week, full-time employees</td>
<td>43</td>
<td>44</td>
<td>44</td>
<td>43</td>
</tr>
<tr>
<td>Number of employees who usually work more than 48 hours per week</td>
<td>3.9 million</td>
<td>3.9 million</td>
<td>3.7 million</td>
<td>3.6 million</td>
</tr>
</tbody>
</table>

12 Figures for full-time workers only. The average part-time agreement is 20.5 hours.
13 Gender breakdown not available.
14 Full-time workers only.
15 Full-time workers only.
16 Source: ONS microdata service.
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This figure is for all employees. Note that 25% of UK employees are employed on a part-time basis.

18 The EU Working Time Directive was brought into UK law as the Working Time Regulations (1998). Note that public holidays are not extra to this entitlement. The result is that some 2.75 million UK workers have to take their public holidays as part of their four weeks leave entitlement.

19 Gender breakdown not available.
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Collective bargaining on working time
Recent European experiences

Edited by Maarten Keune and Béla Galgóczi

The regulation of working time has historically been at the centre of the labour movement’s struggle and in recent decades working time has also been a core issue for trade unions. In the 1990s and early 2000s, much of the working time debate was about labour’s goal of working time reduction, the interest of employers in working time flexibility for the sake of competitiveness, as well as working time flexibility aimed at improving the work-life balance for workers. In recent years, however, the working time debate has changed. In a political and economic context unfavourable to trade unions, employers as well as a number of governments have been pushing for both working time extensions and further flexibilisation. Trade unions have sought to defend the achievements of previous years but have been more successful in some countries than in others.

This volume provides an overview of recent developments in Europe in the struggle over working time, discussing both changes over time and differences between countries. The focus is on collective bargaining on working time issues, but the broader political and economic context in which this bargaining is taking place, as well as relevant legislative changes, are also discussed. In addition, working time is used as an example to highlight recent trends in the role played by collective bargaining at the national, sectoral and company level, the relation between these levels, as well as the interaction between legislation and collective agreements. The volume consists of 21 country reports covering most of the EU member states as well as Bulgaria and Romania. An introductory chapter summarises the main findings.