

9. Germany: Working time and its negotiation

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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

		1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Weekly	W	37.5	37.5	37.5	37.4	37.4	37.4	37.4	37.4	37.4	37.4
	E	39.5	39.4	39.4	39.4	39.2	39.1	39.1	39.1	39.0	38.9
Annual	W	1,651.9	1,645.1	1,644.4	1,643.2	1,642.8	1,642.5	1,641.9	1,642.6	1,643.5	1,643.3
	E	–	–	–	1,735.5	1,729.9	1,727.7	1,724.2	1,722.7	1,721.9	1,719.2

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

Source: WSI Collective Agreement Archive as of 31.12.2004.

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

	West	East
Banking	39	39
Construction	39	39
Chemicals	37.5	40
Deutsche Bahn AG (railways) ¹	38	38
Deutsche Post AG	38.5	38.5
Deutsche Telekom AG	34	34
Printing industry	35	38
Retail trade	37.5	38 ¹
Iron and steel industry	35	38
Building cleaning workers	39	39
Wholesale and foreign trade	38.5	39 ²
Hotels and restaurants	39	39.5
Agriculture	40	40
Metalworking industry	35	38
Public sector	38.5	40
Paper processing industry	35	37
Confectionery industry	38	39
Textiles industry	37	40
Insurance	38	38
Industry-wide average	37.4	39

Notes:

1 39 hrs as of 7.2005.

2 In the majority of branches.

Source: WSI Collective Agreement Archive as of 31.12.2004.

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

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

Note:

1 Upper grade.

Source: WSI Collective Agreement Archive as of 31.12.2004.

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)

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

Source: WSI Collective Agreement Archive as of December 2004.

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

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

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)

Sector	Working week hrs	Working time corridor/ increase	Uneven working time distribution		Overtime limited to ... hrs	Maximum working time hrs	Working time account	Temporary reduction to ... hrs	Time in lieu in exchange for overtime
			possible (up to ... hrs)	averaging- out period					
Banking	39		45	6 months		10/day 53/wk	Multi-year account (<i>Langzeitkonto</i>) max. 175 hrs/yr + 150/-30 hrs	31	as a matter of course Multi-year account also possible
Construction	40/ 37.5 1	-		12 months	-	10/day		-	-
Clothing	37	-	4-9.5/day 45/wk	52 weeks	-	9.5/day 45/wk	possible	-130 hrs/yr	possible
Chemicals	37.5	35-40	yes	12/36 months ²		10/day	Multi-year account	-	as a matter of course
Printing	35	-	yes	several weeks	-	10/day	-	-	possible
Hotels and restaurants	39	-	5-10/day 32-45/wk	3 months	26/month	195/month	possible	-	if requested by worker
Metalworking (North Württemberg/ North Baden)	35	35-40 (for 18/50% of workers)	yes	12/24 months	10/wk 20/month	50 hrs	Multi-year account possible	30	up to 16 hrs possible over 16 hrs if requested by worker
Public sector	38.5	-	10/day 60/wk 3	1/2 year	-	-	by negotiation	32 (East)	as a matter of course
Steel	35	-	yes	up to 1 year	-	10/day 47/wk	possible up to +/- 192 hrs/yr also multi-year account	30	possible up to 8 hrs, 9-16 hrs if in com- pany agreement, over 17 hrs compulsory
Insurance	38	20-42 4	25 %	6 months	-	10/day	-	30	possible
Volkswagen	28.8	-	38.8	12 months	-	-	multi-year account	-	as a matter of course

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).

Figure 9.1: Average collectively agreed and effective working week of full-time employees in Germany



Sources: WSI Collective Agreement Archive; Eurostat: European Labour Force Survey

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

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

Source: Bauer and Munz (2005).

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 at 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 situation, 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 evaluate 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 agreement. 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 initially met with harsh public criticism owing to the fact that employers had supposedly 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, competitiveness 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 collective agreement has now become a standard part of global cost management practice in many companies. Gesamtmetall's president Martin Kannegießer says that this is a prerequisite for the survival of sectoral collective agreements. In his view, 'sectoral collective agreements will cease to exist unless constructive use is made of the options offered by complementary agreements' (Handelsblatt 21.12.2004).

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

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2004
	No. of opt-outs approved											Employees
Working time corridor	37	28	28	53	33	34	34	37	35	44	86	43,738
Pay corridor				6	14	22	18	9	23	21	66	29,314
Annual bonus			12	15	23	22	9	21	24	34	15	7,130

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, irrespective 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 collective agreements. The trade unions were largely able to prevent this from happening 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.

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