



**LUND**  
UNIVERSITY

**Master of European Affairs programme**  
**Business and Business Law**

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**Negotiating Work-Life Balance:**  
**Working Time Preferences and the European**  
**Working Time Directive**

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**Master Thesis**

Spring 2006

## **Abstract**

This thesis examines why working time preferences differ between workers and nations, and explains the effect of working time regulation and working time flexibility on negotiating work-life balance. In five separate sections the following working time issues are examined: the number of hours worked by workers in Europe; factors affecting individual working time preferences; how working time preferences are negotiated in the national industrial relations systems of Sweden, France and the United Kingdom; how the institutions of the European Union have influenced working time negotiations through the Working Time Directive; and the benefits and practices available to organisations implementing working time flexibility. Broadly this paper views working time preferences as being a highly personal and influenced by factors such as wages, taxation, culture (national and workplace) and non-work responsibilities. It is argued that negotiating a preferred working time pattern is essential to achieving work-life balance and when such a balance is achieved, workers are more healthy, motivated and committed to their employer. Essentially this provides an incentive for businesses to voluntarily implement working time flexibility beyond the regulatory standards.

## Table of Contents

<b>1</b>	<b>INTRODUCTION .....</b>	<b>1</b>
1.1	PROBLEM SPECIFICATION AND PURPOSE .....	2
1.2	SPECIFIC RESEARCH QUESTIONS .....	4
1.3	THESIS OUTLINE .....	6
1.4	DEMARCATIONS .....	8
1.5	METHODOLOGY .....	9
1.5.1	<i>European working time data</i> .....	9
1.5.2	<i>Existing theories of preferred working time</i> .....	10
1.5.3	<i>Business law methodology</i> .....	11
1.5.4	<i>Business administration methodology</i> .....	12
<b>2</b>	<b>OVERVIEW OF WORKING TIME ACROSS EUROPE: HOW MANY HOURS ARE WORKERS ACTUALLY WORKING? .....</b>	<b>16</b>
2.1	DISTINGUISHING BETWEEN STANDARD HOURS, OVERTIME AND MAXIMUM HOURS .....	16
2.2	WORKING TIME IN COLLECTIVE AGREEMENTS .....	17
2.3	WORKING TIME SURVEYS .....	21
2.4	INTERNATIONAL COMPARISONS OF WORKING TIME .....	26
<b>3</b>	<b>FACTORS THAT AFFECT INDIVIDUAL WORKING TIME PREFERENCES: WHY DO SOME WORKERS WORK LONGER HOURS THAN OTHERS? .....</b>	<b>29</b>
3.1	WAGE RATE .....	30
3.2	MARGINAL TAXATION RATE .....	33
3.3	NATIONAL CULTURE .....	36
3.4	WORKPLACE CULTURE .....	38
<b>4</b>	<b>NATIONAL LEVEL BARGAINING SYSTEMS IN SWEDEN, FRANCE AND THE UNITED KINGDOM: HOW IS WORKING TIME NEGOTIATED? .....</b>	<b>41</b>
4.1	SOCIAL PARTNERS MODEL – SWEDEN .....	44
4.1.1	<i>Swedish working time legislation: The Working Time Act 1982</i> .....	44
4.1.2	<i>Role of collective bargaining in meeting working time preferences</i> .....	45
4.2	STATUTORY REGULATION – FRANCE .....	47
4.2.1	<i>French working time legislation: The development of a statutory 35-hour week</i> .....	49
4.2.2	<i>Meeting working time preferences within the legal constraints</i> .....	51
4.3	DECENTRALISED BARGAINING – UNITED KINGDOM .....	52
4.3.1	<i>Negotiating working time without standards</i> .....	53
4.3.2	<i>Empowered to work long hours?</i> .....	56
<b>5</b>	<b>REGULATING WORKING HOURS AT THE EU LEVEL: IS THE WORKING TIME DIRECTIVE THE SOLUTION? .....</b>	<b>59</b>
5.1	THE WORKING TIME DIRECTIVE .....	59
5.1.1	<i>The negotiation: Reconciling the irreconcilable</i> .....	59
5.1.2	<i>The compromise: a “positively schizophrenic” Directive</i> .....	60
5.1.3	<i>Implementing the Working Time Directive</i> .....	62
5.2	THE ROLE OF THE EUROPEAN COURT OF JUSTICE .....	64
5.2.1	<i>SIMAP Case C-303/98</i> .....	66
5.2.2	<i>Jaeger Case C-151/02</i> .....	68
5.3	NATIONAL RESPONSES TO EUROPEAN WORKING TIME REGULATION .....	69
<b>6</b>	<b>BUILDING A BUSINESS CASE: WHY SHOULD BUSINESSES CARE ABOUT WORKING TIME FLEXIBILITY? .....</b>	<b>72</b>
6.1	THE EXTENT OF WORKING TIME MISMATCHES IN EUROPE .....	73
6.2	THE BENEFITS OF MEETING WORKING TIME PREFERENCES .....	75

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6.2.1	<i>Recruitment</i> .....	76
6.2.2	<i>Retention</i> .....	79
6.3	FLEXIBLE WORKING TIME PRACTICES.....	85
6.3.1	<i>Modulating the quantity of working hours</i> .....	86
6.3.2	<i>Modulating the timing of established working hours</i> .....	89
<b>7</b>	<b>CONCLUSION</b> .....	<b>92</b>
	<b>APPENDICES</b> .....	<b>V</b>
	<b>REFERENCES</b> .....	<b>X</b>

## Table of Figures

Figure 1. Thesis outline .....	6
Figure 2. Average collectively agreed normal weekly hours in the EU, Norway and candidate countries, 2004 .....	18
Figure 3. Proportions of people in employment in their main job by usual weekly hours worked; France, Sweden and United Kingdom; 2002 .....	24
Figure 4. Proportions of people in full-time employment (36+ hours) in their main job by usual weekly hours worked; France, Sweden and United Kingdom; 2002 .....	25
Figure 5. Happiness and per capita GDP across the world.....	35
Figure 6. Relative wealth versus material wealth .....	36
Figure 7. Distribution of usual hours of work of employees in the UK, 1999.....	55
Figure 8. Conceptualising Hours mismatches .....	73
Figure 9. Percentage of British workers employed in 1998 who were still in the same job in 2002 .....	82
Figure 10. Job Satisfaction over the Life Cycle in Great Britain.....	84

## List of Tables

Table 1. Direct collective bargaining coverage, selected EU and candidate countries.....	19
Table 2. Average usual and actual hours worked per week by full-time workers in all jobs (men and women) by countries and quarters .....	22
Table 3. Average annual hours actually worked per person in employment across countries.....	27
Table 4. Average annual hours and GDP per capita since 1979: United Kingdom, Sweden, France and the United States.....	32
Table 5. Preferred rate of adjustment to weekly working hours.....	74

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## Abbreviations

BT	British Telecom
CET	Comptes Épargne Temps
CIPD	Chartered Institute of Personnel and Development (UK)
DTI	Department of Trade and Industry (UK)
EC	European Community
ECJ	European Court of Justice
EEA	European Economic Area
EIRO	European Industrial Relations Observatory On-line
EIUV	Economist Intelligence Unit Viewswire
EOC	Equal Opportunities Commission (UK)
EU	European Union
FEDEE	Federation of European Employers
GDP	Gross Domestic Product
IELL	International Encyclopaedia of Labour Law
LFS	Labour Force Survey (Eurostat)
OECD	Organisation for Economic Cooperation and Development
WTD	Working Time Directive

## 1 Introduction

One of the greatest challenges for any worker is the ability to maintain a work-life balance. The cliché of “work to live” versus “live to work” may be old, but it remains relevant in contemporary Europe as it addresses the key assumption of work-life balance: that the spheres of work and life are separate entities that compete for our time. Hence time spent at work, comes at the opportunity cost of time for rest or “life”. As work gives us the financial power to pursue our interests outside of work, the challenge of work-life balance is to strike a compromise between each of these competing interests through our management of working time.

Unfortunately the matching of preferred working time patterns with actual working hours is far more complex than simply asking for one’s working time preferences to be met by the employer. National and European labour laws have limited what can be agreed to in working time negotiations by setting minimum standards and national bargaining practices, in order to protect worker health and safety. At the national level some states, such as the United Kingdom and Ireland, consider the individual worker to be in the best position to determine and negotiate individual working time preferences through local level bargaining. Other states, such as the Nordic countries and Germany, agree that the individual is in the best position to determine working time preferences, but do not consider the individual to be in the best position to effectively negotiate these preferences. The preferred level of bargaining in these countries is for individual preferences to be represented through collective bargaining. A third approach, unique to France, is to consider the government to be in the best position to regulate working time through legislation, due to the perception of large power imbalances between workers and management, even where workers bargain collectively through union representation.

Historically individual member states were considered to be in the optimal position to implement laws, standards and processes for regulating working time within their jurisdiction. However, more recently the negotiation of working time outcomes has become regulated from a level even further distanced from the workplace, the European

Community level. The European Council, most notably through the Working Time Directive (WTD), is now effectively restricting what member states may specify in national laws as minimum standards. Although these regulations may be considered as further distortions to the negotiation process, the purpose of such intervention (like that of national level regulation), is to ensure that the preferences workers are respected by employers thus minimising working time mismatches.

Whether such ‘outside intervention’ helps or hinders the negotiation process is a matter of fierce debate and is a recurring theme throughout this paper. What is of particular concern is how working time regulation can force workers to agree to hours that do not suit their own interests or that of their employer, under the guise of protecting worker health. One of the key arguments for minimal intervention into the working time negotiation process is that working time is an area of common interest between workers and management. When working time preferences are met, workers are more satisfied with their working conditions, improving motivation, organisational commitment and ultimately profits. Therefore one would expect external restrictions to distort the negotiation process as the common interests of workers and management should lead businesses to voluntarily recognise working time preferences through the implementation of flexible working time practices. However as working time regulation may simplify the negotiation process and remove an area of potential conflict, confusion or suspicion, such common standards can help organisations focus their time and resources on their core business rather than peripheral working time matters.

### 1.1 Problem specification and purpose

All workers have a particular preference for working hours to which their actual working hours may or may not match. When there is a mismatch between preferred and actual working hours, there is a ‘working time problem’. When workers work extremely long hours, regardless of whether this is through their own preference or that of their employer, there will be negative impacts upon worker health. The European Council considers 48 hours (averaged over a reference period of four months) to be the maximum



to which any worker may work before their health and safety is at risk. However as work-life balance can be affected by working time mismatches where work exceeds a considerably lower threshold, most member states have implemented stricter working time restrictions as part of a social policy agenda. This is achieved either through legislation or through institutionalisation into the national industrial relations systems. Whilst member states vary in their approach towards regulating working time, all consider the promotion of working time matches to be part of a social policy agenda facilitating work-life balance. Essentially the problem to be addressed in this paper is: *do actual working hours match the preferences of workers in Europe and what impact have possible working time mismatches on worker health and work-life balance?*

The working time problem can be examined from at least four different perspectives: the national regulatory perspective, the European law perspective, the business perspective and the worker perspective. At a national level, working time mismatches become a problem when worker interests are not adequately respected in working time negotiations and the national social policy becomes under threat. From a European law perspective the mismatch in working time becomes a problem when worker health is at risk through overwork and European standards are undermined through social dumping. From the perspective of businesses, working time mismatches only become a problem when employee outcomes such as productivity, commitment and turnover come under threat. Finally, from the perspective of the worker, working time mismatches become a problem when the demands from work negatively affect overall life satisfaction by hampering work-life balance.

The extent of the working time problem in Europe is not clear and nor are the reasons why working time mismatches exists to varying degrees in different countries. Working time is difficult to measure and as it is influenced by European laws, national laws, national bargaining systems and human resource management, external factors clearly shape an individual's working hours and associated work-life balance. However, working time outcomes are also influenced by factors internal to the individual worker,

such as age, gender, non-work responsibilities, culture and the preference for wealth or leisure.

Different strategies have been employed by the institutions of the European Union, national governments and businesses to address the working time problem. However, as the factors that influence preferred and actual working time differ greatly between countries, industries and workers, the solutions to the working time problem must also take account of such complexities. Through the examination of the interaction between the internal and external factors, conclusions can be drawn for why some workers experience greater working time mismatches and dissatisfaction than others, and the effect that national and European regulations have on these outcomes. *The purpose of this thesis is to examine why working time preferences differ between workers and nations, and explain the effect of working time regulation and working time flexibility on negotiating work-life balance.*

## 1.2 Specific research questions

To approach the working time problem, this paper is divided into five distinct but related sections. The five sections are divided along the lines of the following five working time questions:

1. How many hours are workers actually working in Europe?
2. Why do some workers work longer hours than others?
3. How are working time preferences represented in national bargaining systems?
4. Is the Working Time Directive an effective solution to unhealthy working hours?
5. Why should businesses care about working time flexibility?

The first question essentially addresses the current working time situation in Europe. This question will be examined through an overview of working hours across Europe and an investigation into the various methods for measuring working time. The purpose is to provide a basic quantitative reference point for how working time patterns nominally differ between European countries and between Europe and the rest of the world.

The second question builds upon the quantitative data by examining the reasons why working time patterns nominally differ throughout Europe. In examining the reasons behind different working time patterns the focus will be on individual preferences. The micro-level analysis of the factors influencing working time preferences will revolve around why a worker may choose to spend more time at work at the sacrifice or opportunity cost of leisure time, and vice versa. Essentially this should provide an indication of how preferred working time is determined internally and may differ between individuals and countries. The main micro-level factors to be examined will be: wages, marginal taxation rates, workplace culture and national culture.

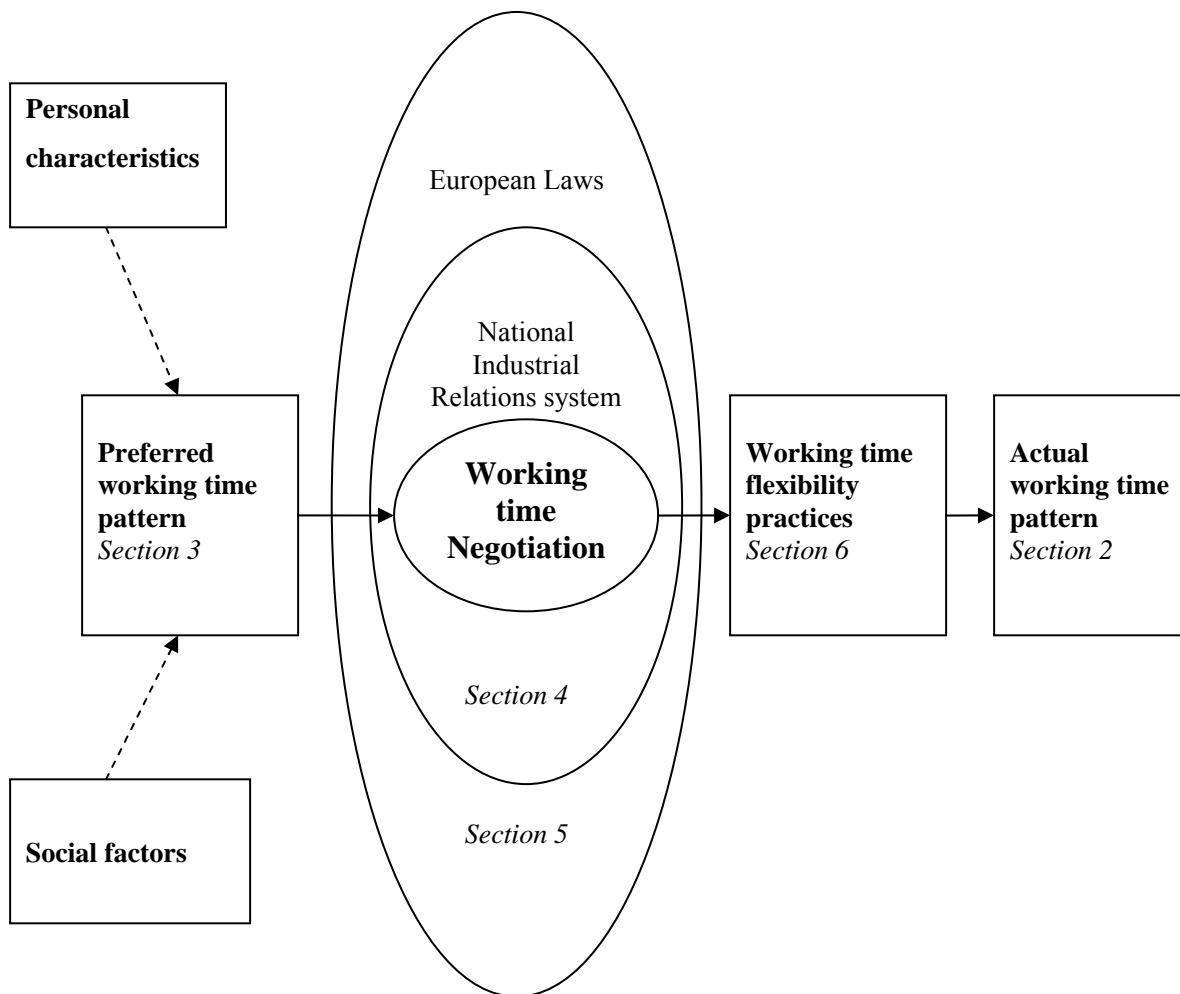
The dominance of legislation, sectoral, collective, or individual bargaining in determining working time is a major factor that distinguishes national industrial relations systems and the associated working time patterns. As actual working time outcomes are clearly influenced by regulatory and bargaining structures, the third question, examines how individual preferences are negotiated in national level bargaining structures. This will be examined with reference to the national industrial relations systems of: Sweden, France and the United Kingdom.

If the European Council is correct in its conclusion that there is a working time problem in Europe, the problem must therefore be due to a failing in the national level bargaining systems to ensure worker health. The purpose of the fifth question is to examine the Council's proposed solution to the working time problem, the WTD. This examination will be based on the working time restrictions outlined in the text of the Directive and their interpretation through the European Court of Justice (ECJ). Whilst the WTD provides some minimum European standards for working time, the need to balance the economic requirements of flexible working arrangements with the social objectives of work safety and work-life balance, is predominantly addressed at the national level (EIRO 2003). Therefore this section will conclude with an overview of national level responses to the Directive and the ECJ judgements.

The final question addresses why businesses should care about meeting the working time preferences of workers. Meeting the interests of the workers does involve real financial costs and challenges to businesses, but the impact of improved organisational commitment derived from flexible work practices can also be measured on the bottom line. Having established that organisational commitment leads to lower recruitment and retention costs, the business case for working time flexibility will conclude with an examination of strategies available to businesses wishing to bring actual working hours closer to preferred working hours.

### 1.3 Thesis outline

**Figure 1. Thesis outline**



The structure of this paper can be illustrated in the above flow chart. The paper actually begins the analysis in the box to the far right, the end point of the working time flowchart or the actual working time patterns currently in Europe. The rationale for this is quite simple, as in order to understand whether workers are working their preferred number of hours it is necessary to first examine how many hours they are actually working. Having established how many hours are actually being worked, it is then possible to compare these figures with preferred working hours and the regulatory standards. Section 3 then draws upon the national data on actual working hours and examines the factors that influence the preferred working time. Broadly it is considered that the preferred number of working hours is influenced by personal characteristics (age, gender, non-work responsibilities and the desire for wealth) and social factors (taxation, national culture and workplace culture).

After determining the preferred number of hours that best meets their work-life balance objectives, these preferences must be negotiated with the employer. The influence that national and European regulations have on these negotiations is the focus of Sections 4 and 5. Section 4 examines the impact that the national industrial relations systems have on the negotiation of working time in Europe. Section 5 then examines how negotiated working hours within the national bargaining system must fall within the boundaries of the European level safeguards. Due to the supremacy of European law, the European level regulations are represented in the outer circle of Figure 1 as they represent the absolute boundaries of potential working hours.

Whilst national and European intervention into the negotiation process may bring negotiated outcomes closer to preferred working time patterns or distort the process, employers also play an important role in determining actual working hours. By offering flexible working time practices businesses can help to bring actual working time patterns closer to the preferred working time patterns. Section 6 examines this final influence on the negotiation process by illustrating how when actual working time outcomes are closer

to preferred working time patterns, businesses can reduce human resource costs and raise productivity due to a more committed and motivated workforce.

#### 1.4 Demarcations

The presentation of non-economic factors in Section 3 is not intended to be an exhaustive list of all non-wage considerations that are part of the internal process of determining working time preferences, but simply to illustrate how basic microeconomics can not fully explain why people chose to work a given number of hours.

Mismatches in working time preferences and actual working hours can occur both in situations where workers prefer to work less than their actual hours, and situations where workers wish to work more than their actual hours. Whilst the situation of workers wishing to work more hours also has implications towards work-life balance and worker health, as the Working Time Directive and national systems of working time regulation are overwhelmingly focused on protection of over-worked workers, Sections 4 and 5 of this paper will likewise focus on the ability to negotiate fewer rather than more hours. Section 6 includes practices that facilitate extended working hours, but this is included specifically to illustrate how by allowing some workers to work hours closer to the legal limits makes it easier for businesses to manage the needs of workers requiring fewer hours.

The Part-time Work Directive 97/81/EC of 15 December 1997 is an important European law impacting upon working time negotiations as it protects part-time workers from discrimination, making reduced working hours more desirable. Although part-time work is a crucial element of this paper, the Directive will not be directly examined as part of the analysis of European level working time regulation.

## 1.5 Methodology

The working time problem is analysed through the utilisation of secondary sources including books, journal articles, statistical databases and online sources. The choice of research materials, literature and data sources varies significantly between each section, but as secondary data provided enough information to sufficiently answer the research questions proposed in each section, there was no need to proceed to the collection of primary data. The method used in the background and theory, business law and business administration sections will now be addressed in chronological order.

### 1.5.1 European working time data

The problem addressed in Section 2 was how to quantify the number of hours worked per week by full-time workers in Europe. This required both data on working hours and definitions of working time and full-time workers. Both problems were addressed through a review of secondary data sources, with external sources of published statistics providing the basis of the working time analysis (Ghauri and Gronhaug 2002: 80). The European Industrial Relations Observatory Online (EIRO) provided the data on collectively agreed hours and collective bargaining coverage, whilst the Eurostat Labour Force Statistics provided data on actual and usual weekly working hours across Europe. Unfortunately, statistics on weekly working time standard deviations were not provided in the Eurostat published figures or online database, and therefore working time distributions were presented from a journal article (Bishop 2004) which derived working time distributions from the 2002 Eurostat data. Annual working time statistics from Organisation for Economic Cooperation and Development (OECD) from national surveys was presented to illustrate working time transitions over time.

An abundance of secondary data from by large and reputable research institutions exists on international working time patterns, the main problem faced was not the lack of data on working time patterns, but that the method for measuring actual working time differed between each of the sources along with the definitions of full time workers. This made international comparisons of actual weekly working time difficult, a problem exacerbated

by interest groups that present data in the format that best reflects their particular viewpoint. To overcome these problems for the purposes of this paper, the data from each of the sources is presented in its original form and explanations are given as to the advantages and disadvantages of using each data source for international comparisons. This provides two advantages, firstly it allows the reader clearly understand the reasoning and logic underpinning the conclusions drawn in this background section to the paper and gives scope for the reader to draw their own conclusions regarding working time in Europe. The second advantage is that it improves clarity for conclusions drawn in later sections of the paper regarding the impact of regulation on working time outcomes and the role of working time flexibility in meeting working time preferences.

### 1.5.2 Existing theories of preferred working time

Having established the quantitative measures of working time in Section 2, Section 3 examines the factors affecting working time preferences and seeks to explain why working time varies across countries. The investigation into the factors affecting working time preferences is an essential starting point for the analysis of the impact of regulation on working time preferences and outcomes. Different theories exist on the process for determining working time preferences with varying degrees of complexity. The most straightforward explanation for different preferences is that economic incentives prevail as the primary motivation for workers. Such a theory is promoted most notably by Nobel Prize winning economist Edward C. Prescott (2004), with marginal taxation being a key de-motivator for working longer hours. The impact of the income and substitution effects on working time choices are examined by presenting the OECD statistics on total annual working hours and GDP per capita for Sweden, France, the UK and USA.

The microeconomic theories of incentive structures and their impact on the rational choice of working time patterns are synthesised with the complexity of the cultural theories to provide a more holistic understanding of why people choose to work. Richard Layard's (2005) critique of the economics of happiness and the irrationality of choices



regarding work-life balance was instrumental to examining how social and cultural factors impact working time decisions. Hofstede's (1984) cultural dimension of masculinity was treated as the most important cultural factor to broadly shape working time patterns across national boundaries.

### 1.5.3 Business law methodology

Section 4 analyses how national regulations and bargaining systems affect the negotiation of working time. It was important to choose multiple countries with different approaches towards working time regulation in order to illustrate the diversity in working time bargaining in the EU. The choice of Sweden, France and the United Kingdom as the three countries to be contrasted was based on the different level to which working time bargaining occurs in each system: national (France), sectoral (Sweden) and individual/enterprise (United Kingdom). The presentation of the legal frameworks used information derived from the *International Encyclopaedia of Labour Law* (IELL), the source overwhelmingly recommended as the most comprehensive and reliable account of European national labour law. Unfortunately the IELL's information on French labour law was significantly dated and given the importance of national law in regulating working time in France and the fluid nature of French labour law, most of France's legal framework is derived from journal articles.

The importance of Section 4 extends beyond the legal restrictions in each country to an analysis of how working time is actually negotiated between workers and business. Jacqueline O'Reilly's (ed.) *Regulating Working Time in Europe* (2003) provided a superb account of the national bargaining systems in the EU and was used as the primary source of analysis of national working time regulation. As the level to which working time bargaining differs between each country, so too do the drivers of working time flexibility within each system: the government (France), the social partners (Sweden) or the individual (United Kingdom). Essentially all three bargaining systems seek to support the common interests of workers and businesses, but differ in their approach on how to best achieve these common goals through negotiation. The different bargaining systems

are analysed with reference to their effect on average weekly working hours and the weekly working time distributions to show that the greater the degree of decentralisation in the bargaining system, the greater variability in working hours and thus a higher proportion of workers working extremely long hours.

Section 5 explicitly addresses the role of European Community law in shaping working time outcomes through the WTD. The WTD is examined based on the working time restrictions outlined in the text of the Directive, in particular the 48 hour weekly maximum, and its interpretation through case law in the ECJ. The implications of the WTD and ECJ judgements on national level working time negotiations involved researching member state submissions to the European Commission on the review of the directive, commentary from research institutions (eg. EIRO) and publications in business journals (eg British Journal of Industrial Relations and Industrial Relations Journal). Once again, reference to the Eurostat figures for weekly working hours is used to explain why countries with workplace bargaining are more likely to be influenced by the regulations and oppose the introduction or widening of the WTD provisions

#### 1.5.4 Business administration methodology

Ghuri and Gronhaug (2002) claim that there are two different orientations for conducting research in business studies: *induction* and *deduction*. Through induction conclusions are drawn from empirical observations, whereby the observations lead to theories for predicting probable outcomes (Ghuri and Gronhaug 2002: 13-14). The basis of inductive research is that from an array of seemingly disorganised but unbiased factual data, an orderly and relevant theory can emerge (Phillips and Pugh 2002: 17). Deduction is a research process where existing theories for explaining outcomes are tested, with conclusions drawn from logical reasoning (Ghuri and Gronhaug 2002: 13-14). Much like the preceding sections which sought to test and explain theories on working time preferences, Section 6 follows a deductive approach towards the business implications of implementing working time flexibility.

The review of relevant literature for Section 6 involved a combination of books, journal articles and online publications relating to the benefits available to businesses prepared to proactively implement working time flexibility. Much of the readings on working time preferences and working time regulation from the previous sections provided a good starting point for the business case for flexibility. In particular the British government and business council proposals to the European Commission opposing further restrictions on working time, as these gave a good account for why working time flexibility should remain at the workplace level.

The key assumption in most of these texts was that there is a commonality of interest between employees and employers regarding working time. Essentially if workers place a high priority on working time flexibility, then they will be attracted to employers offering such flexible practices. The effect of this is to lower the costs of recruitment and improve retention, providing an incentive for businesses to voluntarily introduce many of the practices promoted in the national and European level regulations. The European Foundation for the Improvement of Living and Working Conditions (Eurofound) and The Work Foundation were the key sources of information for evaluating this relationship between flexible practices and recruitment/retention. The theory that facilitating working time matches between preferred and actual hours leads to lower recruitment and retention costs was then selected to be tested.

As Europe remains very diverse in terms working time flexibility, the evaluation of the financial benefits associated with the voluntary introduction of flexible practices needed to be limited to a single geographical area. Initially European level survey data was examined to gauge the importance placed by workers on flexibility, but as this varies across national boundaries due to culture and the level to which flexible practices are established in legislation or custom and practice, it became clear that a solitary reference point needed to be established for the sake of clarity. The UK was chosen as the reference country as far more information has been published in English on such matters in the UK. The lack of national working time regulation also made the UK an appropriate reference country as companies offering flexible practices are doing so

proactively as part of their overall business strategy, illustrating the common interest between business and workers on the working time problem.

The process of testing the theoretical link between working time matches and improvements in business outcomes was conducted through the review of secondary data from surveys and a limited number of case studies. The Chartered Institute of Personnel and Development (CIPD) provided substantial quantitative survey data on the proportion of organisations offering working time flexibility, the types of flexibility offered and the perceived additional benefits and savings associated with their implementation. British Telecom and Genesis Housing Group were given as examples of companies that provided working time flexibility and derived measurable financial benefits. Further quantitative evidence to test the link between working time and employee recruitment and retention was provided by Eurofound's statistics on working time mismatches across the worker life cycle. Such figures were compared with OECD statistics on retention rates and Oswald's (2002) figures on job satisfaction across different age groups, to indicate the impact of working time mismatches on job satisfaction and organisational commitment.

Analysis of the data presented in Section 6 indicated that working time mismatches affected workers differently across age groups, with working less than preferred hours as having a far more detrimental effect on employee outcomes than working more than preferred. In fact, research suggests that workers working long hours actually exhibited greater job satisfaction and commitment, particularly in the older age groups, and that the timing of hours has at least as much influence on worker satisfaction as the nominal hours. This was unexpected as much of the working time regulation is based on helping workers to work less hours in order to gain benefits from improved commitment. Regardless of the already high commitment exhibited from older workers, it was suggested helping workers modulate their working hours downwards or shape them to fit better with their lifestyle will help keep workers from retiring.

Approaching the working time problem from the analysis of purely secondary data has some serious drawbacks. The secondary data presented in Section 6 may not completely

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answer the specific problem addressed, therefore the conclusions drawn may be based on wrong information (Ghuri and Gronhaug 2002: 78). For example, the reasons why young workers are more difficult to retain than middle aged workers are likely to go far beyond the associated probability of working time mismatches for the relevant age groups. Likewise the poor retention rate of the oldest workers may not be directly related to an inability to reduce working time, but could be far more associated with external factors like social welfare payments. It is intended that by explaining the shortcomings of the data presented, the reader will be able to recognise the explicit logic used to draw the conclusions despite the limitations in the data presented.

## **2 Overview of working time across Europe: How many hours are workers actually working?**

One of the biggest difficulties in examining working time in Europe is defining what *working time* actually means. Whilst the European Council has assumed that indeed there is a working time problem within the European Union, namely that an unhealthy long hours culture needs to be addressed, without an adequate definition of working time it is impossible to clearly quantify the problem across the EU. Indeed, the impact of the implementation of the 1989 Social Charter and the subsequent Council Directive 93/104/EC of 23 November 1993 or ‘Working Time Directive’ (WTD), are meaningless without a standard quantification of working time across Europe. The problem associated with defining working time is a recurring theme throughout this paper, but the intention of this section is to simply give a broad indication of the hours worked throughout Europe, whilst recognising the pitfalls of making international comparisons.

Various methods are used to measure working time for the purposes of international comparisons, but unfortunately each measure has its own significant drawbacks. Most of the statistical sources warn that the material should be treated with extreme caution and read in conjunction with the methodological notes (available in the Appendix of this paper).

### **2.1 Distinguishing between standard hours, overtime and maximum hours**

When examining working time it is important to distinguish between *standard* hours and *absolute maximum* hours. ‘Standard hours’ refers to the maximum number of hours to which an employee is expected to work before they become eligible for a higher rate of compensation through overtime (EIRO February 2003). Therefore when referring to the ‘standard working week’, this is the standard hours per week as defined in the national legislation or agreement (sectoral, enterprise or individual). The ‘absolute maximum hours’ refers to the ceiling to which total working hours can not be exceeded by overtime (EIRO February 2003). When analysing working time patterns across Europe from a

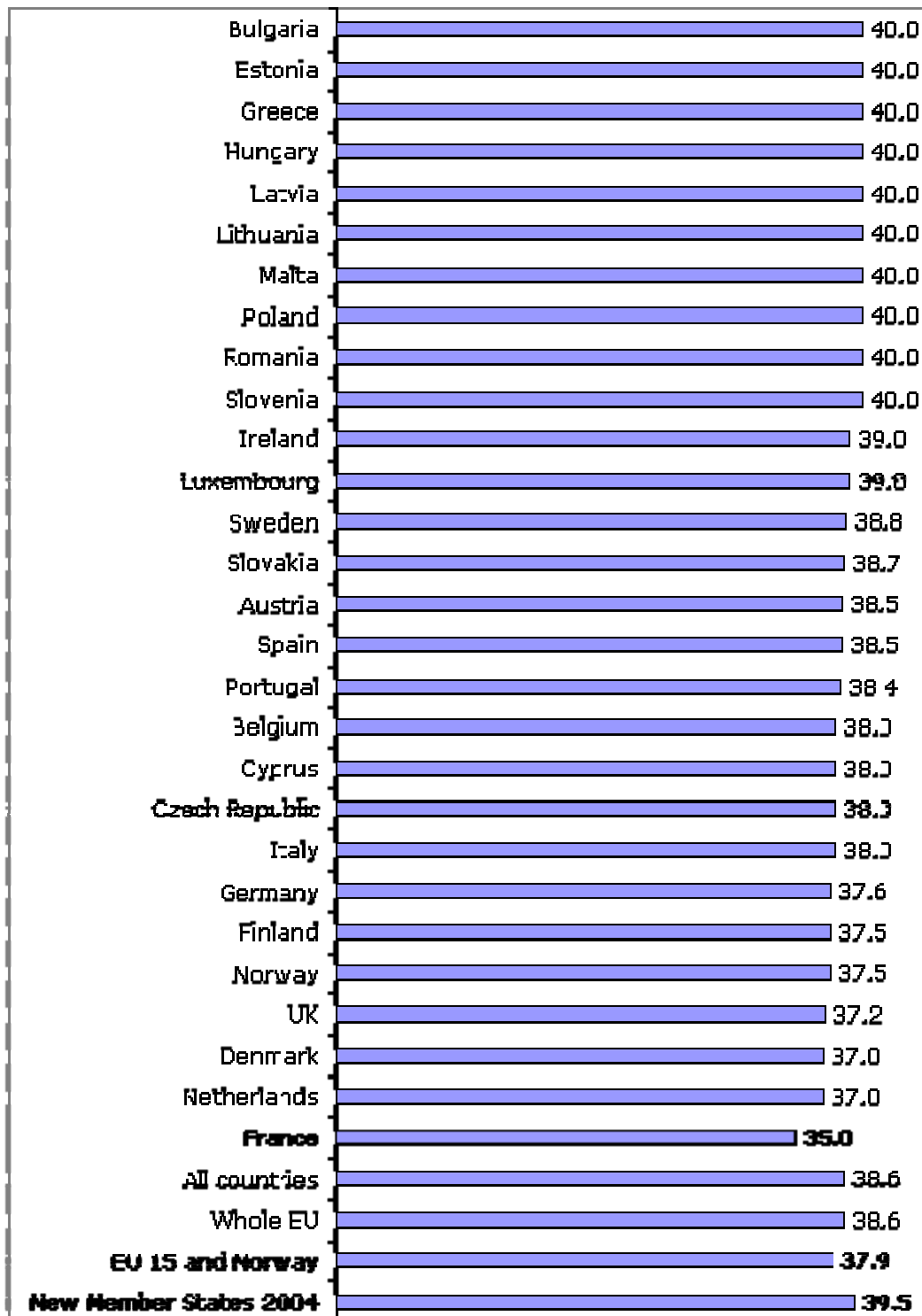
regulatory perspective, the most important measure for working time regulation is not the standard working week but the absolute maximum, as this is the threshold that employees are required not to exceed.

A second distinction that must be made when analysing regulations on the standard working week, is the degree to which pay rate or time off in lieu is enhanced when an employee commences overtime. Once again this can be determined predominantly through legislation or by agreement. Overtime compensation is of extreme importance as it influences the cost associated with utilising flexible hours. Although it is a generally accepted principle that working time should be regulated at the point closest to the workplace (EIRO 2003), if the social partners do not enjoy a high degree of independence of action regarding overtime compensation real flexibility may be restricted. For instance, an industrial relations system may seem flexible by allowing collective agreements to define the standard working week, whilst at the same time be extremely inflexible by requiring overtime rates to be defined through legislation. Therefore, companies may be free to negotiate the standard working week within a collective agreement, but be heavily penalised should they require any deviations from the standard week through the use of overtime as a means for flexibility.

## 2.2 Working time in collective agreements

Whilst the measurement of working time is problematic, broad comparisons of working hours across the EU can be made by examining the average weekly hours in collective bargaining agreements. Figure 2 below from the European Industrial Relations Observatory On-line (EIRO) and “sets out the average normal weekly working hours in 2004 for full-time workers as set by collective bargaining, across the whole economy, for the 28 countries examined” (EIRO 2005A).

**Figure 2. Average collectively agreed normal weekly hours in the EU, Norway and candidate countries, 2004**



Source: EIRO 2005A (see Appendix 1 for methodological notes)



Even considering France's statutory standard 35 hour week, the data in the figure above would indicate that the range in normal working hours between EU states is quite small at only 5 hours. However it would be dangerous to assume that the reality of working hours reflects what is stipulated in such agreements. Although collective bargaining plays a key role in determining working time in most EU countries, the nature, level (intersectoral, sectoral, company, etc), content and coverage of collective bargaining is not uniform between countries and sectors of the economy (EIRO 2005A). As listed in the table below, the proportion of workers who actually have their conditions of employment set at least in part by a collective agreement differs greatly between EU countries (EIRO 2002).

**Table 1. Direct collective bargaining coverage, selected EU and candidate countries**

<b>Country</b>	<b>Coverage</b>
Belgium	100%
Slovenia	100%
Austria	98%
Sweden	94%
Finland	90%
France	90%
Denmark	85%
Spain	81%
Netherlands	78%
Cyprus	65%-70%
Germany	67%
Portugal	62%
Luxembourg	60%
Slovakia	48%
Poland	40%
United Kingdom	36%

Hungary	34%
Czech Republic	25%-30%
Estonia	29%
Latvia	Under 20%
Lithuania	10%-15%

Source: EIRO July 2002

As the characteristics of collective bargaining differs across Europe, to assume that full-time Swedish workers on average work 1.6 hours more per week than British workers (as Figure 2 would indicate) would be entirely incorrect for numerous reasons, not the least of which that Sweden has 90 percent collective bargaining coverage, whereas the United Kingdom has only 36 percent coverage (EIRO 2002). Whereas the collectively agreed standard working week may be shorter in the United Kingdom, it is unrepresentative of the reality faced by most workers, as the workers likely to be working the longest hours are probably excluded from such statistics as they fall outside collective bargaining coverage. Whilst international comparisons on working time based on collective agreements can be useful, they are only relevant between countries both having high collective bargaining coverage. Broad comparisons between countries (or industries) with highly different collective bargaining coverage rates should be avoided.

A final drawback of comparisons based on collective agreements is that what is agreed to in a collective agreement as ‘normal working hours’ or the standard working week, does not include additional hours such as paid overtime, extra hours (those worked beyond the usual working hours but at the same rate of compensation) or unpaid overtime (EIRO 2003). Clearly if a worker’s collective agreement stipulates a normal working week of 35 hours, such as all collective agreements in France, but they regularly work extra hours, the nominal standard working week in collective agreements is almost irrelevant. Therefore, as the costs and utilisation of overtime varies between countries and sectors, it is unclear from such statistics the degree to which actual working hours varies across Europe.

### 2.3 Working time surveys

The major reference for most working time studies is the EU Labour Force Survey compiled by Eurostat. Rather than examining the number of hours agreed to by workers in collective bargaining agreements, Eurostat survey workers across the EU on the number of hours they work per week. Eurostat divide working time into two broad categories based on number of hours *usually* worked per week and the number of hours *actually* worked during the reference week. The number of hours worked per week includes all hours worked, either paid or unpaid, but excludes the travelling time between home and workplace and the time taken for the main meal break (usually at lunchtime). Persons who are also required to complete homework are asked to include the number of hours they work at home. (Eurostat 2005: 11)

The main distinction between usual and actual working hours is that actual working hours only refers to the hours spent at work during the reference week, whereas usual hours is an estimate of weekly hours in a typical week. For example, if a worker happened to be absent for a day of work during the reference week, the hours spent absent would not be included as ‘actual hours worked’, but would be included ‘usual hours worked’ for the purpose of the survey. It should be noted that as the measurement of working time is done at the national level there are problems with different methods for classifications of full-time and part-time workers (EIRO 2005A). Further, as the survey is self-assessed there may be inaccuracies in determining what exactly constitutes working time, particularly unpaid overtime and de facto working time spent on-call. Both usual and actual working hours for full time workers are listed in the table below.

**Table 2. Average usual and actual hours worked per week by full-time workers in all jobs (men and women) by countries and quarters**

	2004q03		2005q03	
	Usual	Actual	Usual	Actual
Belgium	41.2	41	41.3	40.8
Czech Republic	43	43	42.9	42.6
Denmark	40.2	40.2	40.5	40.5
Germany	n/a	n/a	41.5	42.9
Estonia	41.8	42.3	41.5	41.9
Greece	44.2	44.3	44.3	44
Spain	41.7	41.3	42.3	42
France	40.8	40.2	41.1	40.1
Ireland	40.7	41.6	40.7	41.8
Italy	41.4	41.2	41.3	41.1
Cyprus	42.5	42.8	42.2	42.1
Latvia	42.8	43.7	42.8	43.6
Lithuania	39.4	40	39.5	40
Luxembourg	40.9	41.4	40.9	41.3
Hungary	41.3	41.5	41	41.3
Malta	41.4	40.3	41.3	41
Netherlands	40.6	41	40.7	41.3
Austria	44.1	44.4	44.3	44.1
Poland	43.6	44.3	43.7	44.1
Portugal	41.7	41.8	41.8	41.8
Slovenia	43	43.3	42.9	43
Slovakia	41.4	41.5	41.6	41.7
Finland	40.5	40.5	40.6	40.8
Sweden	40.8	40.4	41	40.8
United Kingdom	43.4	41.8	43.1	41.6
EU-15 Average	41.6	41.5	41.7	41.7
EU-25 Average	41.8	41.8	41.8	41.8

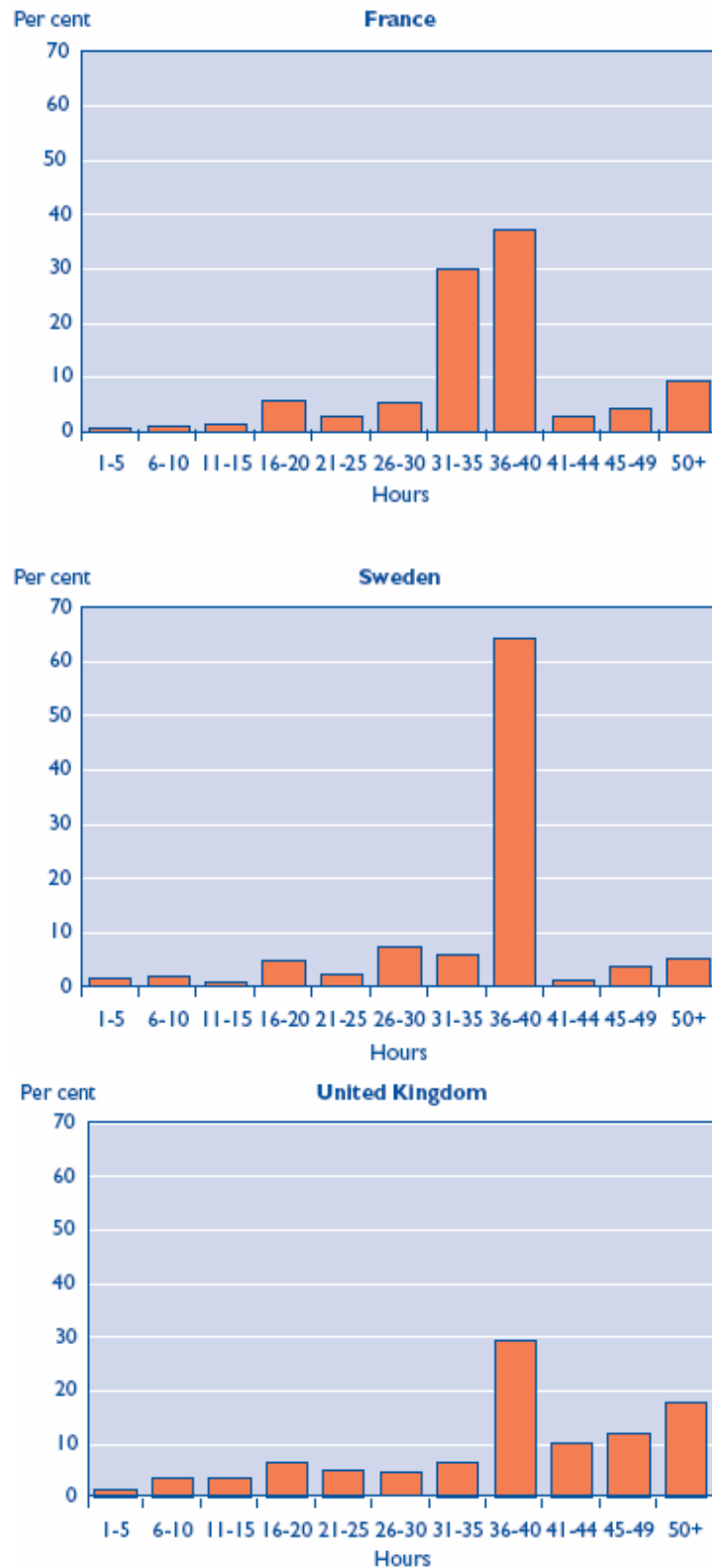
Source: Eurostat LFS

From the above statistics it is interesting to note that usual and actual working hours are significantly higher than collectively agreed hours in all countries except Lithuania, where they are broadly equal. Of most interest is that countries such as Belgium, Slovenia and Austria where collective bargaining coverage is almost 100%, the discrepancy between averaged collectively bargained weekly hours and actual weekly hours remains large, at over 5 hours per week in Austria. Further, for all the controversy surrounding the French statutory 35 hour standard working week it does not seem that working time is significantly less in France than other European countries. This further highlights how collective bargaining and legislative restrictions may lead to fewer formal working hours in the standard working week, but have little effect on hours actually worked when overtime is considered.

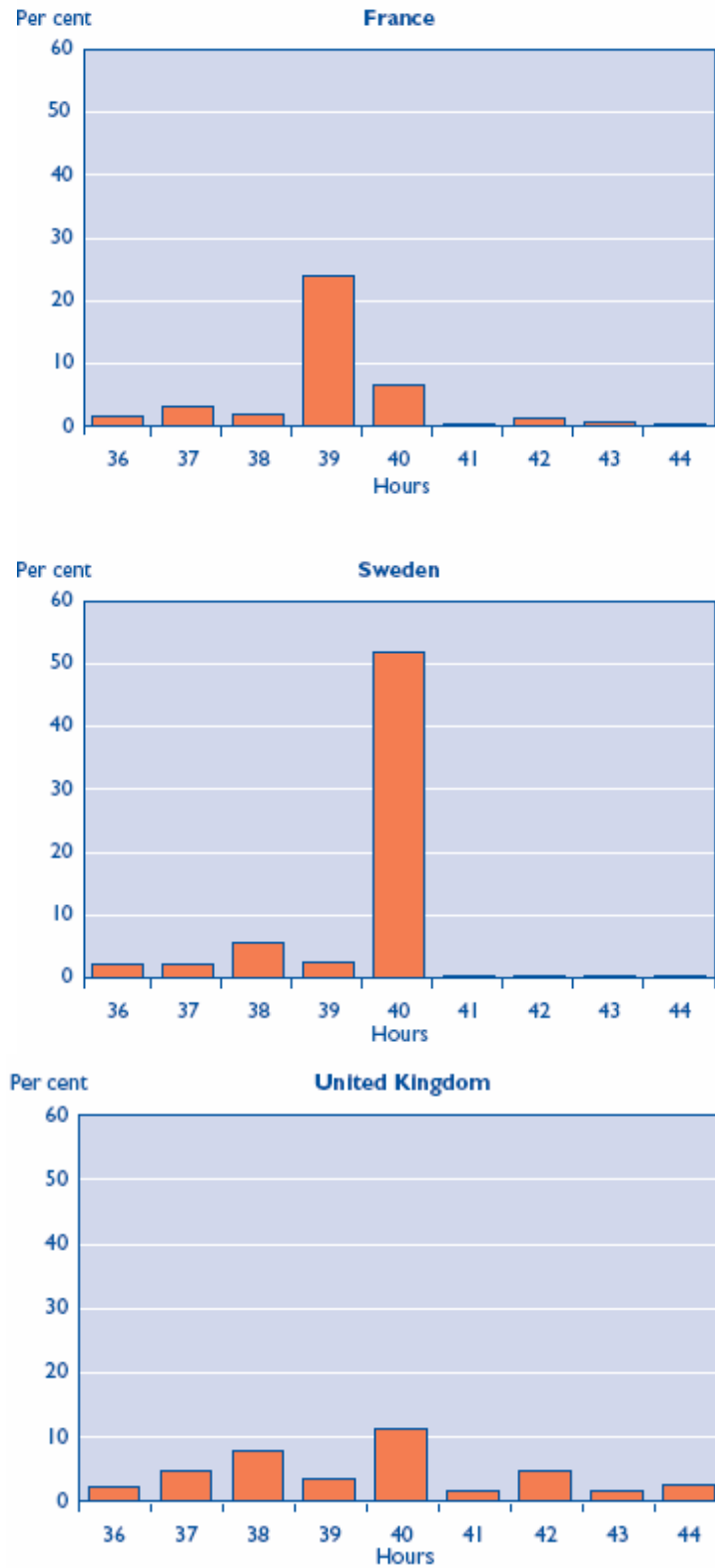
The Eurostat statistics provide a good references point for the working time problem in Europe as they clearly indicate the hours required by the average full-time worker. However, as these statistics do not indicate the distributions or standard deviations from the mean, the number of workers actually working extremely long hours is inconclusive. It therefore should not be concluded that a country such as the United Kingdom (41.7 average actual full-time hours per week in 2005) would be less affected by EU working time restrictions on maximum weekly hours than say a country such as Germany (42.9 average full-time hours per week).

Although not available for all European countries, Bishop's (2004) study on European working time indicated the distributions of usual weekly working hours in Sweden, France and the United Kingdom derived from the Eurostat figures for 2002. Figure 3 indicates the usual weekly hours for all workers within the three selected countries, whereas Figure 4 indicates the typical distributions for full-time workers within the 36-44 hour per week cohort.

**Figure 3. Proportions of people in employment in their main job by usual weekly hours worked; France, Sweden and United Kingdom; 2002**



**Figure 4. Proportions of people in full-time employment (36+ hours) in their main job by usual weekly hours worked; France, Sweden and United Kingdom; 2002**



Clearly the UK has the widest distribution of working hours, with no particular standard full-time working week. This contrasts starkly with that of Sweden and France where working time distributions for full time workers are quite clustered around the 40 hour per week mark. The wider distribution of hours in the UK is indicative of the minimal collective bargaining coverage and what could be expected of a country where working time is negotiated at the workplace level. The relatively high proportion of the labour force working beyond 50 hours per week in the UK relative to Sweden and France, is also of concern regarding the European standards for maximum working hours. The heterogenous nature of working time places further limitations on the degree to which the average weekly working hours of the Eurostat LFS reflect the usual working hours for many British full-time workers.

Essentially the deviations from the standard working week can be explained through the characteristics of the national level bargaining systems. As each of these countries are the references for national level regulation in Section 4, many of the patterns shown in the above figure will be examined in detail with reference to national laws, collective bargaining coverage and the differing drivers of flexibility within each bargaining system. The implications of the working time distributions are also evident in Section 5, as it is clear from Figure 3 that restricting maximum weekly working hours to 48 hours as per the WTD, is to have more effect in the UK than in other member states, leading the UK to oppose European level working time restrictions.

## 2.4 International comparisons of working time

For an indication of how European working time compares to the rest of the world, a very broad study of working time conducted by the OECD has examined working time patterns internationally since 1979. The OECD statistics (see Table 3 below) are interesting as they clearly reveal how working time patterns have changed over time within the given countries. Unfortunately these statistics include part time workers into the sample, making it difficult to draw any conclusions regarding average working hours



and the degree to which (full-time) workers are working unhealthy long hours within any given country. As with the Eurostat statistics, the OECD statistics also suffer from the drawbacks of gathering working time data from national sources, as differing definitions of working time and measurement techniques make inter-country comparisons difficult.

**Table 3. Average annual hours actually worked per person in employment across countries**

	1979	1983	1990	2000	2001	2002	2003	2004
Australia	1 904	1 853	1 866	1 855	1 837	1 824	1 814	1 816
Austria				1 582	1 593	1 563	1 550	
Belgium		1 659	1 601	1 545	1 547	1 548	1 542	1 522
Canada	1 800	1 749	1 757	1 768	1 758	1 740	1 733	1 751
Czech Republic				2 092	2 000	1 980	1 972	1 986
Denmark		1 597	1 452	1 467	1 495	1 462	1 475	1 454
Finland		1 809	1 763	1 721	1 694	1 686	1 669	1 688
France	1 755	1 663	1 610	1 496	1 475	1 437	1 431	1 441
Germany			1 541	1 463	1 450	1 439	1 441	1 443
Western Germany	1 758	1 692	1 566	1 443	1 431	1 421	1 424	1 426
Greece		1 990	1 919	1 926	1 932	1 930	1 936	1 925
Iceland			1 843	1 885	1 847	1 812		
Ireland		1 902	1 911	1 688	1 679	1 666	1 646	1 642
Italy		1 677	1 656	1 613	1 601	1 599	1 591	1 585
Japan	2 126	2 095	2 031	1 821	1 809	1 798	1 801	1 789
Netherlands			1 456	1 368	1 368	1 338	1 354	1 357
Norway	1 514	1 485	1 432	1 380	1 362	1 345	1 338	1 363
Poland				1 988	1 974	1 979	1 984	1 983
Portugal			1 858	1 691	1 696	1 697	1 678	1 694
Slovak Republic				2 017	2 026	1 979	1 931	1 958
Spain	2 022	1 912	1 824	1 815	1 817	1 798	1 800	1 799
Sweden	1 530	1 532	1 561	1 625	1 603	1 580	1 563	1 585

Switzerland			1 648	1 603	1 573	1 555	1 556	
United Kingdom	1 815	1 713	1 767	1 701	1 703	1 684	1 672	1 669
United States	1 861	1 851	1 861	1 858	1 836	1 830	1 822	1 824

Source: OECD Employment Outlook 2005<sup>1</sup>

Whilst inter-country comparisons are riddled with problems, the OECD statistics do provide a good tool for examining working time trends over time within a given country. Assuming the data collection and definitions have not significantly changed within each national data source, it can be concluded whether working time has increased or decreased over time within each country. For example, broadly there has been a significant drop in annual working hours during the past 25 years in all of the countries listed above, with the exception of the United States and Sweden. However as many of the trends in working time may be better explained by the increasing role of women in part-time work and the increasing casualisation of the workforce (historically or since 1979), such statistics should be treated cautiously as broad indicators of national working time trends over time.

The significance of such macro statistics is that as the world economy has grown, the overall number of hours worked per worker has dropped. Whilst the increased wages and greater wealth will have a strong impact upon the motivation to work longer hours, the reasons why workers choose to work clearly go beyond sheer economic considerations and encompass social and cultural factors that differ markedly between countries. The motivational factors affecting working time preferences will now be examined in detail in Section 3.

<sup>1</sup> For methodological notes please refer to page 256 of the OECD Employment Outlook 2005 <http://www.oecd.org/dataoecd/36/30/35024561.pdf>

### **3 Factors that affect individual working time preferences: Why do some workers work longer hours than others?**

It has been established that workers differ in their individual working time preferences, but it is important to examine some of the factors that influence their preferences. Why do some workers prefer to work longer hours than others? The most obvious factor that directly influences the preference for more or less time at work is the wage and marginal taxation rates. Legislation, bargaining systems, structure of the economy and fluctuations in the business cycle also affect working time, but although these factors are easily accountable and often measurable, they do not fully explain the differing preferences for working time across Europe. Other factors, notably the role of national and workplace culture, have a strong bearing on whether a worker chooses leisure over work. Often the cultural impact is so strong that workers will choose to remain at work for unpaid and unproductive hours, simply to look visibly committed to their jobs leading others to follow suit.

This section essentially tries to shed some light on why workers often make irrational choices regarding the working time patterns. Initially working time preferences are analysed in a microeconomic framework examining the economic benefits of working additional hours and the economic costs of leisure. Taxation is then added into the analysis to explain how national working time preferences can be shaped through the distortion of the economic imperatives to work. The economic analysis is entirely based upon the concept that people are rational in their working time preferences and have the power to choose between working time and rest.

Unfortunately economics can not explain working time preferences in their entirety as social pressures often result in workers working longer hours than they would prefer. Prioritising leisure over work has negative economic impacts beyond the immediate, as not choosing to work additional hours in a culture where working time is viewed as a measure of organisational commitment, negatively impacts future career prospects. It is argued that the social pressures to work long hours are directly related to the degree of

masculinity present in organisation, reflected through national and organisational culture. From the premise that many additional hours worked are unproductive and the result of social pressures rather than workload, it is concluded that the removal of the long-hours culture should be a priority of governments and businesses in order to maximise labour output (per hour) and minimise labour turnover, particularly among workers that seek flexible hours such as female workers.

### 3.1 Wage rate

Over the past 25 years, as countries have become wealthier in terms of per capita Gross Domestic Product (GDP), workers have chosen to spend less time at work and “spend a part of their extra potential income on a fuller private life” (Layard 2005: 50) (OECD Economic Outlook 2005: 255). In terms of Maslow’s (1954 in Stum 2002) hierarchy of needs, the increasing preference towards leisure over work could be an indication of a shift towards addressing the higher level needs (self actualisation, esteem, love, etc.) and a search for a wider meaning beyond material possessions, through less time at work. As a strong economy has led to more workers receiving higher wages and overcoming their basic physiological and safety needs, many workers have become more motivated by addressing work-life harmony than additional extrinsic rewards (Strum 2002: 8).

From a microeconomic perspective reducing time at work following a rise in real wages also makes perfect sense, as additional benefit (marginal utility) brought by extra income will reduce once the basic needs are met. Hence, the benefit of an extra \$1 000 through extra hours at work, will be less to a worker on a yearly wage of \$100 000 than a worker on a yearly wage of \$25 000, struggling to achieve even the most basic needs. In economic terms this is considered the “income effect” whereby the individual with higher income can afford to choose leisure time over working time (Bishop 2004: 114).

Whilst such theories can explain why many low-wage workers may choose to work long hours (and likewise workers in poorer countries tending to work longer hours than workers in richer countries), they do not explain why workers on \$100 000+ wages are

also likely to work long hours and complain about a lack of balance in their life. Unfortunately as wages rise, so too does the (opportunity) cost of choosing leisure over work in terms of foregone income. In other words, the worker on a \$100 000 income forgoes a greater amount of income for an additional day of rest, than a worker on a \$25 000 income. This phenomenon is explained by economists as the “substitution effect” (Bishop 2004: 114).

The relative powers of the income and substitution effects will determine the final outcome/preference of the worker (Bishop 2004: 114). Juster and Stafford (1991) argue that the income effect will generally dominate where wages are high, leading workers to consume additional leisure time, whilst the substitution effect will dominate where wages are low, leading workers to offer more hours to the labour market. Such a broad conclusion would tend to be supported by the OECD time series data on working hours (See: Table 3), but does not explain the apparent rise in working hours in Sweden and the persistently high working hours in the United States.

**Table 4. Average annual hours and GDP per capita since 1979: United Kingdom, Sweden, France and the United States**

Year		1979	1983	1990	2000	2001	2002	2003	2004
United Kingdom	Annual working hours	1815	1713	1767	1701	1703	1684	1672	1669
	GDP per capita	\$7,923	\$10,631	\$16,201	\$25,634	\$27,267	\$29,571	\$30,669	\$32,124
Sweden	Annual working hours	1530	1532	1561	1625	1603	1580	1563	1585
	GDP per capita	\$9,364	\$12,518	\$18,432	\$26,718	\$27,075	\$28,071	\$28,982	\$30,711
France	Annual working hours	1755	1663	1610	1496	1475	1437	1431	1441
	GDP per capita	\$8,866	\$12,166	\$17,801	\$26,323	\$27,594	\$28,085	\$28,432	\$29,711
United States	Annual working hours	1861	1851	1861	1858	1836	1830	1822	1824
	GDP per capita	\$11,241	\$14,937	\$22,887	\$35,162	\$35,776	\$36,321	\$37,582	\$39,653

Source: OECD Factbook 2006; OECD Employment Outlook 2005

Combining OECD data for annual working time with OECD data on per capita GDP over the last 25 years, the table above illustrates the historical relationship between economic growth and working time for United Kingdom, Sweden, France and the United States. Even taking into consideration the inaccuracy of using GDP per capita as a measure of broad individual welfare (such as measurement problems, the underground economy, distribution of wealth, cost of living increases etc.), it would not seem that economic growth in developed economies necessarily leads to a reduction in working hours. Whilst all four countries have seen broadly similar increases in GDP over the same period, only France and the UK have seen reductions in working time. Whilst wage levels play an

important role in determining working time patterns clearly they are not the sole motivating factor behind working extra hours.

### 3.2 Marginal taxation rate

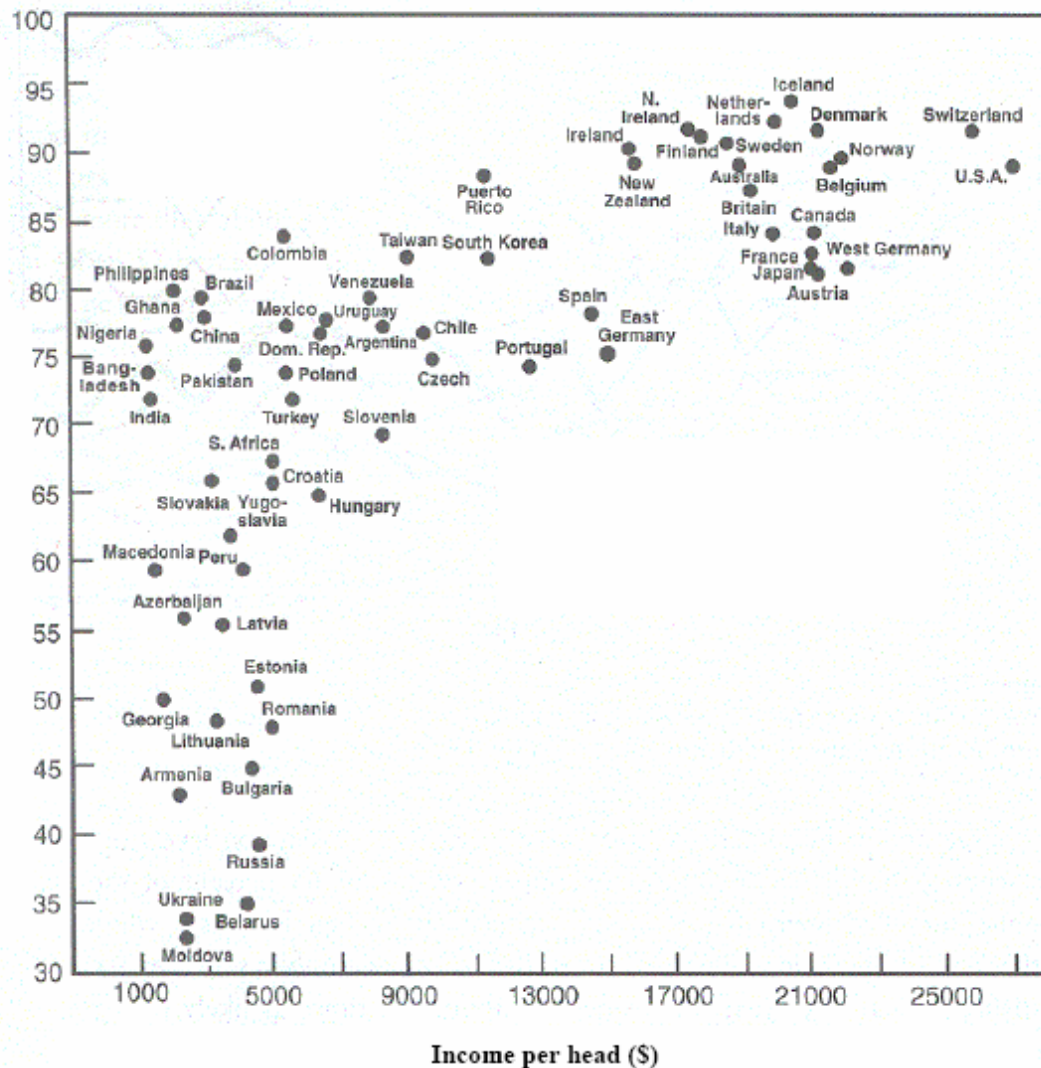
Obviously when examining the impact wages have on working time preferences, consideration must be given to the marginal taxation rate as it is after-tax wages that dominate the income and substitution effect. The marginal taxation rate should have a direct influence on the individual preference towards designating time for work or rest, whereby higher marginal taxation rates should act a disincentive to work additional hours. When trying to account for differences in working time preferences Prescott (2004) argues that marginal taxation rates (not culture or social welfare) explain virtually all differences between labour supply across national boundaries as “when the French and others were taxed at rates similar to Americans, they supplied roughly the same amount of labour” (Prescott 2004A: 18). This seems to account for why the United States has over the past 25 years maintained some of the longest working hours, whereas Europeans have opted to work less as incomes have risen (OECD 2005: 255). It would therefore seem that Europeans have opted to “spend” more of their increases in income on leisure, whereas Americans have opted to increase consumption (Blanchard 2004 in Alesina et al 2005: 3).

As income tax is within the sovereignty of the nation state, the effect of marginal taxation on labour force participation differs across Europe. As mentioned previously, Sweden has maintained its working time pattern for the past 25 years, though from a far lower base. Studies have shown that the historically high marginal tax rates in Sweden (85 per cent in 1981) provided a disincentive to the degree that workers choose leisure over market work (Stuart 1981 in Juster and Stafford 1991: 494). Therefore as incomes have risen in Sweden, the lowering of the marginal taxation rates in the 1990s may have minimised the income effect of forgoing additional work for additional leisure, explaining the modest increase in working hours in Sweden since 1979 (See: Table 4), bucking the European trend (OECD 2005). The relatively low annual working hours

base and the historical role of women in part time employment in Sweden, can also go some length to explain when Sweden has not seen the dramatic drop in overall hours worked since 1979 while GDP per capita has risen

While both sides of the social policy debate broadly agree that higher marginal tax rates provide a disincentive to work and will result in lower GDP due to lower output per worker, there is no consensus on whether higher GDP through increasing hours of work is a desirable outcome. Whilst it is easy to point to the increases in prosperity, and perhaps education and overall health, associated with economic growth (Prescott 2004), it is not so clear whether the workers themselves are satisfied with the additional income. When surveyed on a 1-10 scale “All things considered, how satisfied are you with your life as a whole these days?”, for countries above \$20 000 per capita, additional income has not brought about any significant increase in satisfaction (Layard 2005: 33). The results of this survey are listed in the figure below, with the happiness index equalling the percentage of respondents that scored 6 and above on their self assessed satisfaction.



**Figure 5. Happiness and per capita GDP across the world****Happiness (index)**

Source: Layard 2005

From this it can be argued that high marginal taxation rates and their negative impact upon the incentive to work longer hours and maximise personal wealth is not necessarily an undesirable outcome as workers may receive greater satisfaction from rest and leisure than additional income (Layard 2005: 32-3). Part of the problem is habituation, whereby workers adapt quickly to the additional benefits brought about by additional material wealth. Hence when questioned on how much wealth one needs, wealthier people tend to require greater wealth than poorer people (Layard 2005: 42). The other problem is that

the benefits of additional wealth are often impacted by our wealth relative to others, rather than the material benefits that additional wealth may bring. Take for example the following survey put to a group of Harvard students:

**Figure 6. Relative wealth versus material wealth**

Which world would you prefer? (prices are the same)

A. You get \$50k a year and others get \$25k a year

B. You get \$100k a year and others get \$250k a year

Source: Layard 2005

Interestingly the majority of respondents voted to live in the first world where they were relatively rich but materially poorer (Layard 2005: 41-2). These are interesting findings as they help explain the psychological reasons why people, regardless of material wealth, may choose to work extremely long hours at the expense of leisure time. It also tends to rebut the oversimplified conclusion that marginal taxation rates are the only reason why Europeans work less than Americans (Prescott 2004). Alesina et. al. (2005) argue that if taxes were the only reasons why people chose to work longer hours, labour supply elasticities would need to be far greater than those found in the micro literature. Olovsson (2004 in Alesina et. al. 2005: 4) calculates that income tax differentials between Sweden and the US account for roughly 10 per cent of the difference in working hours. Therefore, although marginal taxation has an influence on our decision to allocate more time to work or rest, our choice is made for far more complicated reasons than simply additional income.

### 3.3 National culture

Many studies have examined the cultural differences between nations, none more comprehensive and extensive than the program of research by Geert Hofstede. Hofstede's (1984) study of personal values of IBM executives around the world led to the definition of four dimensions of cultural variation in work related values: power distance, uncertainty avoidance, individualism and masculinity. He later included long-term

orientation as a fifth dimension crucial to the understanding of business settings (Hofstede in Graham et. al. 1994). Whilst these unique cultural variations should have an important impact upon the working time patterns, it is not clear that all the dimensions impact upon working time patterns equally. For example Sweden may share with the United Kingdom a low power distance culture, but Swedish working time patterns seem more closely aligned with France, a high power culture. Likewise individualism is high in the United Kingdom but very low in Japan, but both countries share a long working hours. The same can be said of the uncertainty avoidance dimension. Interestingly, the only noticeable correlation between working time and national culture in developed countries seems to be the masculinity dimension.

One reason why masculinity may affect working time patterns is that it is this dimension that directly affects the division of labour between the sexes. In the United Kingdom, as with most masculine countries, there is a cultural perception that the non-market work activities of family care are the responsibility of the female family members (Fagan 2000 in Bishop 2004: 114). The intra-family division of labour between market and non-market work in Japan (the world's most masculine society according to Hofstede's cultural dimensions), is such that Japanese men average only 3.5 hours of housework per week compared to 31 hours for Japanese women (Juster & Stafford 1991: 493). This is in contrast to more feminine societies, such as Sweden, where family care is perceived as a shared responsibility between the sexes, or even partly the responsibility of the State.

If non-market work was included in the calculation of working time for international comparisons, many of the large discrepancies in working time between feminine societies and the masculine societies become less noticeable. Juster and Stafford (1991) argue "It is the combined effect of market and non market work differences which create approximately equal leisure time for Swedish and Japanese men: regardless of conceptual model... men in both these high-income countries have about the same amount of work and leisure" (Juster & Stafford 1991: 493). Prescott (2004) also refers to a recent United States-Germany study indicating that Americans and Germans work approximately the same number of hours, the difference being that Americans allocate

more time to market work, whereas Germans allocate more time to domestic non-market work. However, Prescott entirely discounts culture or gender division of work and believes these differences are entirely related to differences in taxation rates such that: “Change the tax laws and you will notice a change in behavior: These people [Europeans] won’t start working more, they will simply engage in more taxable market labor, and will produce more per hour worked” (Prescott 2004A: 18). As mentioned previously, Prescott’s assertions have been strongly disputed on labour supply elasticity grounds (Alesina et. al. 2005) and moreover the taxation systems of a society can be seen as reflection of the masculinity cultural dimension whereby high taxation is associated with welfare orientated feminine societies.

### 3.4 Workplace culture

Whilst national cultural dimensions may shape the intra-family division of work, the impact of masculinity is also reflected in workplace culture. The term ‘long hours culture’ is often used to describe businesses, industries or nations where working hours are unusually long, but this is misleading. Economists such as Prescott (2004) correlate working time with producing an economic outcome and therefore longer working hours with increased economic output. However, although masculine societies and businesses with a disproportionately large number of male employees tend to have longer working hours, the additional hours are not always productive. Where workers are faced with a persistent lack of job security, additional hours may be worked simply to “demonstrate visible commitment to the job” (Goffee and Scase 1992; in Simpson 1998: 38).

Workplace cultures that consider time spent at work as an indicator of commitment to the organisation - as opposed to time spent working or actual output - tend to promote a longer working hours and a culture of ‘presenteeism’. Presenteeism is defined by Cooper (1996) as “being at work when you should be at home either because you are ill or because you are working such long hours that you are no longer effective” (Cooper 1996 in Simpson 1998: 38). Simpson (1998) identified that workplace pressures to work longer hours could not simply be explained by workloads. “Fear of redundancy can

create an imperative to appear visibly committed to the job to maximize limited promotion opportunity and can encourage managers to demonstrate commitment by staying at the office for long periods of time” (Simpson 1998: 48). The existence of presenteeism was found to be stronger in male dominated businesses, particularly where the gender-mix between senior management is heavily male dominated.

One of the major problems with presenteeism is that it leads to ‘competitive presenteeism’ whereby managers compete over the duration they stay at the office (Simpson 1998: 48). Competitive presenteeism can become an endemic part of the workplace culture whereby workers lower down the organisational hierarchy also adopt such working time practices and extend the time it takes to complete tasks in order to actually have work to do after office hours (Simpson 1998: 44).

Presenteeism raises a number of problems for workers trying to balance their work and family commitments, but the major impact is felt by female workers with families. This is largely because of the previously mentioned imbalances in the family responsibilities between genders in masculine societies. Not only do women generally have greater family responsibilities outside of work, but studies have shown that male dominated organisations have used presenteeism (consciously or subconsciously) as a form of resistance to women entering the male domain of senior management (Simpson 1998: 45). Watson found that male managers deliberately stayed late at work and artificially extended meetings beyond the official end of the day in order to criticise managers, especially women, who could not stay for the full duration (Watson 1994 in Simpson 1998: 45).

Essentially female workers in male dominated businesses with long-hours cultures are faced with two choices: engage in competitive presenteeism at the detriment of family life (or life in general) or refuse to work beyond the contracted hours and accept the negative career consequences for implied lack of commitment to the organisation. Of course there is a third option for workers stuck in organisations with such cultures, that is

to leave the organisation and pursue an employer willing to offer the flexibility in meeting individual working time preferences (Simpson 1998).

Although businesses and governments may not consider a long-hours culture as an entirely negative phenomenon as it nominally raises overall labour output (output per worker), the actual increase in output may be overestimated. As presenteeism leads to lower productivity (at least on a labour productivity per hours basis), if the long-hours culture is largely based around being present at work rather than productive, a reduction in working hours or the standard working week, may not lead to less work actually being completed. Therefore it should be a priority for Governments and businesses to shift their priorities away from increasing labour output through increasing working hours, to increasing output based on improved productivity.

## **4 National level bargaining systems in Sweden, France and the United Kingdom: How is working time negotiated?**

As people differ in their financial compensation from work and the financial costs associated with their life interests, the optimal balance between time for work and time for life is determined primarily on an individual basis. Some individuals need to work longer hours whilst others need to work shorter hours to achieve their work-life balance. This makes statements on work-life balance based purely on hours worked look extremely superficial. Likewise claims that countries in which workers broadly work longer hours are failing to address work-life balance issues are also superficial. When judging national systems for determining working time, the important question is whether national working time patterns reflect worker preferences.

To answer this question it is essential to examine how working time is determined, as individual preferences are met through dialogue and negotiation between workers and their employers. If individuals are in a good position to determine their work-life balance, they need to have the power to negotiate their work-life balance with their employer. This requires flexibility from both sides of the employment relationship. Workers that wish to work shorter or longer working hours need to be able to determine their hours of work with a flexible employer or be able to find an employer offering work that matches their needs. Inflexibility in the industrial relations system will lead to outcomes whereby individual working time preferences can not be met due to regulations or outside interference.

Essentially all industrial relations systems seek to support the common interests of workers and businesses, but unfortunately there is no consensus regarding how to best achieve these common goals. While there is certainly no uniform “European Model” for determining working time issues, there are some commonalities between clusters of countries in Europe. Jacqueline O’Reilly, editor of *Regulating Working-Time Transitions in Europe* (2003), groups the countries in relation to the way in which working time issues are primarily decided — whether the primary mechanism is one of national

negotiations between social partners (as in Sweden and to a lesser extent as in Germany and the Netherlands), whether the central mechanism governing working time is statutory regulation (as in France and to a lesser extent as in Spain), or whether working time arrangements are principally set by employers coupled with some localised collective bargaining, but subject to very limited state involvement (a pattern seen to characterise the UK and Ireland) (O'Reilly 2003: 24-45).

Where working time is a matter of micro-level bargaining at the individual or enterprise level, there is a stronger degree of decentralisation in the industrial relations system. Removing barriers that hinder workers and businesses from negotiating and matching their individual preferences at the workplace level is often viewed by liberal governments as an appropriate method to improve labour market flexibility. In other words, allowing workers and businesses to negotiate their preferences free of legal and institutional constraints, potentially allows for win-win outcomes. The United Kingdom is an example of an industrial relations system characterised by *individual flexibility* (Bodin 2001: 17) whereby the worker, as an individual, has authority over negotiating his own conditions of employment with his respective employer. Collective bargaining coverage is limited in the United Kingdom and the preferred level of bargaining is the company, leaving overtime thresholds and other working time matters within the jurisdiction of individual bargaining or unilateral employer initiative (EIRO 2003).

Secondly, where working time is a matter of collective bargaining at the sectoral level, the respective union (representing a group of employees within a particular profession) and an employer or employer association (representing a group of employers within a particular industry) is responsible for initiating working time flexibility. This form of negotiation is often characterised as a distinctly European “social partnership” model where the “social partners” (the union and the employer association) jointly determine the core conditions of employment through collective bargaining (Eurofound 2005: 5). Where overtime and working time are determined predominantly through collective bargaining, each collective agreement defines working time separately. Systems where authority lies in the hands of the social partners or is of management prerogative,



generally have greater heterogeneity and flexibility as there is more scope for diversity between industries and workers within a nation, thus making national working time standards and maximum hours difficult to define (EIRO 2003). Sweden is an example of an industrial relations system that promotes sectoral bargaining and labour market flexibility through *negotiated flexibility* (Bodin 2001: 17).

Thirdly, working time may to be determined is at the national level (macro-level). This is the most centralised form of working time determination whereby all workers in all sectors are covered by the same agreement or legislation. Where such working time conditions are set predominantly by legislation, there is generally a greater degree of homogeneity of working time standards, as all workers within a nation are subject to the same standard working week and overtime maximums (thus absolute maximum hours) as per the national legislation (EIRO 2003). In such situations national standards are easy to define as working time is effectively not an allowable matter for industrial bargaining at any level. France is an example of an industrial relations system characterised by *State-driven flexibility* (Bodin 2001: 17), whereby legislation plays a key role in determining working time patterns.

As most industrial relations systems in Europe contain elements of each of the three levels, it is the degree to which one particular level takes precedence or how the multiple levels are interrelated that gives each industrial relations system their national characteristics (Eurofound 2005: 5). This next section will contrast how working hours are bargained in Sweden, France and the United Kingdom, with a particular focus on the interaction between legislation and bargaining. While there are numerous reasons for the diversity of industrial relations systems within these countries – including diverse histories, politics, institutional development and cultures within these countries – the intention of this section is to explain how working time is currently bargained, rather than a historical account of the different bargaining systems. Each country analysis will begin with an analysis of the relevant national working time legislation, followed by the role of collective bargaining in decentralising the level to which working time matters are decided.

## 4.1 Social partners model – Sweden

In Sweden the central mechanism for determining working time is through collective bargaining between social partners. Since the 1980s the general trend in Sweden has been an emphasis on decentralising the decision making process to the enterprise or branch level, with very little government intervention or regulation (Anxo and Storrie 2003: 50). Whilst the Swedish system differs considerably with its Nordic counterparts in the level to which industrial bargaining takes place, the high levels of union density and collective bargaining coverage, and the existence of a strong “social dialogue” between the social partners, often leads analysts to group the countries together as a distinctly Nordic model, “combining economic efficiency with high levels of social protections as proof that Europe does not have to follow the Anglo-Saxon model of supposed ruthless capitalism” (The Economist 2005: 38).

### 4.1.1 Swedish working time legislation: The Working Time Act 1982

The current law regulating working time in Sweden is the Working Time Act 1982. The Working Time Act prescribes the standards and maxima for working time arrangements. The Working Time Act distinguishes between four categories of working time: normal working time, time on-call for duty, overtime, and extra hours in the case of part time employment. As this paper is only concerned with regulating working time for full-time workers, the fourth category of working time will not be examined.

*Normal working time* is effectively the ‘standard hours’ of work, or the threshold marking the point to which overtime begins (IELL 1997: c178). Normal working time is limited in the Working Time Act to 40 hours over 5 day working week (breaks not included), averaged out over a maximum 4 week reference period (IELL 1997: c178). This effectively restricts normal working time to a maximum 8 hour day. As with many Scandinavian and Southern European countries, while the standard working week is set by the legislator, the social partners are left to negotiate the actual hours worked, usually

below this norm (EIRO 2003). As previously illustrated in Figure 2, the average collectively agreed normal hours or standard week is 38.8 hours, 1.2 hours less than the legislative maximum (EIRO 2005). Whilst actual working hours may deviate from collectively agreed standards, given the high union density and collective bargaining coverage, collectively agreed hours is a good indicator of usual working time patterns in Sweden (see: Figures 3 and 4).

*Time on-call for duty* refers to time when an employee is not performing work, but is at the employer's disposal at the place of work (IELL 1997: c180). Time on-call for duty is restricted to 48 hours over a 4 week reference period, or 50 hours a month (IELL 1997: c180). *Overtime* refers to working hours in excess of normal working hours, and time on-call for duty as defined in the Act or collective agreement (IELL 1997: c182). Overtime is restricted to a maximum 48 hours over 4 weeks, 50 hours per month or 200 hours per year (IELL 1997: c182). Additional hours worked in excess of the negotiated hours, but below the statutory limit of 40 hours are not classified as overtime in regulatory terms and are paid as normal hours (EIRO 2003). Therefore the restrictions placed on the use of overtime ordinarily only apply to the hours worked in excess of the statutory 40 hour working week. Although overtime provides a degree of flexibility for businesses to respond to changes in business demands, overtime can not be used as a means to permanently extend the working week beyond the standard prescribed in legislation or by agreement (IELL: c182).

#### 4.1.2 Role of collective bargaining in meeting working time preferences

The standards in the Working Time Act are in principle compulsory, but deviations from the maxima by further limiting or extending working hours are permissible matters for collective bargaining (IELL 1997: c175). The social partners are in practice free to bargain industry wide agreements overriding statutory regulations on working time in part or in their entirety (IELL 1997: c175). Alternatively the Swedish National Board of Occupational Safety and Health, also has the authority to grant exemptions to the

prescribed maxima in the Working Time Act provided the worker is not placed at a disadvantage (IELL 1997: c175).

This leaves the social partners a great degree of control, flexibility and autonomy in determining working time arrangements, ultimately making the statutory restrictions in the Working Time Act optional in that they can be replaced through collective agreements between social partners, whether that be at the industry or company level. Such national or local agreements may then be applied to workers not bound by it, thus further extending the coverage of collective bargaining and limiting the role of legislation (IELL 1997: c175). By allowing the decisions regarding working time to be made at the level closest to where the agreements will take effect, the Swedish system theoretically should promote integrative bargaining.

The emphasis placed on the need for individual preferences of workers and management to be respected within working time regulation is well founded. A survey from a 1989 parliamentary commission responsible for studying the legal, economic and social dimensions of working time supported the Swedish approach to negotiating working time arrangements at a decentralised level (Anxo and Storrie 2003: 54). The study found that the majority of respondents (over 80 per cent) were satisfied with their current working hours arrangements, with only 10 per cent preferring to work longer and 10 per cent preferring to work less hours for less money. The study also confirmed that the majority (67 per cent of respondents) of Swedish workers prefer any future reductions in working time to be negotiated at the workplace level (Anxo and Storrie 2003: 54). Whilst the survey data is rather dated, the underlying conditions supporting neo-corporatist collective bargaining – notably the existence of high union density (see: Appendix 2), wide collective bargaining coverage (see: Table 1) and a high level of organisational articulation of both capital and labour (Crouch 1994: 282) – remain strong in Sweden, allowing collective bargaining to operate as a legitimate mechanism for representing worker interests.

There are some limits on the degree to which authority may be delegated to the lowest level in the form of a local or company agreement. Company level agreements or exemptions through the Swedish National Board of Occupational Safety and Health may include deviations from national agreements on areas such as overtime and rest at night, but they can only be valid for one month (IELL 1997: c175). The flexibility to deviate from labour law regulation either temporarily (local) or permanently (national) through collective bargaining has led the Swedish system to be described as a system of *negotiated flexibility* whereby statutory regulation provides guidance rather than restriction on the ability for employers and employees to develop working time arrangements that cater to individual needs (Anxo and Storrie 2003: 50).

## 4.2 Statutory regulation – France

The French industrial relations system and legal relationship between employees and their employer are often characterised, at least in the business world, as highly formal and regulated by laws that tend to favour the absolute protection of the interests of the employee rather than that of the employer (Triplet & Associés 2004). In contrast to Sweden where collective agreements may deviate from legislative standards, collective agreements in France may not exceed the statutory 35 hour working week. Hence France has an average collectively agreed hours of exactly 35 hours per week (See Figure 2 in Section 2).

The Labour Code (Code du Travail) is the primary basis for labour law and through various bills, most notably the Robien and Aubry Acts, the Labour Code has been modified to promote flexibility to the French industrial relations system. Between 1982 and 2000 France saw a growing individualisation and increasing flexibility in working hours with no fewer than seven laws passed by French Parliament to this effect (Boulin et. al. 2003: 170-1). Although the trend towards decentralisation and individualising working-issues during the 1980s and 1990s was not unique to France, what sets the French approach to deregulation apart was France's intension to counter the problem of high unemployment with working time reductions. The premise was basically to reduce

high unemployment by increasing permanent jobs through job sharing of fulltime jobs, supported by government rebates.

No other OECD country has followed France's approach towards working-time reductions and their approach is in stark contrast to the views of the social partners in Sweden (Durand et. al. 2004). In 1992 when Sweden saw an upsurge in unemployment, all members of the Swedish social partners model (unions, employer associations and government, with the exception of the former Communist Party and Environment Party) were united in their opposition to reducing the working week to counter unemployment problems (Anxo & Storrie 2003: 55). While this paper will not examine the effectiveness of France's unique approach to countering unemployment, it is important to recognise that it is within this context of high unemployment that the French working-time reductions were introduced.

Another unique element of the French approach has been the use of legislation to officially introduce working-time reductions (Durand et. al. 2004). While some countries have made efforts to cut working time, such as Germany and the Netherlands in the 1980s, these reductions were predominantly negotiated on a case-by-case basis between the social partners, without government intervention (Durand et. al. 2004). Introducing working time reductions nationally through legislation is a rather heavy-handed approach to ensuring that workers maintain a work-life balance. Such centralisation of decision making effectively considers workers to be unable to negotiate their own working time preferences and that working less hours is the key to maintaining a work-life balance for all. Although regulating working time through legislation should make it easier to understand French working-time patterns (due to great homogeneity of working time between workers and sectors), the fact that new bills amending the Labour Code are a regular occurrence, keeping track of the precise details of the Labour Code is problematic, particularly for non-French speakers. It must also be remembered that actual working hours can deviate greatly from the standard 35 hour working week through the use of extra hours such as overtime, as indicated previously in Figures 3 and 4.

#### 4.2.1 French working time legislation: The development of a statutory 35-hour week

The history of the 35-hour week can be traced back to 1993 with the introduction of the Quinquennale Act. The Quinquennale Act introduced flexibility into working time by allowing for the use of annualised hours in company agreements in situations where total working hours were reduced (Article 38) (Boulin et. al. 2003: 176). The Quinquennale Act also introduced a reduction in employer social security contributions where the social partners negotiated an agreement that included at least a 15 per cent working time reduction with pay cuts (Article 39) (Boulin et. al. 2003: 176). The provisions of the Quinquennale Act were clearly intended to reduce the standard working week, but were unfortunately not adopted by many French companies. In response to the lack of uptake in the Quinquennale Act provisions, in June 1993 the Robien Act was passed which extended the social security rebates of Article 39 of the Quinquennale Act and eased employer obligations to maintain staff levels after implementing a working time reduction (Boulin et. al. 2003: 176).

It wasn't until the introduction of the first Aubry law in 1998 that the 35-hour week was explicitly specified, the previous Acts only promoted working time reductions in exchange for government rebates. The Aubry laws reduced the standard working week from 39 hours, as it had been so since 1982, to 35 hours (Paris Group Meeting 2003). The implementation of the 35-hour working week occurred first for firms with more than 20 employees from 2000, followed by all others from 2002 (Paris Group Meeting 2003). Incentives were provided to those who implemented the 35-hour week early through collective agreements, as one of the objectives of the Aubry law was to promote decentralisation of working time issue to the workplace level through collective bargaining (Paris Group Meeting 2003).

However, as with many working time regulations, the French approach had difficulty defining 'actual working time' and overtime. The second Aubry law passed in 2000

redefined actual working time as “time during which the employee is at the employer’s disposal and must comply with its directives without being able to go about his or her personal business” (EIRO 2000) including: meals and breaks (where the employee is at the employer’s disposal), the obligatory 20 min break per 6 hour continuous work period and other breaks, such as time spent changing clothes, as specified in collective agreements (EIRO 2000). As with the definition of actual working time in the Labour Force Survey, this definition does not include travelling time between home and workplace and any breaks which are not defined by law or collective agreement (Langlet 2002).

The Aubry laws were followed in 2003 with the Fillon law that, whilst maintaining the statutory 35-hour week, raised the annual overtime quota from 130 to 180 and reduced the overtime compensation from an obligatory 25 percent to 10 percent until the end of 2005 (EIRO 2004). The annual overtime quota was further increased to 220 hours per year by Prime Minister Jean-Pierre Raffarin in a bill passed in February 2005 (EIRO 2005B). Perhaps more significantly, the 2005 Raffarin bill further increased the flexibility associated with the use of extra hours as a means of extending the working week, without the equivalent extra time off. The Raffarin bill provided new options for using work time savings accounts (*comptes épargne temps*, CETs) whereby overtime and other benefits could be deposited into the CET and outstanding days in a CET could be cashed up (EIRO 2005B).

Although it may be apt to consider France a highly regulated industrial relations system for working time negotiations, the French system is actually far less regulated by law now than previously and the trend is towards further decentralisation of working issues to the workplace level. Since the conservative government emerged in France 2002 overall there has been a weakening of the 35-hour week. Whilst the 35-hour week remains in place officially, the amendments to the Labour Code through the Fillon and Raffarin bills have effectively made it easier for the 35-hour week to be extended through the use of CETs and limiting restrictions on the use of overtime. The legislative changes seen in France typifies how easily one can be misled by evaluating statutory standard working



weeks and forgetting the impact overtime and annualised hours have on actual working hours.

#### 4.2.2 Meeting working time preferences within the legal constraints

Debate surrounding the changes to France's 35-hour working week continues to be heated. One of the biggest flaws of France's approach to reducing working time as a means to address high unemployment, was the creation of part-time jobs that workers did not particularly want. Working time reductions, achieved through the promotion and subsidisation of part time jobs, created a situation where more than 40% of workers in part time employment actually preferred to work longer hours (Boulin et. al. 2003: 175). The subsequent Aubry laws also disregarded individual preferences on working time for full-time workers as it assumed 35 hours to be a magic number whereby all workers could achieve their work-life balance.

Rather than changing the statutory standards the recent French labour law reforms have sought to widen the power of collective bargaining in working time issues, decentralising power away from the state and towards the social partners (Pelisse 2004: 222). Whilst unions and political socialists have claimed that the recent reforms that introduce flexibility into the 35-hour working week "will be the death of the 35-hour law" (EIU ViewsWire 2005), others point to the introduction of additional choice into the system. The reforms make it easier for workers to choose to spend more time at work, beyond the 35 hour standard, through the use of cashing up extra days off or extending working hours through collective agreement (EIU ViewsWire 2005). As prime minister Jean-Pierre Raffarin puts it, the recent reforms allow "those who want to work more to earn more" (EIU ViewsWire 2005).

In two surveys following the introduction of the 35-hour week in 2000, the majority of the public (57 percent) supported the statutory standard, with 83 percent of workers who had moved to the 35 hour working week claiming that they did not wish to return to their previous schedules (Trumbull 2002 in Pelisse 2004: 225). This could be interpreted as an

indication that changes to the 35-hour working week are not wanted by workers. However, these survey results may already be considerably out of date as many of the workers that received a reduction in working time with no associated losses in pay in 2000 have since suffered a pay freeze in return (EIU ViewsWire 2005). Therefore by transferring decision making power towards the workplace level and increasing the flexible use of extra hours and overtime, a commonality of interests can be met whereby the employees can get more pay, should they choose to work beyond the standard, whilst the heads of companies can gain flexibility in personnel management.

Unfortunately, despite a conscious effort from the French government to delegate decision making to collective bargaining, the decentralisation of decision making will not lead to jointly beneficial outcomes unless workers interests can be represented in collective bargaining negotiations. Despite the wide collective bargaining coverage within the French industrial relations system (see: Table 1), the low union density (see: Appendix 2) could hamper the ability of workers interests to be articulated through union representation in collective bargaining. Whilst allowing statutory restrictions to be circumvented by collective bargaining may be successful in the case of Sweden (where union density and collective bargaining coverage are high), French unions may not be sufficiently organised to effectively represent workers interests and make decisions that meet the interests of workers and management alike.

### 4.3 Decentralised bargaining – United Kingdom

The United Kingdom has the lowest level of protection and is the least regulated industrial relations system in the European Union (Smith 2003: 282). Whilst the current system is directly related to liberalist traditions, the reforms of the 1980s saw the erosion of the limited labour market legislation, employment protection and trade union rights in an attempt to add flexibility to the British labour market and respond to global demands (Smith 2003: 280). Legislation guaranteeing minimum standards for the length of the working day, minimum rest periods or even the right to public holidays have only been operating in the UK since 1998 (IELL 2002: c180). Such rights derived from the Young

Workers Directive and the WTD were implemented in the UK's Working Time Regulations. Unfortunately the vagueness of the terms of the original Directives were not clarified in the Regulations, with the UK government preferring to copy-out (or "cop-out" as some prefer to call it) the text of the Directives in order to keep the Regulations "goal-based" rather than prescribed (Barnard 1999).

Instead of entrenching such rights in legislation, prior to the Regulations, such conditions of employment were guaranteed through collective bargaining, individual bargaining or custom and practice (IELL 2002: c180). It follows that in the UK many conditions of employment remain unregulated with the preferred level of industrial bargaining being at the individual or workplace level, with very little union or government intervention (O'Reilly 2003). It could be argued that statutory regulation of hours of work, such as that in France or supranational regulation, can reduce the potential for mutually beneficial win-win outcomes as they place restrictions on what can be negotiated at the bargaining table by those in the best position to determine common interests (Kenner 2004: 589). Hence by removing or not introducing such regulation in the first place, individuals under the British system of industrial relations are theoretically better able to negotiate flexible and creative solutions to their work-life balance and working time needs. As union density (see: Appendix 2) and the power of organised labour in the United Kingdom is relatively low, management are generally less constrained by approvals processes, consultation or contestation from unions, allowing for quicker decisions and implementation.

#### 4.3.1 Negotiating working time without standards

The consequences of decentralising working time negotiations to the workplace level and their impact on the standard working week can be seen with the unique distribution of working hours in the UK (See: Figures 3 and 4). As mentioned previously, where statutory regulation and collective bargaining coverage are minimal, national working time patterns are expected to be more heterogenous and less standardised, as statutory and collectively agreed standard working weeks are less binding. Hence, although the

working time statistics suggest that the average working week in the UK is not significantly higher than that of the more regulated labour markets in continental Europe, working time patterns are far more heterogeneous in the UK.

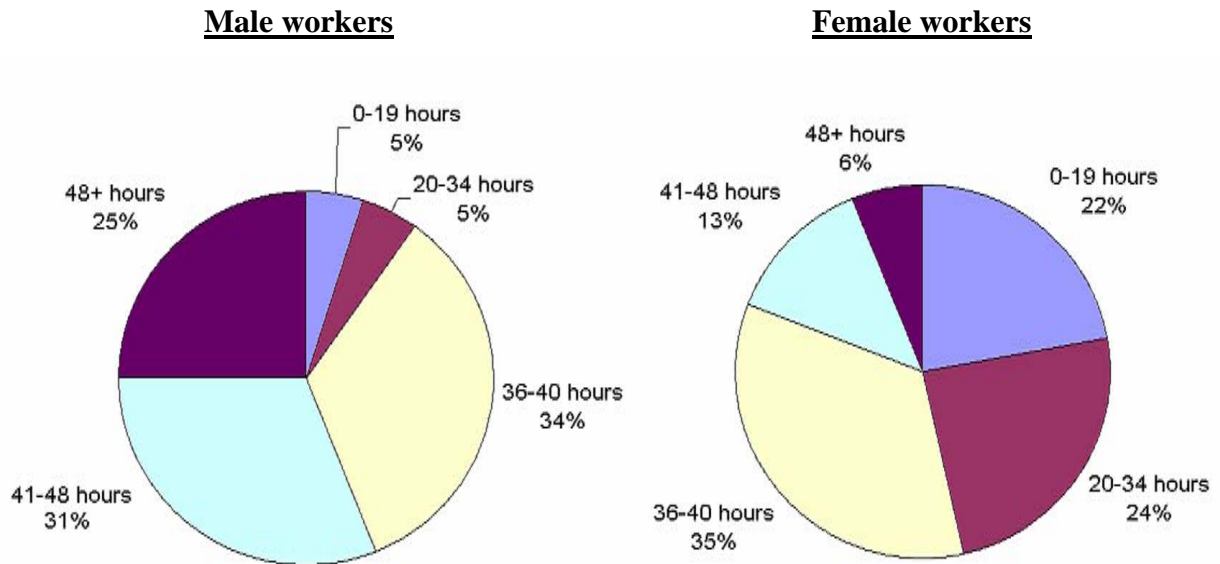
Unlike almost all other European countries, working time in the UK has a wide distribution of hours with a significant proportion of workers working extremely long or extremely short hours (O'Reilly 2003: 25). The contrast between the UK and the more standardised working hours seen in other part of Europe, "reflects the absence of statutory working-time regulation, the weakening of industrial relations and the low priority given to working-time reductions by the trade unions" (O'Reilly 2003: 29).

Decentralising the decision making process is often presented as an opportunity to provide greater choice to the individual, indeed this was the reason cited by the French Prime Minister Pierre Raffarin for decentralisation in the French industrial relations system (EIU ViewsWire 2005). Although British workers may have a choice greater choice in working hours than others in Europe, with an abundance of part-time non-standard work opportunities, the choice faced many workers is of an unsatisfactory nature. Many workers in the UK are faced with the choice between part time jobs offering very few hours and full time jobs that can require very long hours, with little in between (Smith 2003: 293).

The problem with promoting part-time work as a means to promote working time flexibility in the UK is that part-time work is highly concentrated in the low paid jobs (Smith 2003: 310). Balancing working life and family life in the UK through part-time work also leads to a loss of lifetime income, as occupational status and welfare rights may be hampered when pursuing a career through part-time work (Smith 2003: 310). The fact that women are more likely to need flexibility in working time in the UK, in part due to the unequal gender distribution of care responsibilities and lack of available childcare, led the Equal Opportunities Commission view the polarisation evident in the British working time distributions (see: Figure 7 below) as reflective of gender inequality

(EOC in House of Lords European Union Committee 2004: 17). The working time distributions for male and female workers in the UK are listed below.

**Figure 7. Distribution of usual hours of work of employees in the UK, 1999**



Source: Smith 2003: 294

The difficulty of balancing working time with time outside of work actually goes beyond the problem of gender inequality or family responsibilities. Basically anyone in the UK who wishes to work less than the standard full time working week (which often includes overtime) must make sacrifices beyond the immediate economic trade-off. Workers fear that by enforcing their rights to in respect of working time “they would demonstrate a lack of commitment to their employers” (Barnard 1999: 75). As organisational commitment and promotional opportunities in the UK can often be influenced by the number hours worked ‘above and beyond the call of duty’, workers do not simply trade away 20 percent of annual income when negotiating a 4 day working week (or a 20 percent reduction in the standard working day).

Unlike in Sweden where statutory provisions protect an employee’s right to paid leave for forced absences (i.e. illness, industrial accidents, defence service, childbirth) and a

combination of statutory rights and collective agreements protect a workers right to additional leave (paid or unpaid) for personal reasons (i.e. parental leave, study leave, leave for job seeking etc.) (IELL 2002: c241-60), the British approach is to place many of the aforementioned *rights* as *benefits* that must be bargained for, preferably at the workplace level with little outside intervention (or protection). This places many British workers in a precarious position whereby workers are expected to be flexible towards the needs of business, but flexibility towards workers needs be negotiated.

#### 4.3.2 Empowered to work long hours?

Whilst human resource managers may emphasise that British workers are *empowered* to negotiate their individual working time patterns, others see such empowerment occurring only in the hands of management. Where there is an imbalance of power between labour (low power) and management (high power), jointly beneficial outcomes are come under threat if management simply chose not to value worker interests, unilaterally dictating working conditions at risk the occasional conflict (Crouch 1994: 44). Workers with less valuable skills have less power to negotiate and are more easily threatened, replaced or not offered employment, restricting their ability to negotiate working time flexibility or working time conditions considered as standard in continental Europe. Groups identified to be in the worst position to negotiate conditions of employment and preferable working time patterns under the British system include: households with children, young workers and older workers (Smith 2003: 292-300).

Although the right to chose to work less hours has received significant attention, it must also be remembered that some workers chose to work longer hours and this desire must also be respected. It is interesting that whereas France and Sweden emphasise (or overemphasise) the rights of workers to work less hours, the UK emphasises the freedom to choose to work longer hours. Forcing workers to work less hours for less money, whether through reducing the standard working week or restricting extra hours, is likely to be unpopular from the perspective of workers and management in the UK for a variety of reasons. Both employer organisations and unions recognise the difficulties of reducing

working time where it requires a reduction in pay (Hobbs in House of Lords European Union Committee 2004: 17). Indeed the French government knew this when implementing their national working time reductions by protecting workers' wages, at least in the short term.

The low pay associated with many jobs in the UK (the 'working poor') often makes overtime an essential tool for gaining a family wage (Smith 2003: 292-3). However regardless of the level of income, many workers simply prefer to work long hours due to the due to job satisfaction (Barnard in House of Lords European Union Committee 2004: 17). British workers' reliance or preference for working longer hours has led the British government to quickly denounce any restrictions on working time as not being in the interests of workers or management.

However with the resulting polarisation of working time patterns, some have described the British production system as a 'vicious circle' of low-wage, low-skill and low-value added production (Lane 1989 and Rubery 1994 in Smith 2003: 280-2). The UK's short-term flexibility, lack of labour market regulation and minimal employment protection, may promote a lack of trust between workers and management, discouraging the investment into training and development required for sustained efficiency gains through in high-skill and high-value added production (Smith 2003: 285-6). Instead, the British production system may allow organisational and managerial incompetence to be compensated for by the ability to pay lower wages with poorer conditions (Tarling and Wilkinson 1997 in Smith 2003: 285).

Overall it is difficult to say whether the UK's neo-liberal approach to working time negotiation will generate greater mutually beneficial outcomes than the state driven or collectively organised labour driven approached of France and Sweden. Obviously these judgments are political in nature and stem from the ideals of what we see as a *fair* society or a *fair* distribution of the fruits of labour. What is of interest is that these ideals are now leaving the domestic political arena and becoming debated in supranational institutions of the European Union. As social policy becomes increasingly influenced by supranational

institutions, domestic laws and policy must comply with such restrictions and effectively support the overall European direction towards social policy. These distinctly European issues regarding working time will now be examined in Section 5.



## **5 Regulating working hours at the EU level: Is the Working Time Directive the solution?**

A distinguishing feature of European industrial relations is the existence of supra-national regulation. The most significant European-level mechanism is the Working Time Directive (WTD). The supremacy of EC law requires that national laws and practices comply with EU norms and the specific rights guaranteed by the Directive. The following section will begin by examining the negotiation and content of the WTD. This will be followed by an overview of the most significant case law to go before the European Court of Justice (ECJ). The ECJ plays a significant role in European-level working time regulation as it helps interpret and shape how the member states must comply with the Directive and how the Commission must enforce it. Finally, this section will conclude with an analysis of national responses to the ECJ case law.

### **5.1 The Working Time Directive**

The WTD lays down the minimum general safety and health requirements for the organisation of working time across the European Union. The WTD was adopted under the legal base of Article 118a (now, after modification, Article 137) of the EC Treaty, concerning worker safety and health (Supiot 1996: 205). Whilst it contains specific conditions for night work, shift work, road transport workers, work at sea and civil aviation, the main focus of this section will be to examine the WTD in terms of its general application to daily rest, weekly rest, and annual leave.

#### **5.1.1 The negotiation: Reconciling the irreconcilable**

The WTD was to shape the future of working time in the European Union, and followed four years of negotiation surrounding two competing visions of European social policy (Kenner 2004: 589). The first view, clearly grounded in the liberal views held in the United Kingdom, was that regulation of hours of work reduces labour market flexibility - and therefore productivity - as it forces employers and employees to agree to working

hours that do not necessarily match their unique preferences (Kenner 2004: 589). Essentially the greater the distance between the individual and the level (provincial, national, supranational etc) to which the regulations are established (the degree of centralisation in the decision making process), the greater the degree individual preferences are disregarded and labour market flexibility is reduced. Hence this form of labour market regulation does not support the principle of subsidiarity and from this it is argued that the associated labour market “rigidities” lead to less job creation, undermining economic growth (Kenner 2004: 589). The European solution from this viewpoint is to create an individualised and autonomous approach to working time. Therefore the answer to the problem of integrating working time in Europe is for “flexibility at UK level [to] be matched by flexibility in Europe” (UK Chancellor Gordon Brown 2003 in Kenner 2004: 599).

The opposing vision for European working time harmonisation was that standardised maximum hours of work, with the flexibility to negotiated over the reference period, should be seen as a modernisation process for determining working time. By promoting health and safety at work, the needs of both the enterprise and the worker can be addressed, leaving a greater scope for adaptable deployment of labour (Kenner 2004: 589). “Hence, transnational social standards can raise productivity and dynamically interact with economic integration to produce a continuous upward movement in social and economic outcomes (Deakin and Wilkinson 1994 in Kenner 2004: 589)”.

### 5.1.2 The compromise: a “positively schizophrenic” Directive

Regardless of the economic arguments surrounding working time regulation, the Council made it clear in recital 4 of the preamble to the WTD that the protection of workers’ safety, hygiene and health “should not be subordinated to purely economic considerations” (Directive 2003/88/EC). Such a statement made it clear that the Council held a bias that the employment relationship is inherently conflictual and the worker needs to be protected from his employer, or even himself. The quantitative restrictions outlined in the WTD can be summarised as follows:

- a minimum daily rest period of 11 consecutive hours per 24-hour period (Article 3);
- a rest break, where the working day is longer than six hours (Article 4);
- a minimum uninterrupted rest period of 24 hours for each seven-day period, which is added to the 11 hours' daily rest (Article 5);
- maximum weekly working time of 48 hours, including overtime (Article 6);
- paid annual leave of at least four weeks (Article 7).

Source: Europa 2005

In order to calculate weekly averages, member states may lay down reference periods not exceeding 14 days for the weekly rest period and not exceeding four months for maximum weekly working time. However under certain circumstances the above restrictions do not apply and may be derogated from through collective agreement or through the “opt-out clause” (Article 21(1)).

Although Articles 1 to 16 in the WTD clearly place restrictions on member states, various exclusions were included into the later Articles. Article 17(1) excludes particular categories of workers such as managers, family workers and workers of religious ceremonies in churches and religious communities from all restrictions in the WTD. Articles 17(2) to 17(5) allow derogations for security operators, off shore workers and other categories where there is a need for continuity of service, where there is a collective agreement. Article 17(5) continues to limit the coverage of the WTD by temporarily suspending the restrictions of maximum weekly working time to doctors in training until at least 1 August 2009. Articles 18 and 19 provide a general derogation from the reference periods for calculating weekly working time by means of collective agreement or agreement between two sides of industry. The agreement must not extend the reference period beyond six months, or in the case of a collective agreement 12 months.

The abovementioned derogations, whilst providing flexibility, do not decentralise flexibility below the industry or collective level. As not all European countries have strong collective bargaining systems, the inclusion of an opt-out clause was essential to

win the support of the UK where most labour negotiations are conducted at the individual or workplace level (Kenner 2004: 590). Article 21(1) (previously Article 18(1)(b)(i)), allows member states to authorise an employer to opt out of the 48 hour maximum weekly working time limit, provided the worker agrees, proper records are kept and the general principles of worker health are respected (Europa 2005). This allows countries with weak collective bargaining regimes to circumvent the WTD restrictions through individual bargaining agreements. However, the UK is currently the only member state to implement the opt-out generally across all employment sectors (Hobbs & Njoya : 309).

Considering the differing stances of the member states, unfortunately the end result of the WTD negotiation was a compromise viewed unsatisfactory by both sides of the social policy debate. With the insertions of the derogations and exceptions, the WTD has been described by socially minded observers as “positively schizophrenic”, whereby the first part (Articles 1 to 16) establishes the rules that the second part (Articles 17 to 22) immediately drain of any binding effect (Supiot 1996: 189). However from the strong liberal UK perspective, the derogations did not go far enough. Soon after the ratification of the WTD, the UK brought an action under Article 173 (now Article 230) to have the Directive annulled arguing that the legal base of Article 118a was defective. The UK argued that not only did the WTD not support the principles of subsidiarity and proportionality, but as the UK disputed any scientific evidence to show that working time was connected to health and safety, the WTD “encompassed measures which were unconnected to the purported aims” (COM 2000 787: 2). Although these arguments were essentially rejected by the ECJ (case C-84/94), opposition to the legal rationale underpinning the WTD still remains.

### 5.1.3 Implementing the Working Time Directive

As mentioned previously, one of the most difficult challenges in regulating working time at a supranational level across Europe is actually defining *working time*. As the WTD stipulates the maximum weekly working hours and minimum rest periods to be adhered to by all member states, for the purposes of uniform implementation Article 2 (1) of the

WTD defines 'working time' as "any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice". Conversely, Article 2 (2) defines 'rest period' as the anti-thesis of working time, constituting "any period which is not working time". Clearly the legislative draftsmen were intending to clarify any irregularities or confusion with defining 'working time' and 'rest period' by treating each type as mutually exclusive periods of time (Kenner 2004: 593).

Such binary opposition between work time and rest time has been criticised as construing time at work as "time of subordination, and free time... as time of idleness" (Supiot 1996: 190), ignoring the true place work occupies in personal time (Supiot 1996: 191). This implicitly devalues time spent in professional training, time devoted to domestic responsibilities (domestic chores, caring for children and dependents, responsibilities often disproportionately imposed on women), as well as nominal free time spent de facto on work (Supiot 1996: 190-1). Travelling time between home and work may indeed not constitute working time, but the motivation for this travel is the work itself and certainly reduces the time available for true rest (Juster & Stafford 1991: 474). Therefore, the actual workload, which includes work intensification and these additional responsibilities, is a more valid indicator of the impact working time has on an employee's health (Supiot 1996: 191).

In other words, the notion that working greater than 48 hours per week or not receiving a minimum rest period of 11 consecutive hours is unhealthy for all workers, can be viewed as an overly simplistic or even invalid measure. As people differ with their responsibilities outside of work, so too does the impact that their nominal time at work has on their overall health. People with fewer responsibilities outside work time (in their resting time) or less intensive work conditions, should theoretically be able to work longer hours without the associated health implications. Work intensity is also completely disregarded with the WTD measurements. White-collar employees, such as academics, may be more comfortable and capable of working longer hours than waitresses or construction workers who may find a 48 hour week physically exhausting

(Reynolds 2003: 1175). As the relationship between working time and health is complex and influenced by many individual factors (such as age, gender and education) and work characteristics not included in the WTD, many pundits still bring into question the causality between working time and overall health and safety, the legal rationale underpinning the WTD (Hobbs & Njoya 2005: 310).

Regardless of whether other factors should be included into working time, it is understandable that for the sake of uniform application, the Council defined working time simplistically. However even the strict and opposing definitions of work time and rest time have caused problems of interpretation for the national courts. The failure of the WTD to clearly define the application of the working time criteria has led these finer points to be interpreted through case law before the ECJ. Whilst the member states clearly had influence on the Council with the framing of the WTD, their ability to influence the ECJ on the interpretation of the Directive is obviously restricted. The interpretations from the ECJ will no doubt have enormous implications on the management of human resources in business, as it requires the flexibility of staffing numbers and rosters to comply with the requirements of a minimum daily rest periods and maximum weekly hours.

## 5.2 The role of the European Court of Justice

As the WTD is implemented at the national level with national laws and practices, it is important that harmonisation of working time standards occurs. The member states are to apply the provisions of the WTD based precisely on the scope of the abovementioned definitions of working time, not only to the maximum weekly working time and reference periods, but also to the provisions on night working, rest breaks and rest periods, both daily and weekly (Kenner 2004: 593). At first glance, this would seem like a relatively simple process as the Directive is strict in its definitions and quantitative standards. However, as is often the case, the member states have interpreted and implemented the Directive differently, often keeping economic considerations ahead of health and safety.

It is therefore the role of the ECJ to ensure uniform interpretation of the WTD such that definitions and standards are harmonised across member states.

Article 2(1) of the WTD essentially assigns three criteria for determining working time, those being: **(1)** the worker is working; **(2)** the worker is at the employer's disposal; and **(3)** the worker is carrying out his activity or duties, in accordance with the national laws and/or practice. Whilst it is clear that time travelling to work or time spent away from work with work on the mind would not be considered working time (it does not fulfil any of the criteria and clearly falls into the resting time definition), given the mutually exclusive nature of the WTD definitions, it is not so clear whether time spent on-call for work at the work premises, or even time spent contactable for work, could truly be considered resting time, rather than working time.

As the definitions are mutually exclusive, a broad definition of working time, necessitates a narrow definition for resting time and vice versa. For example, a narrow interpretation of the WTD definition of working time could result in time on-call being excluded from working time calculations, particularly where the worker is at the premises but not working or not performing duties in their entirety (i.e. supervising). This would thereby define resting time very broadly. On the contrary, a narrow interpretation of the WTD definition for rest period could result in all periods of on-call time to be included as periods of working time, whether performing duties or simply being available to perform them, as on-call workers are effectively "at the employer's disposal" and not resting in their entirety. The question essentially is whether the three criteria should be treated as cumulative requirements or autonomous characteristics of working time/rest periods. These seemingly minor inconsistencies actually have large ramifications on the national industrial relations systems, as the WTD not only restricts maximum working time, but perhaps more importantly for employee health and safety, restricts minimum rest time.

The problem of how to classify periods of time that fulfil some but not all three criteria of working time (and hence some but not all criteria of resting time) was identified soon after the adoption of the WTD. Prior to the judgment of the ECJ in C-303/98 *Sindicato*

de Médicos de Asistencia Pública (SIMAP) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana (hereafter referred to as SIMAP and examined below in 5.2.1), most member states considered it to be within the scope of national legislation and practice to classify time, such as readiness to work or time on-call, into an intermediate category, not defined by the Directive (European Commission 2000: 7). The distinctions between the intermediate categories were based firstly on the degree to which the worker must be available to work, and secondly on whether any actual work was required during this period of availability. It was generally considered by the member states and the Commission that only periods of actual work would be counted as working time (SIMAP Advocate General's Opinion para. 33).

The compatibilities of such national provisions with the wording and purpose of the Directive first came into question before the ECJ in SIMAP, followed by further clarification in C-151/02 *Landeshauptstadt Kiel v. Norbert Jaeger* (hereafter referred to as *Jaeger*). Both ECJ judgements indicated that working time needs to be interpreted broadly by the national courts, whereby periods of availability at the work premises need to be considered working time in their entirety, regardless of whether any work is actually performed.

### 5.2.1 SIMAP Case C-303/98

In SIMAP an organisation representing Spanish doctors brought a collective action against the Spanish Ministry of Health (Valencia) seeking that time spent on-call be included as working time for the purposes of their collective agreed 40 hour standard working week and 48 hour maximum working week (including overtime). Under the agreement between the State Health Administration and the main trade union organisations, only hours where the doctor is of actual attendance were taken into consideration for the calculation of working time. Advocate General Saggio summarised the main questions to the ECJ as: “can time when the doctor must be contactable and time when he is present at the health centre fall within the definition of working time given in



Article 2(1) of the directive, and how should it be calculated for the purpose of determining the number of working hours?”

Advocate General Saggio opined that the three criteria for defining working time, as per Article 2(1), need not be met concurrently, but should be treated as three autonomous criteria, whereby the satisfaction of only one would suffice for time on-call to be treated as working time (C-303/98 AG’s Opinion para. 36). However, the position is different where a doctor is merely contactable as “the commitment is contingent and discontinuous, and the worker can, if only in a limited way, manage his own time since he is not obliged to be present at his workplace” (C-303/98 AG’s Opinion para. 37). Advocate General Saggio’s distinction between the treatment of on-call and contactable hours was that:

“...time when a doctor is on call in a hospital should be considered to be working hours within the meaning and for the purposes of the directive. If, on the other hand, the worker is on call under the contact system, only time spent actually carrying out activities should be included in the calculation of the working hours, but the remaining hours cannot be considered to be rest periods”. (C-303/98 AG’s Opinion para. 39).

The Court broadly followed the Advocate General’s opinion and also drew a distinction between the treatment of on-call hours and contactable hours based on the ability of a worker to pursue his or her own interests (C-303/98 ECJ Judgement para. 49). However the ECJ did not follow Advocate General Saggio’s interpretation of working time as constituting three autonomous criteria that need not be met concurrently. Instead the Court simply held that all three criteria were fulfilled when a doctor is on-call at the hospital, as the disputed criteria (the third criteria of whether “the worker is carrying out his activity or duties, in accordance with the national laws and/or practice”) is de facto fulfilled as “the fact that such doctors are obliged to be present and available at the workplace with a view to providing their professional services means that they are

carrying out their duties in that instance” (C-303/98 ECJ Judgement para. 48). The ECJ concluded its response by stating:

“...time spent on call by doctors in primary health care teams must be regarded in its entirety as working time, and where appropriate as overtime, within the meaning of Directive 93/104 if they are required to be present at the health centre.”

(C-303/98 ECJ Judgement para. 52)

This case was of particular concern to member state governments as the widely held national practice of not treating on-call time as working time was a mechanism for flexibility and helped minimise the spiralling health care costs (Kenner 2004: 593). As doctors were regularly required to work a period of on-call duty following their regular shift, if this period was to be considered working time as per the WTD, then additional staff would be required to be on-call to ensure the doctors received their 11 hours daily rest. However, whereas the Advocate General made it clear that contactable hours could not be treated as resting periods, even when the worker was not required to attend work (C-303/98 AG’s Opinion para. 38 ), the Judgment stated that “only time linked to the actual provision of primary care services must be regarded as working time” (C-303/98 ECJ Judgement para. 52), implying that hours on call under a contact system should be considered as rest periods if the worker is not contacted for work. This is an important omission from the ECJ as it places no restrictions on the use of contactable hours, whereby workers could be required to be contactable during all rest periods. Regardless of this minor concession, it is clear that the ECJ upheld the objective of the WTD to give priority to workers’ health over purely economic considerations.

### 5.2.2 Jaeger Case C-151/02

In a case before a German court in 2002, broadly similar to SIMAP regarding on-call duties for medical staff, the ECJ was asked to rule on whether on-call time could be considered as a rest period under national legislation or agreement where the on-call

worker, though present at the hospital, is guaranteed not to work the majority of the time on-call and is entitled to sleep during periods of inactivity. As the disputed criterion for SIMAP was whether “the worker is carrying out his activity or duties” when at the work premises on-call but not *actually* performing any duties, Jaeger provided an opportunity for the ECJ to limit the impact of SIMAP by treating authorised periods of sleep as rest periods. However the Court reinforced the SIMAP decision by extending the interpretation of working time to include all periods of on-call duty, regardless of whether the person is working or even permitted to sleep at the premises.

### 5.3 National responses to European working time regulation

In response to the SIMAP and Jaeger judgments member states such as Germany, Spain, the Netherlands and Slovenia have introduced the Article 21 opt-out clause specifically in the health care sector (Hobbs & Njoya: 312). These national responses have effectively nullified the impact of the ECJ judgments on the workers most likely to participate in on-call duties (Hobbs & Njoya: 312). The opt-out clause has been utilised by the member states as a mechanism to pick and choose how the WTD and associated ECJ judgments impact upon their national system for regulating working time. The increasing use of Article 21 as a shield from the ECJ is indicative of a lack of economic and political sensitivity in the ECJ judgments.

In response to SIMAP and Jaeger, and in accordance with the review mechanisms stipulated in the WTD itself, the Commission consulted with the social partners, the Economic and Social Committee, the Committee of the Regions and the European Parliament, and proposed an amendment to the WTD (COM (2005) 246 final 2004/0209 (COD) 31.5.2005). Whilst the Commission made it clear that the current framing of the opt-out clause is unacceptable, the main focus of the amendment was to address the treatment of on-call time by inserting two new definitions into Article 2, those being “on-call time” and “inactive part of on-call time”. In direct contrast to SIMAP and Jaeger, the Commission’s proposal stipulates: “The inactive part of on-call time shall not be regarded as working time unless national law or, in accordance with national law and/or practice, a

collective agreement or an agreement between the social partners decides otherwise” (COM (2005) 246: 7). This proposed amendment will place the onus back on the member states to extend the protection offered in the WTD to on-call workers permitted to rest during on-call time at the workplace.

The negotiation, implementation and development of the WTD illustrates the complexity of the working time problem. Working time encompasses political, economic and legal factors that require a co-ordinated approach involving compromises at both the national and supranational level. Whilst the ECJ must interpret the WTD with a view to its primary purpose, to *effectively* protect worker safety and health (Kenner 2004: 598), the national governments and the Commission view *effectiveness* as to include economic considerations. However, the ECJ has disregarded all powerful economic arguments in the face of protecting worker health. This has created a power struggle between the judicial arm and the administrative arm of the European Institutions, whereby the Commission has simply sought to change the laws in response to unfavourable decisions from the ECJ.

As mentioned previously, the ECJ has rejected all economic arguments on the basis of the statement in recital 4 of the preamble that: “health and safety should not be subordinated to *purely* economic considerations”. It is important to recognise that the framers of the WTD chose to include “purely”, rather than simply stating “health and safety should not be subordinated to economic considerations”. The inclusion of the adjective “purely” could be seen as way of limiting the degree to which economic considerations could be disregarded. Hence rather than indicating that all economic considerations need to be disregarded if they imply a negative effect on health and safety, a different conclusion would be that the framers intended economic considerations to remain a valid consideration in the regulation of health and safety at work, so long as they were not the only factor considered.

The blindness of the ECJ to economic considerations, and the escape route that Article 21 provides to nations wishing to avoid the constraints of the WTD, could be seen as a

failing of European level regulation. As workers - the people the WTD is ultimately supposed to benefit - take economic factors into consideration when determining career and working time preferences, a total disregard of the preferences of the workers (and voters) could ultimately undermine the effectiveness of the Directive.

It must be remembered that the implications of the SIMAP and Jaeger judgements, and the associated amendments suggested by the Commission, are to a large degree restricted to workers performing non-standard work hours. However, the indications given by the ECJ in the approach to interpreting the WTD is a worrying sign for human resource practitioners and member states seeking to promote flexibility. Ironically the greatest beneficiary from the extension of workers rights in the WTD could be its greatest opponent, the United Kingdom. Given that indirect labour costs, such as the costs of complying with health and safety standards, can be an element in competition between enterprises in different states within the common market (Eurofound 2005: 25), the UK and any other country unilaterally seeking a more flexible labour market through the opt-out clause, could reap the benefits of social dumping if the ECJ continues with its narrow interpretation of the WTD.

However, the future direction of working time may not necessarily be so polarised between those covered by the WTD and those not. Whilst there's no doubt that extending working time to encompass periods of de facto working time such as on-call duty will inevitably lead to higher costs to business in some industries, one of the strongest cases for keeping minimal intervention from the European institutions is that such safeguards are not required in most circumstances. Many businesses have promoted working time reductions voluntarily through flexible working practices and demonstrated that improved worker health can lead to measurable financial gains to the business. The commonality of interests between employers and employees will now be discussed in Section 6.

## **6 Building a business case: Why should businesses care about working time flexibility?**

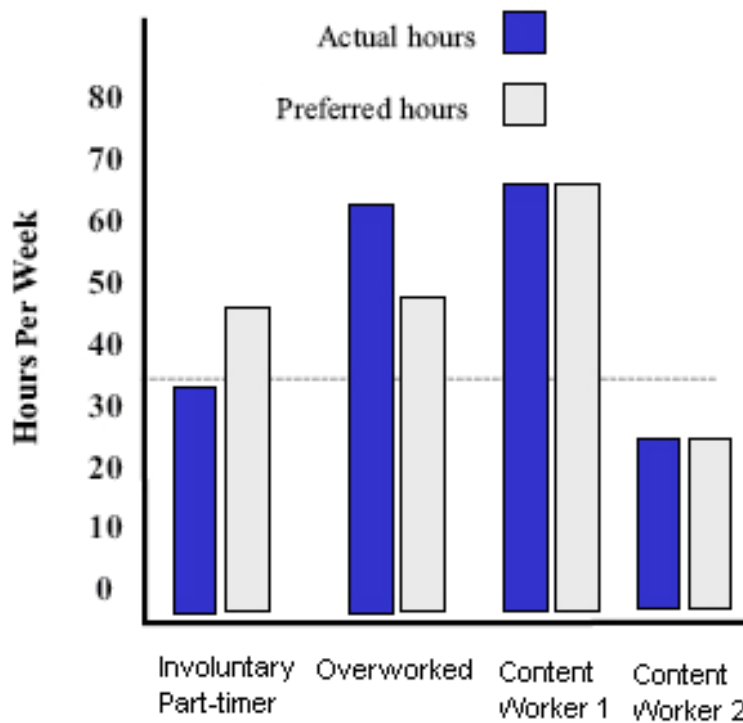
Clearly working time is governed by a variety of laws and practices, but apart from knowing the rules and following them, why should businesses be interested in promoting work-life balance policies that facilitate better working time matches? For businesses to voluntarily implement flexible practices to suit employee desires there needs to be positive consequences associated with meeting working time preferences, or negative consequences associated with not meeting them. The argument put forward by the United Kingdom for minimal regulation is that working time is an area of common interest between employees and employers. When workers place a high priority on working time flexibility, they will be attracted to employers offering such flexible practices. By facilitating working time matches between preferred and actual hours recruitment and retention costs can be minimised, thus providing an incentive for businesses to voluntarily implement working time flexibility beyond the regulatory standards.

To examine the above theory on the relationship between the interests of workers and management regarding working time flexibility, the following section will begin by investigating the extent to which working time preferences are currently being left unmet by employers throughout Europe. Having established that both job seekers and existing employees place a high priority on working time flexibility, the impacts of working time flexibility on recruitment and retention will then be examined with reference to survey data and examples from the United Kingdom. This will be followed by an examination of the practices available to businesses in meeting working time preferences and how specific working time flexibility practices can meet the needs of an increasingly diverse workforce.

## 6.1 The extent of working time mismatches in Europe

As mentioned previously, a working time mismatch is when actual working hours do not equal preferred working hours. As working time preferences are an important element of an employee's conditions of employment, this mismatch should lead to a degree of dissatisfaction for the worker, whether due to actual hours exceeding preferred hours (overworked) or being below (underworked). If workers truly place a high priority on having their working time preferences met, then one would expect that as the disparity between preferred and actual hours widens, there would be a greater degree of dissatisfaction associated with the actual working time pattern. Alternatively, when working time preferences are met, workers should be far more content with their conditions of employment. Working time mismatches can be conceptualised in the figure below.

**Figure 8. Conceptualising Hours mismatches**



Source: Reynolds 2001: 1175

Studies have shown that working time flexibility is desired for different reasons across the employment life cycle. For example, workers with spouses or children are likely to be more negatively affected by working time mismatches that require them to work more than their preferred number of hours than workers without such responsibilities (Reynolds 2003: 1179). As jobs are often not designed to fit family responsibilities, one would expect middle-aged workers to be most affected by working time mismatches. The degree to which different age groups face working time mismatches in the EU15 and Norway are listed in the figure below.

**Table 5. Preferred rate of adjustment to weekly working hours**

Preference	Under					
	20	20-34	35-39	40-49	50+	All
	(%)	(%)	(%)	(%)	(%)	(%)
Reduce hours by 15+	1	2	9	10	56	16
Reduce hours by 5-15	5	10	22	43	25	27
Reduce hours by 4 or less	1	4	15	9	*	8
Total who would prefer shorter hours	7	16	46	62	81	51
Total who would prefer to work current hours	40	54	46	34	18	37
Increase hours by 4 or less	7	3	4	1	*	2
Increase hours by 5-15	20	17	4	3	1	6
Increase hours by 15+	26	10	*	*	*	4
Total who would prefer to work longer hours	53	30	8	4	1	12
Total	100	100	100	100	100	100

\* less than 0.5%.

Base: The employed population aged 16-64 in the EU15 + NOR, 1998.

Source: Eurofound [no date]: 2

The above figure provides some valuable insights into working time preferences across the employment life cycle. Broadly, the majority of workers are facing a working time mismatch, but for very different reasons. Working time mismatches for workers under 20 are likely to be due to underwork, the 20-34 age bracket are mostly content with working hours (54% of respondents reporting a working time match), whereas workers



over 34 are likely to face overwork. The experiences of the middle aged workers (35+) support the assumptions regarding the onset of family responsibilities (Reynolds 2003), whilst the experiences of the older workers (50+) can largely explained through the income effect of receive higher wages and the lack of economic necessity to work additional hours such as overtime.

What is of most interest is the heterogeneous nature of the working time mismatches. For example, even within the 20-34 age cohort there is a great degree of diversity in interests whereby some workers experience overwork, whereas others experience underwork. Reports in the United Kingdom indicate that although almost two fifths of fathers wish to reduce working time in order to meet carer needs (Trade Union Council in The Work Foundation 2005), male breadwinners with children are also likely to be dissatisfied with working too few hours. Many fathers feel responsible for the wellbeing of their children and search for additional working hours (Kaufman and Uhlenberg 2000 in Reynolds 2003: 1180). Alternatively other fathers may also wish to work longer hours in order to escape from their families (Hochschild 1997 in Reynolds 2003: 1190). Therefore, the need for flexibility even within age cohorts can be markedly different depending on individual circumstances. This is important to businesses as, although the European Council have treated the working time problem purely from the perspective of the overworked, businesses are experiencing many employees wishing to increase their working hours.

## 6.2 The benefits of meeting working time preferences

Whilst it is clear from the above studies that Europeans are generally experiencing a working time mismatch, the business case for implementing working time flexibility requires that meeting working time preferences will lead to tangible benefits to the business. Although all workers wish to gain a work-life balance, it needs to be remembered that the conditions of employment contain numerous elements of which working time flexibility is but one. If other factors, such as additional money or greater job security are of more importance to existing employees or recruits, then businesses

would be better addressing those needs rather than reshaping work to fit a need that will not attract or retain valuable workers. Therefore it needs to be established that flexibility is pivotal to employee outcomes, rather than something that is desired but of relatively low priority.

Flexible work-life balance practices can benefit businesses directly by lowering the costs associated with recruitment by making the business an ‘employer of choice’ for potential recruits. This may involve a reduction in time associated with finding replacement staff due to more interest from job seekers or a reduction in training costs by widening the pool of potential recruits to include workers unable to work the standard working week. However, the main benefit of flexible working time practices lies in lowering retention costs and the indirect costs of replacing lost workers. Whilst the direct costs of recruitment, such as advertising, interviewing, training and induction, are easily quantifiable, the costs of staff turnover go beyond these areas to include customer relationships, the loss of key knowledge and the increased risks associated with new staff. That is not to say that an extremely high retention rate and minimal staff turnover should be a goal of businesses implementing working time flexibility, but that unnecessary turnover of skilled and otherwise satisfied workers due to a lack of work-life balance policies should be minimised.

### 6.2.1 Recruitment

One of the most cited benefits of flexible work practices is their impact upon the recruitment process by making the employer more desirable to potential employees. The Chartered Institute of Personnel and Development’s (CIPD) survey “Recruitment, retention and turnover 2004 A survey of the UK and Ireland” indicated that over 85% of British organisations are experiencing recruitment difficulties (CIPD 2004: 2). The problem faced by most businesses is the lack of specialist skills (68%) or experience (66%), making competition for potential recruits fierce (CIPD 2004: 2). This has led most businesses to recruit people with potential but without the necessary skills or

experience (CIPD 2004: 2), leading the businesses to incur additional training costs or lower productivity once the recruit commences employment.

In order to attract skilled employees in a tight labour market, employers must take notice of what employees want now and in the future. Numerous surveys have been conducted to evaluate what job seekers look for in potential employers and the indications are that flexibility is high on the agenda for most workers. In a Department of Trade and Industry (DTI) survey of 4000 job seekers in the UK, 70% of job seekers wanted to work more flexibly and for 46% flexible working was the benefit they would most look for in their next job (DTI in The Work Foundation 2005). Although the priority placed on working time flexibility will vary between workers as work-life balance is an inherently personal experience, clearly the majority of job seekers are now demanding greater flexibility from their employers.

Given that more workers are now demanding improved flexibility it is no surprise that the companies that have proactively implemented work-life balance policies are reaping many rewards. The CIPD's 2005 survey "Flexible working: impact and implementation," indicated that over half of HR professionals believed that the implementation of flexible working practices has had a positive or major positive effect on their organisation's recruitment process (CIPD 2005: 9). Whilst much of the British survey data on flexible working practices may be reflective of a deficiency in the British government's approach towards ensuring employees have access to leave entitlements, the low standard in the UK provides businesses that offer more than the minimum standards a unique advantage over their competitors.

Flexible practices not only make the employer more competitive within the existing labour pool, but actually expand the potential pool of recruits by making work available to more people. British Telecom (BT) is an example of a company that has embraced this ethos by widening its recruitment pool and attracting "people often under-represented in UK workforce such as disabled people, lone parents and carers" (The Work Foundation 2005). Rather than being forced to recruit workers without the necessary

skills or experience like other companies in the CIPD (2004) survey, BT attracts workers not even actively participating in the labour force due to their inability to find appropriate working time matches within their industry, or simply due to discrimination. This further supports the belief that working time flexibility is an area of mutual benefit for employers and employees alike.

However, overall probably the biggest benefit of flexible working practices on the recruitment process is the savings made from not having to go through the costly process so often. Labour turnover in the UK was 15.7% in 2004 (CIPD 2005B: 23), with an average cost of recruitment at £3,950 per leaver, rising to £10,000 for senior managers and directors (CIPD 2005B: 14). Whilst many organisations have a clear measure on the direct costs of recruitment and training, only 8% of businesses consider the wider costs of staff turnover on business operations (CIPD 2005B: 14). Of those that measured the indirect costs of turnover, such as loss of time, hampered staff morale and productivity, the average cost of turnover was estimated at £4,625 per leaver (CIPD 2005B: 14). However these estimates are considered by the CIPD to be severely understated due to the small sample size.

It is also likely that the overall estimates of the average costs of recruitment and turnover are conservative as they do not consider the impact upon customer relations and the overall image of the business as an employer of choice. Whilst these additional factors are even more difficult to measure, perhaps the best indication of the true impact that turnover has on business profits is reflected in companies that have managed to reduce turnover. Genesis Housing Group, who saw the skills and relationships developed by individual housing workers as a key to their overall business profits. By recognising the detrimental effect that staff turnover was having on customer satisfaction, Genesis sought to reduce turnover by responding to areas of employee concern (CIPD 2004: 34). As a result of this initiative, Genesis was able to reduce turnover from 24% to 17% over 18 months, saving the organisation approximately £250,000 (CIPD 2004: 34).

BT also recognised the broader impacts of staff turnover on business costs, when it sought to improve the retention of female workers with family responsibilities. Through its implementation of flexible working arrangements and improved access to maternity leave, BT generated recruitment and induction savings of £5 million in 2003 (The Work Foundation 2005). The BT and Genesis examples clearly illustrate in practical terms how flexible working arrangements can generate financially measurable benefits over the whole recruitment process.

Obviously minimising the frequency of the recruitment process by improving the retention rate is the most cost effective method for lowering recruitment costs. Although making oneself an employer of choice to potential recruits will make recruitment less time consuming and less costly, the true gains of work-friendly policies come from the minimisation of the indirect costs of turnover. Recruiting replacement staff will invariably be riskier and more time consuming than retaining established staff with demonstrated knowledge of the business practices. Businesses must therefore focus on establishing work-life balance policies that improve the organisational commitment of existing staff.

### 6.2.2 Retention

The reduction in formal commitment and loyalty of employees towards career development of employees is widely documented, so too is the belief that employers now have the upper hand in the negotiations (Golden 1996 in Reynolds 2003: 1177). However, what is of more interest is how employee commitment towards the employer has responded to these changes. There are strong indications that the individualisation of career management and short term nature of the employment relationship has also led to a reduction in commitment on behalf of employees towards their respective employers (Cooper 1999 in Emmerik and Sanders 2005: 714).

Whilst many employees still long for the security of the traditional career, in a labour market where flexibility and the confidence to keep pace with change is high on the

agenda, employees are encouraged to act as “free agents” towards their employers and gain security through self-managed careers (Hirsch 1987 in Brousseau et. al. 1996: 54). The younger generation entering into the workforce with high tolerance for change and uncertainty, see periodic moves between employers as part of a successfully managed career (Brousseau et. al. 1996). For employers to gain special ties or commitment from these workers they must go beyond the offering of traditional linear career advancement and rewards packages in exchange for longer hours. Although businesses may enjoy the benefits of disassociating themselves with lifetime employment and the responsibility for career development, the considerations given to work-life balance policies will continue to grow in importance as the fight to retain valuable staff transfers to the newer generation.

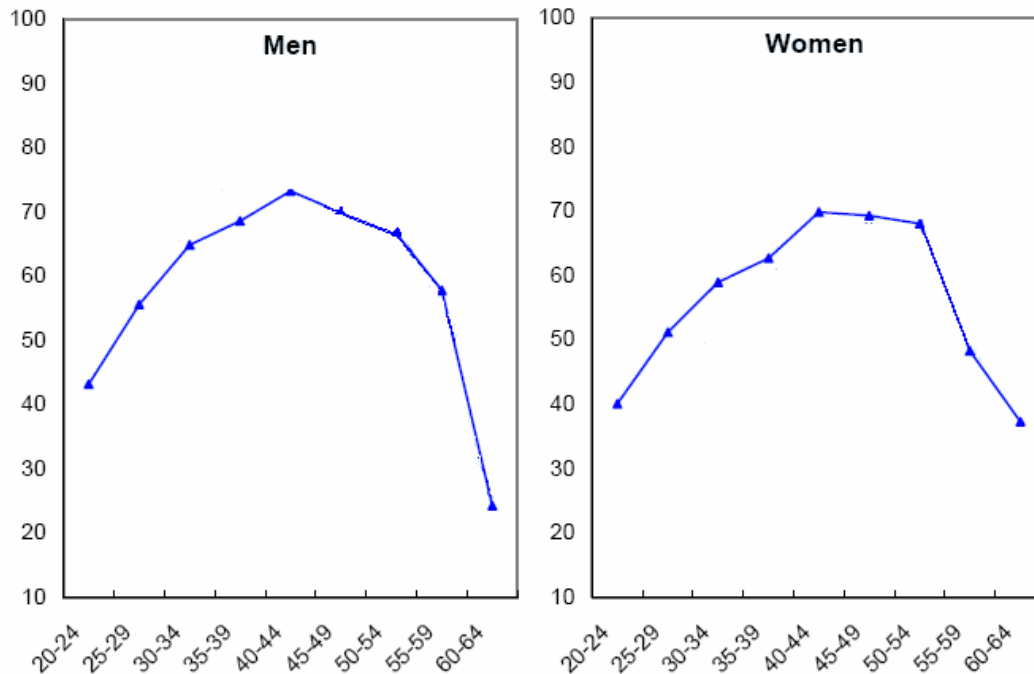
The need for commitment from both younger and older workers should remain a key goal as organisational commitment generates numerous benefits to businesses, including improved productivity and retention rates (The Work Foundation 2005). Studies have shown that where employers have demonstrated commitment towards accommodating working time interests through flexible practices, employees have shown greater satisfaction with their job contract and subsequent commitment to their employer (Van Emmerik & Sanders 2005: 715). This is particularly valuable when trying to generate organisational commitment in times where constant change is becoming the norm. Meeting the working time preferences of workers enhances affective commitment and “the degree to which employees feel connected to their work and to the organization” (Van Emmerik & Sanders 2005: 714). Increasing affective commitment should be of utmost importance to businesses as it is considered the most powerful vehicle for converting sets of values into employee behaviours (The Work Foundation [no date]: 3).

However, a business’ claim of working time flexibility must be genuine for the benefits of improved affective commitment to be realised. Promising flexibility that can not be delivered may improve the recruitment process in the short term, but is costly and ineffective in the long term (The Work Foundation [no date]: 4-5). Employees attracted to an employer through false hope or unfulfilled promises will not perform as well or stay

committed to the organisation (The Work Foundation [no date]: 5). In situations where flexibility can not be provided to the extent that the employee requires, it is important that the employer provides a realistic job preview in order to remove any perception of inequities (Van Emmerik & Sanders 2005: 721). Essentially the recruitment strategy must reflect the organisational reality or else the long term benefits of improved retention will never eventuate.

One theory for explaining the impact of unmet expectations on organisational commitment is Rousseau and Tijoriwala's (1998) "psychological contract". Rousseau and Tijoriwala define the psychological contract as "an individual's belief in mutual obligations between that person and another party such as an employer... predicated on the perception that a promise has been made (e.g., of employment or career opportunities) and a consideration offered in exchange for it (e.g., accepting a position, foregoing other job offers), binding the parties to some set of reciprocal obligations." (Rousseau and Tijoriwala 1998: 679). Offering an employment contract for a given number of hours and then expecting a worker to work "above and beyond" their formally contracted hours will be perceived as a breach of the psychological contract (Van Emmerik & Sanders 2005: 715). Studies have indicated that a perceived breach of reciprocity inherent in the psychological contract will broadly result in negative attitudes, such as a higher propensity to leave the organisation (Van Emmerik & Sanders 2005: 715). Although unmet working time preferences broadly lead to worse retention rates, supporting the belief that working time and staff turnover are interrelated, not all age groups experience the same degree of turnover in relation to unmet working time preferences. The figure below illustrates the degree to which British employees of different age groups are likely to stay with an employer over a four year period.

**Figure 9. Percentage of British workers employed in 1998 who were still in the same job in 2002**



Source: OECD [no date]: 15

British businesses are facing a far more difficult time preventing younger staff from leaving the organisation than their middle-aged counterparts. Younger workers, who tend to face the prospect of underwork are far more likely to be less satisfied with their job (see: Figure 10, below) and show less commitment to their employer (in terms of tenure) than their older and overworked counterparts. Studies have shown that “working fewer hours than one prefers is associated with less organisational citizenship behaviour, lower self esteem, alcohol abuse and depression” (Reynolds 2003: 1172). Therefore businesses need to address the demands of underworked staff, without going beyond the quantitative restrictions outlined in the WTD and national legislation.

Interestingly the patterns in rates of retention do not differ greatly between the sexes in the UK across the employment life cycle. However, as the UK is far more heterogeneous in its overall working time patterns, both between workers and between the sexes, it



should not be assumed that flexibility measures will address the needs of all workers equally. Given that 90% of males on average work over 36 hours per week compared to just 54% of females in the UK (see: Figure 7), the demands for working time reductions or flexibility may be for entirely different reasons. The polarisation between full-time and part time work in the UK with full-time work dominated by males and offering long hours, greater responsibilities and higher wages, and part-time work dominated by females and offering lower pay and less responsibilities, offers many opportunities to businesses offering alternative work arrangements. With more women entering into the professional ranks and full-time work, the demands for working time flexibility for full-time workers will no doubt continue to increase.

A further important conclusion to be drawn from the retention rates between age groups and sexes is that for older males (60+) the retention rate is astonishingly low. This further indicates that part time work options or other working time reductions are simply not available to many older full time workers. This provides a dual opportunity to proactive British businesses when offering flexibility for full time workers to work fewer hours. Working time flexibility allows businesses to not only keep their own highly satisfied and committed older workers from retiring, but potentially attracts older workers from outside the organisation facing the prospect of long hours with their current employer or retirement.

**Figure 10. Job Satisfaction over the Life Cycle in Great Britain**

Source: Oswald 2002: 3

Overwork certainly does not seem to affect overall job satisfaction, with older workers being the most satisfied of all with their jobs. However, as older workers are more likely to be tempted into retirement, businesses face a strong challenge in adding flexibility into the structure of working hours in order to retain such workers. Although older workers are generally facing overwork and are likely to exit the labour force after reaching the age of 55 in both sexes, overworked workers in general do not show less commitment to their employers whilst actually at work. Studies such as Van Emmerik and Sanders (2005) suggest that overworked employees actually show more affective commitment and identification with their jobs than those with working time matches. Warrall and Cooper's (1999 in Van Emmerik & Sanders 2005: 721) findings also suggest that overwork is not directly associated with lower employee commitment.

The problem of balancing the interests of older workers with their younger counterparts is a key challenge of working time flexibility. From the UK's *Sunday Times Best Companies to Work For* list, it seems that businesses are overwhelmingly focusing their attention on meeting the longer hours preferences of the younger workers, rather than working time reductions for older workers. Age diversity is not a feature in the 'best companies' where hours are becoming increasingly longer and 56% of the employees are under 35 and only 6% over 55, compared to the general working population where only 36% are under 35 and 15% are over 55 (Bolton 2006: 14). Although age diversity may not be a priority in many organisations and workers may even be attracted to employers where their age group is overrepresented, entirely shaping flexibility towards one demographic group will dissatisfy excluded employees and create both retention and potential recruitment problems.

Overall it is clear that different age groups are experiencing differing degrees of dissatisfaction associated with their working time mismatches. It is reasonable to conclude that given the differing nature of the working time mismatches and the different career concepts and expectations that workers are placing on their employers, that a single solution to the working time problem that satisfies all groups is not practicable. To meet the needs of a diverse workforce, businesses must ensure that flexible working practices are not only made available, but that there is a significant variety in choice for workers wishing to meet their personal work-life balance.

### 6.3 Flexible working time practices

Working time flexibility measures available to businesses wishing to become more worker-friendly broadly fall into two categories: those that affect the *number* of hours worked and those that affect the *timing* of those hours. Flexibility in the total number of working hours can be introduced through changes to the structure of work, such as part-time work arrangements, job-sharing (sharing a full-time job between multiple part-time employees), and phased retirement. The total number of hours worked can be modulated without major changes to the job structure through additional leave arrangements such as

maternity/paternity leave, sabbaticals, term-time working (additional leave during school holidays) and career breaks. Alternatively the number of working hours may also be extended through the use of overtime. Flexibility into the timing of working hours can be introduced through flex-time (flexible start and end times for the working day), annualised hours (flexible work patterns throughout the year) and shift work (multiple working time schedules).

### 6.3.1 Modulating the quantity of working hours

Part-time work is the clearest example of non-standard work and is now so entrenched into many businesses that it is often not even considered a flexible working practice (CIPD 2005: 5). As with many flexible practices the use of part-time work may be driven more by business needs for flexibility than the employee's, with 17% of part-time workers in the EU15 involuntarily working part-time hours (Eurofound 2003: 15). The business motivations for part-time work vary across Europe as it may be used as a vehicle to phase in early retirement (as in Germany), to attract inactive women into paid employment (Netherlands and Ireland), for temporary reduction in hours (Sweden) or as a means for obtaining cheap and marginalised labour during peaks in the business cycle (UK) (O'Reilly 2003: 34-5). The extensive use of part-time work led the European Council to introduce EU Directive 97/81/EC, protecting the rights of part-time workers to equivalent treatment to their full-time counterparts. The rights of part-time workers have been further extended beyond the EU minimum standards for many workers through national legislation, collective agreement or simply through employer initiative.

Not surprisingly part-time work is the most widely used flexibility measure in the UK and is available in 86% of the British organisations surveyed by CIPD, of which 41% have a formal policy for facilitating part-time work (CIPD 2005: 6). The actual uptake of part-time work is not so wide as only 43% of surveyed organisations make it available to all workers. However, not all full-time workers are attracted to part time work as many perceive barriers beyond the organisational constraints. When surveyed on "perceived barriers to part-time working" 53% of British workers saw part-time work as damaging

their career prospects and 66% viewed part-time workers as having less employment rights (Eurofound 2003: 43). British workers were also the most likely of all Europeans to claim that they can not afford to work part time (61% compared to an EU15 + Norway average of 44%; see Appendix for full table). Although companies in the UK are likely to employ part-time workers and have policies regarding part-time work, the UK provides a good example of how introducing working time flexibility needs to go beyond simply making the flexible practices available, the negative perceptions blocking their adoption must also be broken down.

Job-sharing is another example of a practice that bears strongly negative perceptions, though this also due to the negative views on behalf of employers. Over 70% of private sector companies in Ireland see no advantages in introducing job-sharing (O'Connell et. al. 2003: 271) and across the UK only 2% of companies are considering introducing job-sharing to meet flexibility demands (CIPD 2004: 7). Although job-sharing is the second most widely available flexibility measure, with 63% of British companies reporting it available to at least some employees, only one in ten employees actually utilise job-sharing (CIPD 2004: 11). One of the problems with making job-sharing widely available to all employees is that the marginal costs of implementing job sharing rises as more employees access the provision and "the continuity provided by full-time staff falls, potentially decreasing the marginal productivity of the whole workforce" (Budd and Mumford 2006: 28).

As job-sharing is essentially a form of part-time work, the perceived barriers to career progress remain a serious inhibitor to its desirability on behalf of many employees. However, as a form of phased retirement it may be an increasingly important tool for retaining older workers and their knowledge. As many older workers approaching retirement have already achieved their desired career goals and can afford to earn proportionally less income, many of the typical perceived barriers to part time work do not apply. Job sharing may then help employers retain workers who may have otherwise left the company and "it's much less expensive to tap the expertise you have with proven employees in your organization than it is to go outside the organization and recruit

someone new” (Marks in Anonymous 2006). Therefore job-sharing can achieve win-win outcomes for both employees and employers where the employee can afford to work less hours and the employer can’t afford to lose them.

Whilst job-sharing may not be cost effective for all employers, where the desire for fewer working hours is due to childcare responsibilities the use of term-time working (additional leave during school holidays) may be the preferred option. As term-time working becomes increasingly costly and difficult to manage when more employees utilise it, it is understandable that only 15% of British organisations reported it available to all employees, despite it being available in 38% of all organisations (CIPD 2004: 6). A problem faced with additional leave arrangements such as term-time working is that it can create resentment amongst workers without children. “Demonstrating fairness between different employees” was identified as the biggest problem faced by managers when implementing flexible arrangements as “some employees will be unfairly burdened with late nights and tight deadlines, while those with children will not” (CIPD 2004: 18). Although this is of direct concern with term-time working, the same problem of fairness can be applied to leave arrangements in general where multiple requests are received for the same period of leave. It is therefore recommended that businesses have a transparent set of criteria for dealing with leave requests, as working time flexibility will invariably increase the complexity of leave management (CIPD 2004: 18).

As many workers wish to work less hours in order to achieve a work-life balance, these working time shortfalls must be filled by other workers. Obviously additional staff may be hired, which in itself poses additional financial and managerial problems, but as other existing staff members may prefer to work additional hours there is potential to permanently or temporarily extend working hours for these workers, further improving working time matches in the organisation. Overtime is the least sophisticated method for temporarily achieving working time flexibility and its use can bring about many benefits. In comparison to other methods of flexibility overtime is easy to organise, immediately reversible and often a win-win outcome for both employer and employee (where the overtime is paid) (Boulin 2003: 179). As overtime is restricted by laws prescribing

maximum working time thresholds and involves a higher rate of compensation, it is not always the most cost effective flexibility measure.

The relative attractiveness of overtime will depend upon the cost of employing additional labour and the predictability of working time patterns. For example, term-time working provides a highly predictable working time pattern that could easily be planned for in advance through less costly methods than overtime. Whilst it may be tempting for businesses to cover absences by increasing work intensification for others and benefiting from unpaid overtime, this strategy is extremely short sighted. This is particularly the case where the workforce is unionised as many studies have also shown unionised workforces tend to make the use of overtime most costly due to stronger pressures on accurate reporting and compliance with overtime provisions (Weil 1996 in Golden 1997: 6). Therefore more sophisticated methods may provide more longer term value for businesses wishing to extend working hours on a more regular or permanent basis.

### 6.3.2 Modulating the timing of established working hours

Where the total number of working hours can not be reduced to meet the preferences of the employee, reshaping the timing of the existing number of hours may go some length to addressing the working time mismatch. Workers working more hours than preferred “may consider that their work schedule is compatible with family life because it has been selected strategically in the context of having to arrange particular forms of childcare, or in relation to other considerations such as the work schedules of their partners” (Eurofound 2003: 44). As the ability to co-ordinate work with non-work responsibilities may depend more on the timing of the working hours than the number worked (Reynolds 2003: 1179), workers with power over flexible work schedules may be better able to coordinate their working time with their lifestyle.

One of the more established methods for improving flexibility in the timing of hours is the use of flex-time. Flex-time usually involves the requirement of being present for a core number of office hours (say 10.00-15.00), but with flexibility either side (Flexibility

Ltd 2005). This not only helps employees better manage their responsibilities outside work, but may help avoid rush-hour commutes and allow workers to schedule quiet times to get on with work (Flexibility Ltd 2005). Whilst flex-time may complement other forms of working time flexibility, the unpredictability of working schedules may pose some problems, especially to managers who prefer to “manage by eyeball” (Flexibility Ltd 2005). However, criticisms of flex-time “cheating” are more likely to stem from a problem with performance appraisal and a workplace culture where emphasis is placed on visible commitment and presenteeism (see Section 3.4), rather than outcomes or productivity.

Unfortunately the drawback regarding predictability of work schedules remains a legitimate concern. The second and third most cited problem faced by British line managers when implementing flexible practices involved communication with team members and the ability to control workflow (CIPD 2004: 18). Some of these concerns can be addressed through more structured forms of flex-time, but this will of course limit the overall benefits of working time flexibility. The compressed working week (eg. a 4 day week) is a popular solution to some of the communication and workflow problems, as it allows the extension of the working day over a reference period (usually one or two weeks) in exchange for a predetermined day off. The employee benefits from reducing quasi-working time such as travel and preparation time, whilst the employer gains a more motivated and committed worker during the time actually spent at work (Oliver 1998).

Whilst flexible timing of working hours can help alleviate the work-life balance problems associated with overwork, it provides no direct solution to the financial problems faced by the underworked. In fact, flexibility in the timing of working hours can actually undermine the financial position of workers requiring additional hours. Whereas employees may have previously benefited by receiving overtime for extra hours in response to demand fluctuations, flexible timing practices allow business to improve planning for work schedules. For example, annualised hours provides a great tool for British manufacturing firms to maintain continuous production and minimise overtime by varying the working time patterns over the year in response to seasonal fluctuations



(Essery 2004). However as overtime is a critical source of income for underworked workers, the loss of income is far more important for such workers than the gain from more flexible schedules. As unionised workforces, such as those in the manufacturing sector, are more likely to benefit from overtime, unions have been extremely suspicious of such flexibility measures (Flexibility Ltd 2005).

Overall the interest placed by employees on flexibility in timing of working hours should be recognised as a great opportunity for proactive organisations to improve motivation and commitment in their staff. Although flexible timing of hours does not address all the problems of working time mismatches, it has been shown to minimise their negative effects on organisational commitment for those working long hours. The high priority placed on flexibility in the timing of working hours, which is often of greater concern to employees than nominal hours, should also be a strong warning signal to the European Commission. Whilst employees clearly treat the time spent preparing and commuting to and from work as having real implications on work-life balance and overall health, such factors are ignored in the WTD which focuses overwhelmingly on the quantity of hours spent at work. However, these employee preferences regarding flexibility in the timing of working hours can not be as easily ignored by businesses looking to recruit and retain highly sought after workers.

## 7 Conclusion

The difficulty faced by any analysis that seeks to understand the effects of working time on work-life balance is that both are vague concepts. The inherent problems with defining and measuring working time, makes comparisons between workers and across national boundaries problematic. As working time is difficult to measure, the impact of nominal working hours on work-life balance and worker health is difficult to quantify as personal characteristics, such as responsibilities outside of work, age, gender and work intensity often have larger implications on worker health than nominal working hours. The conception of what constitutes a work-life balance will not only differ markedly between employees, but will also change across an employee's life cycle

Whilst it is clear that national and European level regulations will directly affect working time outcomes, their impact on health and work-life balance will always be indirect and difficult to measure. That is not to say that establishing minimum standards for working time and rest periods will have no effect on worker health and work-life balance, but simply that the intended and unintended consequences will vary between countries, industries and workers. National culture, workplace culture, marginal taxation rates and wages strongly affect individual preferences, raising serious problems for mandating work-life balance at a European level purely through the restriction of working hours. The lack of a standard and accurate method for measuring working time is of course a major obstacle to implementation and evaluation, but the real problem is that the distinction between work and life is simply not clear.

When workers enjoy their work and see meaning in their work beyond the paycheque, the satisfaction from work achievements will invariably spill over to general life, making the quantity of working hours relatively less important to work-life balance. Alternatively, where work is considered entirely a means to a financial ends, the distinction between work and life will be far greater as personal identity and life satisfaction will be derived from pleasures outside work. Essentially this is the classic case of how when one "lives to work" working time is a source of satisfaction in itself, whereas when one "works to

live” working time is a period of subordination or subjugation that would be best minimised. Clearly a given number of hours will have different health and work-life balance implications for workers depending on their motivations for work and the intrinsic satisfaction they derive from their job.

Work-life balance also assumes far more than simply the quantity of hours spent at or away from work, it includes the control over the timing of working hours. Flexibility in the power to determine the distribution of working hours across the working week can be more important than simply how many hours, particularly when the demands of family responsibilities begin the moment the official working day ends. The timing of working hours will also be of importance to workers as it will help fit working time within the constraints of non-work responsibilities or simply minimise work-related time such as time spent commuting to and from work. This has been recognised by many businesses, but perhaps this is the greatest shortfall of the current discussion surrounding working time at the European level. Much of the European level focus surrounds ensuring maximum working time quantities are not exceeded in order to promote worker health and work-life balance, but such initiative are missing one of the key components of working time, which is the timing of hours.

Ideally working time regulation should have the flexibility to allow those that want to work longer hours or non-standard working hours to meet their working time preference, whilst at the same time protecting those that wish to work less hours or standard hours from having working time flexibility imposed upon them. Historically social policy considerations and the balancing of such competing interests were areas of national sovereignty and determined within the national industrial relations system. For example, the Swedish system allowed working time restrictions to be overridden by sectoral level bargaining, whereas the UK imposed minimal regulation and allowed working time to be negotiated at the workplace level. However, as indirect labour costs derived from labour standards are an element in competition between enterprises in different member states, for Europe to become a truly integrated market, common standards for working time needed to be established.

The problem faced by the European Council when agreeing to set European level standards, was how to best incorporate flexibility into the system. Ideally a Swedish approach would have been preferred, but not all member states had sufficiently developed collective bargaining systems to allow European level restrictions to apply flexibly through collective bargaining. This problem was compounded by the fact that the countries with minimal collective bargaining and union density, such as the UK, were also the countries with the largest number of workers working long hours. As many of these workers actually prefer to work long hours due to very low minimum wages, job insecurity or simply high job satisfaction, such restrictions would have resulted in many workers being forced to work less than their preferred number of hours.

The political compromises required during the drafting of the WTD resulted in numerous exclusions for particular groups of employees and a general opt-out clause for member states. The ECJ's decisions to restrict national level flexibility and widen the scope of the WTD, has further polarised the working time standards between those workers covered by the WTD and those excluded. However as member states can simply opt out of the WTD and the European Commission can change the text of the Directive in response to unfavourable judgments, it is clear that the future of working time regulation lies in the political sphere rather than the judicial system.

Although working time regulation plays an important role in shaping the standard working week, businesses need not be reactionary to the standards imposed. Through the voluntary implementation of working time flexibility practices addressing the quantity and timing of hours, businesses can gain a significant recruitment and retention advantage over their competitors. As many valuable older workers no longer work out of economic necessity and are approaching the end of their careers, working time flexibility is essential to retain such workers and facilitate the transfer of knowledge to the next generation of managers. As the next generation of managers are clearly taking more control over managing their own careers and have working time flexibility as a priority, businesses need to offer flexibility in order to attract and retain such workers. Generating

commitment from an increasingly diverse workforce with differing needs for working time flexibility and different career concepts is extremely difficult, but flexible working options can create a benefit that is difficult to imitate by competitors.

Whilst requiring workers to adapt their lives to the workplace standards and schedules may be easier than trying to adapt the work to the worker, for key human resources businesses are beginning to recognise that investment into work-life balance policies and retention is far more cost-effective than further recruitment and training. This could be considered as a strong argument against the need for further regulation of working hours, as it is clear that businesses are becoming proactive in this regard and need to have the power to determine these matters at the level closest to the employee. However, this is unlikely to be accepted by socially minded national governments or by the European Commission any time soon, as such institutions see working time flexibility and work-life balance as a goal for all workers, not just those considered valuable enough to justify additional attention and resources from their employers. Continued intervention into working time negotiations will no doubt maintain the distortion of working time matches for those with self-awareness and negotiation power, but while the agenda is to protect the weakest workers from the most exploitative employers, such restrictions will continue to be justified.

## Appendices

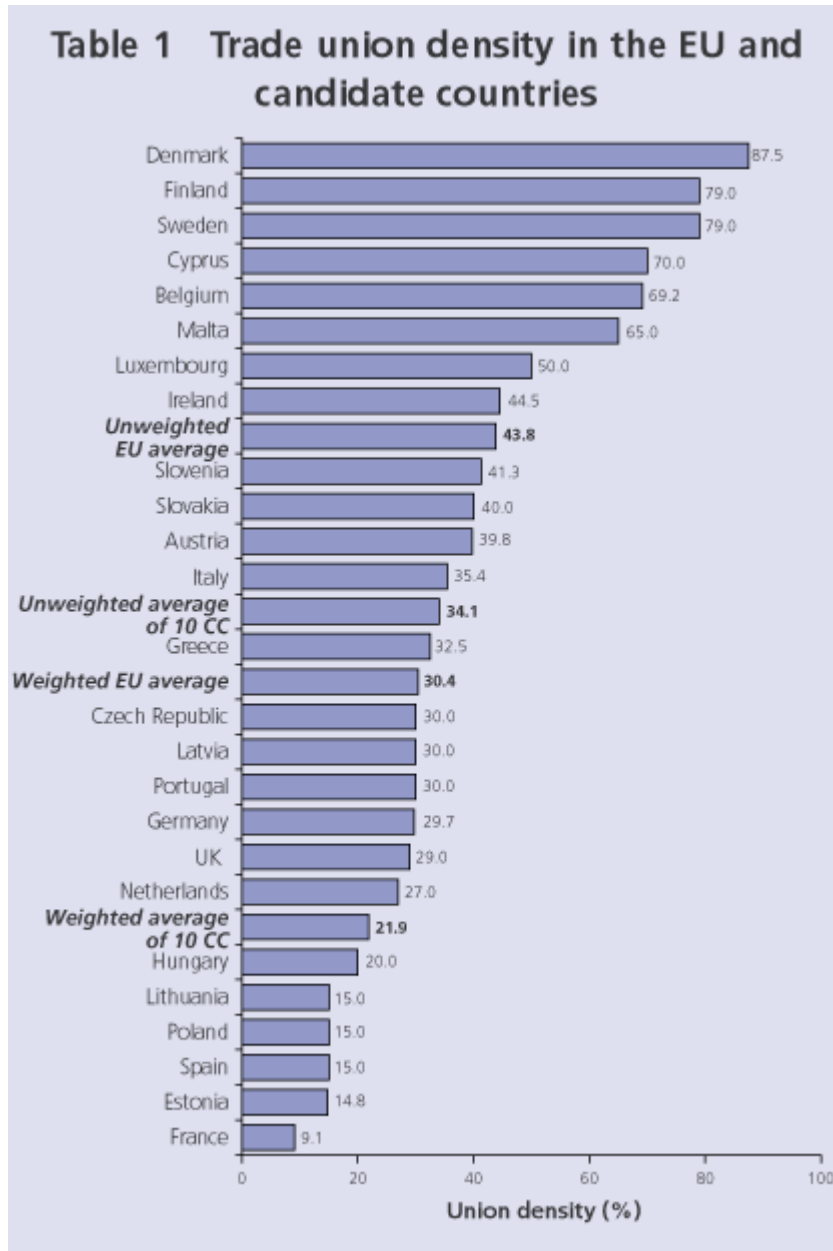
### Appendix 1

The figures in table 2 should be read in conjunction with the following notes from the EIRO.

- **Austria:** figures from Chamber of Labour (*Arbeitskammer*); figure for men is an estimate.
- **Belgium:** figures from Statistics Belgium (*Institut National de Statistique/Nationaal Instituut voor de Statistiek, INS/NIS*) labour force survey.
- **Bulgaria:** figures from *National Statistics Institute* (NSI) labour force survey; 2004 figures for first half of year.
- **Cyprus:** figures, from *Statistical Service of Cyprus* labour force survey, refer to number of weekly actual hours worked with a full-time job.
- **Czech Republic:** figures, from Czech Statistical Office, are for October-December 2003 and July-September 2004 respectively.
- **Denmark:** figures from Statistics Denmark.
- **Estonia:** figures from Estonian labour force survey.
- **Finland:** figures from the *Statistics Finland* labour force survey
- **France:** figures from National Institute of Statistics and Economic Studies (*Institut national de la statistique et des études économiques, INSEE*) labour force survey.
- **Germany:** figures from Institute for Employment Research (*Institut für Arbeitsmarkt- und Berufsforschung, IAB*).
- **Italy:** figures from Bank of Italy.
- **Latvia:** figures from the Central Statistical Bureau (*Centrālā statistikas pārvalde, CSP*) labour force survey; 2004 figures for third quarter.
- **Lithuania:** figures, from Statistics Lithuania (*Lietuvos statistikos departamentas*), are for second quarter each year.
- **Malta:** figures from *National Statistics Office*.
- **Netherlands:** figures, from Central Statistical Bureau (*Centraal Bureau voor de Statistiek, CBS*), include overtime.

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- **Norway:** figures based on [Statistics Norway](#) labour force surveys.
  - **Poland:** figures, from Central Statistical Office ([Główny Urząd Statystyczny, GUS](#)), refer to third quarter of each year.
  - **Romania:** figures from Institute of National Statistics ([Institutul National de Statistica, INS](#)); 2004 figures for second quarter.
  - **Slovakia:** figures, from Slovak Statistical Office ([Štatistický úrad Slovenskej republiky, ŠÚ SR](#)) labour force survey, refer to fourth quarter of 2003 and second quarter of 2004.
  - **Slovenia:** figures from Statistical Office of the Republic of Slovenia ([Statistični urad Republike Slovenije, SURS](#)) labour force survey.
  - **Spain:** figures calculated on basis of National Institute of Statistics ([Instituto Nacional de Estadística, INE](#)) labour force survey, second quarter.
  - **UK:** figures from [Office for National Statistics \(ONS\)](#) labour force survey.

Appendix 2



Appendix 3

Notes on Figure 4.

a) The concept used is the total number of hours worked over the year divided by the average number of people in employment. The data are intended for comparisons of



trends over time; they are unsuitable for comparisons of the level of average annual hours of work for a given year, because of differences in their sources. Part-time workers are covered as well as full-time.

- b) Data estimated from the Labour Force Survey.
- c) Data estimated from national accounts.
- d) The year 1990 refers to 1991.
- e) Data refer to establishments with 30 or more regular employees.
- f) Data refer to establishments with five or more regular employees.

For more information on the source of the statistics see:

<http://www.oecd.org/dataoecd/36/30/35024561.pdf>

## Appendix 4

Table 12 Perceived barriers to part-time working: all full-time employees

	% Who mentioned one or more of the following (multiple responses)				
	It would not be possible to do my current job part-time	My employer would not accept it	It would damage my career prospects	Part-timers have worse employment rights	Could not afford to work part-time
Netherlands	47	55	51	25	32
UK	63	60	53	66	61
Sweden	64	55	49	47	36
Denmark	52	59	45	50	28
Norway	53	53	44	48	30
Germany	53	60	56	43	43
France	61	54	46	35	54
Ireland	59	61	55	63	53
Austria	55	71	53	43	34
Belgium	55	50	50	29	37
Finland	42	45	32	40	35
Portugal	62	62	41	52	47
Spain	56	65	44	54	29
Italy	60	64	32	20	44
Greece	82	56	53	68	49
Women	47	48	42	39	40
Men	63	66	51	45	48
Would prefer part-time work	47	54	42	41	50
Do not want part-time work	63	61	49	43	30
EU15+N	58	59	48	43	44

Note: Countries are ranked by the existing rate of part-time employment, which is most widespread in the Netherlands. Luxembourg is not shown due to sample size limits, but it is included in the overall figure for all countries (EU15+N).

Source: Analysis of the Foundation's *Employment Options for the Future Survey*, 1998.

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