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Varying flexibilities in systems of organised decentralisation

Working time flexibility in the metal industries in
Denmark and Germany

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Abstract

There seems to be a paradox: The use of flexible working hours (i.e. variable hours) is more widespread in Germany than in Denmark, yet at the same time the discussion on the need for further flexibilisation of working hours is also more prevalent in Germany than in Denmark. In order to answer to this paradox a qualitative study of working time regulation in the metal industry in Denmark and Germany was performed in the spring of 2005. In addition to five case studies of company-based agreements in Denmark and Germany (Baden-Württemberg) the study consisted of analysing statistical data, legislative information, collective agreements and interviews with representatives from trade unions and employers' associations in Germany and Denmark.

Based on our preliminary findings three explanatory theses for further research are developed in the article: 1) The *level of specification*, i.e. the level where the framework agreements on variable hours are specified, is more decentralised in Denmark and allows an adjustment of working time closer to the single employee. 2) Both in the German and Danish metal sectors company-based agreements regulate the growing use of flexible working hours. Though the trade union response to this pressure from the company level can be described as a form of organised decentralisation in both countries, the response within the Danish collective bargaining system can be characterised as a *proactive organised decentralisation* while the response of the German system should rather be interpreted as a *reactive organised decentralisation*. 3) The varying regulation of working time flexibility in Germany and Denmark implies varying risks in the regulation. In Germany lacking competencies in small or medium-sized companies lead to *unbalanced trade offs*. In Denmark the strong decentralisation combined with a lacking demand on +/- hours limits for time banks without reference periods seems to impose risks for certain groups of employees who, regardless of company size, can have *extraordinary long working hours* violating the 48-hour rule.

The article is based on a pilot-study launched in the first phase of a three-year research project on the efficiency of Danish labour market regulation in an international comparative perspective. In this context "efficiency" refers to both economic competitiveness and the ability to create jobs i.e. security for employees.

Introduction

Working time has become a heated issue in European countries, however, evidently more so in some countries than others. The debate has for instance been intense in Germany, but is virtually non-existent in Denmark, where both trade unions and, more importantly, employers' representatives have stated that changing the existing working time regulation is a non-issue.

Comparing the prevalence of flexible working time in Denmark and Germany the diverse debates seem to include an unexplained paradox: Variable working hours (e.g. use of time banks) are more widespread in Germany than in Denmark, but so is the discussion on further flexibilisation of working time. In this paper we try to explain this paradox regarding the regulation of flexible working time by use of a qualitative analysis of the regulation in Denmark and Germany.

The newest comparative figures from Eurostat and the European Labour Force Survey from 2001 show, that over 40 % of the employees in Germany to some extent work variable hours, whereas this is the case for only little more than 20% of the employees in Denmark (European Commission 2003a: 150). Newer figures emphasise this difference, however the use of variable hours seems to be rising in both countries. According to data from the German Socio-economic Panel Study from 2003 approximately 60% of the employees experience such variations (European foundation 2005a: 9), and the employer association in the industrial sector of Denmark (*Dansk Industri*) conclude in an internal survey from 2005 that one third of the companies have concluded formal company agreements on variable working hours¹.

This extensive use of variable working hours is a phenomenon, which has accelerated since the 1990's (Jeppesen 2003: 62-63). Globalization, the increased international competition, has led employers to claim a need for cost cutting measures and a more flexible regulation of employment relations, including more flexible working time arrangements. Despite these converging demands across the European countries, the characteristics of national industrial relations systems prevail. It is well documented that in spite of economic globalization and increased European political cooperation basic elements of national systems of employment regulation as well as in a broader sense systems of welfare regulation remain intact (c.f. Sisson & Marginson 2004, Hall & Soskice 2001). Even though both the German and the Danish labour market regulation is embedded in systems of multi-level governance characterised by national regulation (laws), sectoral collective agreements and company level agreements, arguments have been made that the German regulation is more rigid compared to the Danish regulation. Researchers have highlighted that the Danish system which is more or less solely based on collective agreements and which throughout the last two decades has undergone a profound process of decentralising bargaining

¹ The result from the internal survey in Dansk Industri was given to us in an interview with a representative.

competencies gives room for a more flexible regulation of terms and conditions (Due & Madsen 2003a: 9-11). The question is, however, whether these differences in regulation have any significant impact on working time regulation and consequently affect the forms of flexibility with regard to working time that develop in these two countries. How, where and by whom is flexible working time negotiated in Denmark and Germany respectively, and does this explain the difference in working time flexibility? We try to answer these questions through an investigation of how flexible working time is regulated within the metal industries in Denmark and Germany². The focus is on legislation, collective agreements and selected work place level agreements. Five company-based agreements have been chosen – two in Germany (Baden-Württemberg) and three in Denmark. The investigation focuses on flexible working hours for full-time employees on open-ended contracts – on the so-called *Normalarbeitsverhältnis*. This demarcation sets a natural limit to the range of possible flexibilities. Flexibilities related to part-time work, fixed-term contracts or temporary work are therefore not discussed in this article. Furthermore, we narrow our focus to flexibility related to *variable hours* thereby excluding a precise study of *non-standard hours* and *overtime* (Marginson & Sisson 2004: 274-285). This demarcation is described in more detail in the next section.

The analysis is based on interviews with shop stewards from three Danish companies and with chairmen of the works councils from two German companies (*Betriebsratsvorsitzende*) in the spring of 2005³. Representatives from the trade unions and the employers' organisations in both countries have been interviewed as well⁴. The intention by choosing the qualitative approach and a deeper analysis of a limited number of cases is to generate qualified research theses regarding the explanation of the above-mentioned questions.

Forms of flexibility – definitions and demarcations

Flexible working time arrangements exist in many forms; they are formulated within the framework of national regulation (laws and/or collective agreements), which leaves room for a plurality of more specific regulations. At company level flexible working time is often negotiated for different groups of employees according to the specific characteristics of their job (e.g. predictability of fluctuations in demand of work). Further, it can be assumed that (flexible)

² It should though be noted that the Danish employers' organization in this area of production (*Dansk Industri*) has a broader coverage as the corresponding ones in Germany accepting not only members from the metal industry but also from other parts of the manufacturing industry.

³ The two chairmen were interviewed at IG Metalls regional office in Stuttgart in June 2005.

⁴ Two representatives from the Danish trade union The Central Organization of Industrial Employees in Denmark (CO-industri) and a representative from the employers' organisation The Confederation of Danish Industries (*Dansk Industri*) in the metal industry of Denmark were interviewed in May 2005, and likewise two representatives from the German Metalworkers' Federation (IG Metall) and one representative from the employers' organisation (Südwestmetall) were interviewed in June 2005. One of the representatives from IG Metall was interviewed at the headquarters in Frankfurt and the other at the regional office of IG Metall in Baden-Württemberg (IG Metall Bezirksleitung).

working time arrangements are not always subject to formal agreements, but quite often take the form of informal agreements. In addition 'hidden agreements' that in various ways violate existing formal agreements can also be found (see page 11-13).

In spite of this complexity in the field of working time regulation it seems useful to identify three main forms of working time flexibility for full-time employees on open-ended contracts. Firstly, the *duration* of the working time can vary from the collectively agreed normal working hours (Marginson & Sisson 2004: 274-277; Jeppesen 2003: 65; Seifert 2004: 1-16). The usual working hours in EU are averagely longer than the collectively agreed resulting in paid or unpaid overtime or overtime with time off in lieu, and the gap seems to be increasing every year (Lehndorff 2004)⁵. Secondly, the *scheduling* of the working time can vary. It can include non-standard hours, i.e. planned working hours on weekends or holidays or in the time span from 6 pm to 6 am (including shift work). Thirdly, the *distribution* of the actual working time can vary within an agreed time span – what also often is called variable hours. Many collective agreements allow the working time to vary over six months or one year, if the average working time per week sums up to the normal working hours. The variation within a determined period can be administered through for instance personal time accounts, where credit hours are accumulated, and surplus days thereby can be transferred into shorter working hours or days of leave (Seifert 2004: 11-13).

A certain overlap between the three forms of working time flexibility can be expected. A phenomenon like overtime for instance can both be ascribed to variations in *duration* and *distribution* or even both of them, depending on the agreed working time arrangements at sector or at workplace level. It is also possible, that shift work or work in weekends, which represents variations of *scheduling*, can be combined with overtime work.

One of the key reasons working time flexibility is requested has to do with the fluctuations in demand (Marginson & Sisson 2004: 273). These fluctuations can be more or less predictable and can last for longer or shorter periods. If the predictability is low, and the fluctuations usually last for shorter terms, then variations in the *duration* or *distribution* of working time seem relevant. Predictable long-term fluctuations such as seasonal work can be managed through all three variations, whereas less predictable long term fluctuations mainly invites for variations in the *distribution* of working time (or supplementary hiring on fixed term contracts).

⁵ The European Labour Force Survey from 2002 reports usual weekly working hours in Denmark and Germany of respectively 39,1 and 39,9 leaving a gap of over two hours in Denmark and over four hours in Germany to the agreed weekly working hours in the metal industries (European Commission 2003a: 143).

The focus in this article lies on variations in the *distribution* of working time (variable hours), and therefore the term “flexible hours/working time flexibility” refers to this type of flexibility from the next section and on.

Idealtypes on variations in distribution of working time

Studying a limited number of works -/ company agreements indicates that it is possible to distinguish between three idealtypes regarding the *distribution* of working time⁶. Firstly, there are the *collective weekly variations* of working time. This type of varying distribution is common in companies with seasonal production and therefore a high, yet predictable, fluctuation in demand. Secondly, we find the *collective daily variations*, often found in service work, where the fluctuation is also high but more unpredictable and can change on a daily basis. Working time changes are typically notified a day in advance by the manager or is managed by groups of employees. Thirdly, there are *individual daily variations*. This type of flexibility is requested at workplaces with certain types of service work or many administrative workers, where the fluctuation is high but almost unpredictable. In these cases it is impossible for the manager to give notice on overtime work to the employees, why an individual flexibility is requested. The individual planning of the working time and time off in lieu (in cooperation with the colleagues) opens up for the possibility that the employee can take time off when he needs it.

Idealtype	1	2	3
Type of work	Seasonal production	Industrial service	Administrative work, technical service
Fluctuation	High	High	High
Predictability of fluctuation	High	Low	Very low
Type of flexible working time requested	Collective weekly variations	Collective daily variations	Individual daily variations
Notice requested	Yes	Yes	No, self management

Table 1: Idealtypes on variations in distribution of working time

⁶ A number of 20 works agreements/company agreements – mainly from Denmark – were studied. As this study has a pilot character, it is the intension later on to increase the proportion of German agreements studied.

Legislation and agreements on working time flexibility

EU directive on working time – the frame of flexibility

The directive on working time from 1993 (currently under revision) is implemented in Germany through the Working Time Act (*Arbeitszeitgesetz* 1994) and in Denmark through collective agreements and a supplementary legislation. The rule on rest hours is in Denmark though implemented by chapter nine in the Working Environment Act, which was adjusted in 1996 (*Arbejds miljøloven* 1975). In the metal industry in Denmark the directive is implemented via the general framework agreement (*Industriens Overenskomst* 2004: Appendix 10). In both Germany and Denmark the outer frame for working time arrangements in the metal industries is constituted by the rule on 11 unbroken rest hours per day and an average of maximum 48 working hours per week. In the Danish metal industry the 48-hours maximum should be calculated over a reference period of four months. According to the *Working Time Act* a working day in Germany should not be more than eight hours, but it can be prolonged to ten hours, if the average working day over six months is held within the eight hours (*Arbeitszeitgesetz* 1994: §3). The social partners at sector level can agree on a different reference period in a collective agreement (12 or 24 months) – or for the management and employee representatives in a works agreement if the collective agreement allows it - as long as the weekly working time does not exceed an average of 48-hours over 6 or 12 months or brakes the 11-hour rule (see Table 2). The current revision of the directive is expected to lead to an implementation of an overall 12-month reference period of the 48-hour rule in Denmark and Germany in the coming years (European Commission 2003b).

Regulation of working time in the German and Danish metal industries

At the central level working time flexibility in the Danish metal industry is first and foremost regulated by the general framework agreement in the industrial sector, which allows company agreements on flexible working hours (*Industriens Overenskomst* 2004: Chapter 3, §12). This possibility has, with different limits, existed since the 1995 framework agreement (Navrbjerg et al. 2001: 18). For white-collar workers working time flexibility is regulated by their separate general framework agreement, which has similar rules on working time (*Industriens Funktionæroverenskomst* 2004: §8). The specification of the exact type of working time flexibility performed at the workplace is therefore in all cases decided at company level – either as a specific company agreement⁷ for all employees or as a framework company agreement, where each employee should decide if he wants to make use of it (and how). In Denmark approximately one third of the companies in the metal industry have made formal local agreements on variable working hours. One fourth of these – i.e. approx. eight percent of the companies – have made framework company agreements, which allow indi-

⁷ A company agreement is here defined as a collective agreement at company level, where trade union representatives takes part in the negotiation.

vidual agreements on flexible working hours directly between the single employee and his manager⁸. The option to conclude company framework agreements has existed since 2004.

In Germany working time flexibility in the metal industry is at the central level regulated both by law (see earlier section) and regional collective agreements. The collective agreements on working time at regional level often take the form of framework agreements, which should be specified in works agreements at company level (*Betriebsvereinbarungen*). It is also possible to make specific company agreements between the trade unions and employers who are not member of the employers' associations (*Haustarifverträge*). The number of this type of agreements could be rising since the membership rate of the employers' organisations in the German metal industry is falling rapidly, thereby putting the sector level agreements under pressure⁹. In some companies the trade unions also take part along side with the employee representatives in negotiating supplementary company agreements (*Ergänzungstarifverträge*) if the local partners agree to negotiate a deviating agreement.

Comparing the German regulation with the Danish we choose to perform a closer study of the collective agreements in one of the regions of Germany. In Denmark sector level agreements in the metal industry are national in scope, whereas the collective bargaining in the much larger country Germany takes place in seven different regions (*Bezirke*) with separate collective agreements. Consequently, the trade unions and the employers' associations coordinate horizontally at sector level between the regions in order to ensure homogeneity between agreements in different regions. Typically the trend-setting agreement is concluded in Baden-Württemberg or Nordrhein-Westfalen, which is then more or less copied to the rest of the regions. This is also the case regarding working time regulations.

Concentrating on the collective agreements on working time flexibility in Baden-Württemberg three different agreements are of interest. Firstly, the basic framework agreement for all employees (including white collar workers) in the metal industry in Baden-Württemberg allow flexible working hours with a reference period of six months, where surplus hours can be taken as time off in lieu (*Manteltarifvertrag 1997: §7.5, §7.6*). Secondly, since March 2004 it has been possible in accordance with the so-called "Pforzheim agreement" to devi-

⁸ This information is part of the results from an internal survey in Dansk Industri given to us in an interview with a representative.

⁹ From 1991 to 2001 the number of companies member of the employers' organisations in the German metal industry dropped from 9533 to 6093 (EIRO 2002). Although the drop surely includes fusions among companies it is still a remarkable figure. The driving force for companies' desire to leave the employers' organisations could be the dissatisfaction with the regulations on working time, which more than half of the small and medium-sized member companies in the metal industry expresses in a survey (ibid.). In January the headquarters of the employers' organisation (*Gesamtmetall*) announced, that they are willing to accept members that are not bound by sectoral collective agreements in order to be able to "represent all companies" (EIRO 2005a). A similar possibility exists regarding the Danish employers' organisation (*Dansk Industri*).

ate from the framework agreement (see next section for details). Similar agreements have since then been implemented in the rest of the regions. Thirdly, in February 2005 the social partners in Baden-Württemberg reformulated parts of the framework agreement. The reformulation first and foremost addressed the regulation of flexible working time as a tool ensuring employment and avoiding unnecessary hiring and firing (*Tarifvertrag zur Änderung der Manteltarifverträge und der Tarifverträge zur Beschäftigungssicherung in Baden-Württemberg 2005*). It is unique in the sense that this is the first agreement in Germany, which allows the local partners to make a voluntary works agreement on a time bank for flexible working hours and/or for early retirement with no obligatory reference period. This is underlined for both types of time banks, as the aim is to adjust the working time to fluctuations in demand that seldom follow a specific reference period. However it is demanded that the local partners must agree on limits on +/- hours for the time bank of flexible working hours, and that no more than 152 hours per year must be saved in the early retirement time bank (ibid. §7.7.1.2, §7.7.2.3). If the upper limit of the time bank for flexible working hours is more than 300 hours, the company also has to ensure the hours in case of insolvency. All hours in the time bank for early retirement must be ensured in case of insolvency (ibid. §7.7.1.6.1, §7.7.2.6.1).

Regulation of working time distribution	Denmark	Germany (Baden-Württemberg)
Rest hours per day	Law (11 hours)	Law (11 hours)
Maximum hours per week	Collective agreements (48 hours average over 4 months)	Law (40 hours average over 6 months or 48 hours average over 6 (or 12) months)
Reference period for flexible working hours	Collective agreements (37 hours as weekly average over 12 months)	Collective agreements (No reference period for flexible working hours, but local partners must agree on limits on time banks)
Normal working hours	Collective agreements (37 hours)	Collective agreements at regional level (35 hours)
Framework agreement for distribution	Collective agreements at sector level and workplace level	Collective agreements at regional level
Possibility for deviation from collective agreement	Yes. Social partners at sector level should be informed.	Yes, but social partners at sector level must approve of deviations through location clauses.

Table 2: Overview of rules and regulation on working time flexibility in Denmark and Germany

Opening clauses on regulation of flexible working time

In Denmark the needs and wishes from the employers and employees on working time can be specified in company agreements that deviates fundamentally from the framework agreement at sector level (*Industriens Overenskomst* 2004: §50). The so-called “Forsøgsordninger” allow locally agreed deviations on all parts of four chapters in the sector agreement - including the one on working time (Chapter 3) – however, excluding the implemented EU directive. The “Forsøgsordninger” has existed since 2000, but was revised in 2004. Following the sector level agreement from 2000 the sector level partners were obliged to approve deviating company agreements, but from 2004 and on they only need to be informed.

Deviating company agreements can, like all other company agreements, be withdrawn by either the management or the employee representatives with a two months notice (*ibid.* §8.2). According to the representative from the employers’ organisation this minimizes the risks for the management and employee representatives agreeing on deviations and ensure balanced company agreements – if one of the local partners abuses the possibility of deviation, the other part can give notice to terminate the agreement. Although these possibilities of deviation have only existed since 2000, they must be seen as part of a development in the Danish metal industry since the beginning of the 1980’s. At that time pay and working conditions were to be negotiated at inter-sectoral, sectoral and company level – further, an automatic cost of living adjustment was in force. Consequently, the employers were striving for a more simple bargaining structure, which could ensure the competitiveness of the industry. In the 1980’s the bargaining structure was changed into a two level structure based on sector level and company negotiations, and the local partners received greater competencies to agree on working time arrangements within the framework agreements throughout the 1990’s (Navrbjerg et al. 2001: 18).

The possibilities of deviation are quite radical in the Danish metal industry of due to the fact that whole chapters of the sector agreement can be ignored. It is disputable whether the label “opening clause” offers the correct connotations with regard to company agreements in the Danish metal industry, since opening clauses typically are defined as the possibility of deviation *within* a framework agreement (Jacobi 2003:35). However, most of the Danish company agreements on flexible working time are not deviating from the framework agreement. Representatives from the trade union and the employers’ organisation estimate that since 2000 approximately 40 company agreements explicitly using the deviation possibilities on working time have been signed¹⁰. As this number covers both agreements on variations in the duration, scheduling and distribution of working time, the number of deviating company agreements on variations in distribution must be expected to be less than 40. This pattern in the use of the possibilities to deviate on working time is also found in Germany (see next section).

¹⁰ This figure is an estimate calculated by both the trade union (*CO-industri*) and the employers’ organisation (*Dansk Industri*) in May 2005.

The possibility to deviate from the agreements in Baden-Württemberg lies, as mentioned above, in the opening clauses of the “Pforzheim agreement” from February 2004. The agreement includes opening clauses on two aspects. First, it adds some paragraphs to the general framework agreement making it possible for the local partners to agree on 40 hours per week as normal working hours for up to half of the employees – though, only if more than half of the employees are highly qualified workers (*Pforzheim agreement 2004*: § 7.1.5). It is furthermore possible for the local partners to agree on 40-hour working week for more than 50% of the employees, if needed in innovation processes or if there is a lack of certain specialists (*ibid.* § 7.1.5). Second, the “Pforzheim agreement” allow the local partners to agree on more thorough deviations from the framework agreement on for instance pay and working time, if the deviations contribute to processes of ensuring competitiveness and employment in the company (*Pforzheim agreement 2004*: §2). The use of this opening clause – and the possibility to extend a 40-hour working week to more than 50% of the employees – implies collective bargaining of supplementary company agreements (*Ergänzungstarifverträge*), in which the sector level partners in the metal industry participate and should approve of the result. In this bargaining the local and sector level partners must also agree on a term of notice of the agreement. Works agreements on a 40-hour working week for up to 50% of the employees has a term of notice of three months unless another term is agreed (*Betriebsverfassungsgesetz 1972*: § 77.5)

Internal statistics from the IG Metall show that by December 143 companies in the German metal industry had closed deviating supplementary company agreements on working time using one of the location clauses¹¹. This figure does not represent deviating agreements on variations in distribution of working time alone, but also includes agreements on variations in duration and scheduling. The representative from the employers’ organisation in Baden-Württemberg (*Südwestmetall*) estimates that approximately 30 of these deviating agreements have been closed in Baden-Württemberg. It is not likely that the use of the “Pforzheim agreement” has peaked since these figures only cover the first year the agreement has been in force. However, it is surprising that the number of deviating supplementary company agreements is not larger considering the intensity of the discussion on further flexibilisation in Germany.

How can this relatively limited use of the opening clauses in Denmark and Germany be explained? The limited use according to the statistics could be interpreted in at least three different ways:

1) Maybe the framework agreement at the central level is so wide that it fulfils the needs at company level, and accordingly reduces the use of the opening clauses. The laws and collective agreements in Germany and especially Denmark give the local partners quite a substantial ‘room’ for local bargaining,

¹¹ This internal statistic was kindly given to us at the interview with the representative from IG Metalls head office in Frankfurt on the 9th of June 2005.

when it comes to company -/works agreements on variations in the distribution of working time.

2) Another possible explanation is that the companies do not have the resources to formulate a deviating answer to their needs. The share of small and medium sized companies is large in Denmark. 93,7% of the companies in the total industrial sector in year 2000 had less than 50 employees and employed 28% of employees in this sector (European Commission 2003c: 14). At the employers' organisation (*Dansk Industri*) the companies have access to different model- or standard agreements on non-deviating company agreements on working time, and the representative from The Confederation of Danish Industries reports that these standard agreements along side with possibilities of information and consultancies regarding working time are often used. This extensive use of guidance could lead to lesser variation in regulation of working time at company level. The share of small and medium sized companies is smaller in Germany than in Denmark. In the industrial sector of Germany 91,0% of the companies had less than 50 employees in year 2000 and employed 21,7% of the employees (ibid.), but the fact that many of not only small but also medium sized companies do not have a works council, and the fact that the union might not have representatives in these companies, make the question of lacking resources even more present in Germany. The representative at the IG Metall regional office in Baden-Württemberg is actually experiencing closer contact with the limited number of companies, where they *have* union presence in the works council, because of the new challenges in using framework agreements and thereby growing needs for information and consultancy, but what is going on in the other companies?

3) Finally, the widespread use of "hidden agreements" at company level in Denmark and Germany, which is a common experience among the shop stewards from the Danish cases and the chairmen from the works councils in the German cases, could explain the small number of known deviating works -/ company agreements. The comparatively low rate of unionisation in the German metal industry (see page 24) possibly gives way to a larger number of works agreements that actually violate the existing agreements in the industry. In Denmark former studies have shown that not only illegal agreements are hidden in Denmark – local partners have in some cases kept what they thought was a company agreement violating the sectoral agreement hidden from the partners at the sector level. They were simply unaware of the scope of possibilities for company agreements within the sectoral agreement (Navrbjerg, Steen E. (1999): 239, 261). This suggests a lack of resources at company level and/or insufficient information on behalf of the sectoral organisations. A large survey among shop stewards from 1998 shows that up to 27% of the companies in the Danish metal industry have "hidden agreements" (Navrbjerg et al. 2001: 26-27).

Cases on regulation at company level

In order to give a more detailed analysis of how the local partners actually use the collective framework agreements on flexible working time, we have interviewed employee representatives and analysed written works -/company agreements from five different companies in the metal industry – three in Denmark and two in Germany. Contact to the case-companies was established through the trade unions in Denmark (*Co-industri*) and Baden-Württemberg (*IG Metall Bezirksleitung*) respectively. The companies were selected in order to have a certain variation in the size and type of work. In the following sections the regulation of flexible working hours in each company is shortly described and analyzed. Tables on key characteristics of the cases are placed at the end of the article (see appendix). The case-companies from Denmark are respectively named DK1, DK2 and DK3, whereas those from Baden Württemberg in Germany are named DE1 and DE2.

DK1 – a small machine service company

The company is small with only 12 employees. Due to the high and unpredictable fluctuations in demand and a substantial number of travel days *individual daily variations* in working time has been implemented. The typical working day is 12 hours, which in effect means that the 48-hour rule is violated in practice. Since 1993 the company has had a written company agreement on time banks with no upper/lower limit. Some plus hours are paid in cash, but they should preferably be taken as time off in lieu - an overtime supplement is though always paid. Although the time banks are primarily self-managed, whole days off must be agreed with the management. The agreement was revised in 2002 doubling the plus hours to be paid in cash. In 2002 the workload was growing steadily and it was difficult to make the employees work overtime since they were never able to take time off in lieu. The employer on the other hand was reluctant to hire new employees due to the costs. The employees therefore suggested changing the company agreement so that more overtime hours could be paid in cash and thereby motivate the employees to work overtime hours again. Now the agreement is discussed every January in order to solve fluctuations in demand by working time flexibility instead of hiring and firing. The Danish government is expected to pass some new laws in 2006, which will have a decreasing effect on demands. In order to avoid dismissals the local partners therefore expect to minimize the number of paid overtime hours in January 2006.

DK2 – a small machine service department

The department has 14 employees in four different locations in Denmark. Though the work at the department is blue-collar work, the employees are hired in accordance with the framework agreement for white-collar workers (*Industriens Funktionæroverenskomst* 2004). In total the company has 108 employees, but 94 of them work in a separate administrative department, which has its separate company agreement on working time. All work in the service department includes travelling, and part of it is on call work. The fluctuation in de-

mand is not only high but also very unpredictable, which results in a need for unannounced working time flexibility like *individual daily variations*. When meeting in the morning the employees do not know when the workday will finish, and from time to time working hours for most of the employees violate the 48-hours rule. Since 1983 there has been a written company agreement on time banks and overtime hours. Before that the company implemented working time flexibility by verbal agreements in order to motivate employees to work overtime, however since both management and employees exploited the agreements, both sides were dissatisfied with the system. Furthermore since the employer wanted to become a member of the employers' organisation, The Confederation of Danish Industries, they put the agreement into writing. The company agreed on no upper or lower limit of the time bank and gave the employees the right to choose between time off in lieu or full overtime payment. The employees coordinate their working hours and time off themselves, and the management is not involved in the time bank equations. Changing management teams have since 1983 tried to reduce the overtime payment, but the agreement has according to the workers representative survived, because it has a strong influence on the employees' motivation in working overtime hours.

DK3 – a department in a large Danish multinational production company

The department is part of a Danish multinational company with 6000 employees worldwide of which 1500 employees work in Denmark. The Danish departments consist of employee groups with different work tasks and therefore different forms of working time flexibility. Four written company agreements on flexible working time regulate the varying flexibilities, which can be divided into two types: 1) In 2001 the local partners made a written company agreement with assistance from the local union on a time bank with upper and lower limits for the workers operating the machines, where both *collective weekly* and *collective daily variations* in working time are seen as unavoidable. The agreement was motivated by previous cases of considerable fluctuations in time banks, which not only violated the 48-hour rule but also caused problems when employees left the company. According to the agreement all overtime hours should be taken as time off in lieu, but an overtime supplement is always paid. For this group of employees, the management schedules overtime and time off in lieu to ensure a continuous manning at the machines. This scheduling is possible because the fluctuation in demand to some degree is predictable. A similar agreement has been made for white-collar workers. 2) Later, the local partners concluded company agreements on *individual daily variations* for the production workers with other tasks than operating the machines. One agreement is for the coordinators and supervisors on the floor, who can expect to have unnoticed overtime work. The management does not interfere in their planning of overtime hours and time off in lieu – this is subject to coordination among colleagues. Similar agreements have been made for employees who work with machine service or development. Still, the agreement for machine service workers is different in the way that it deviates from the framework agreement in

combining rules from the two collective agreements at sector level (*Industriens Overenskomst 2004; Industriens Funktionæroverenskomst 2004*).

DE1 – a medium sized machine production company

The company is placed in Baden-Württemberg and has a total of 750 employees. 540 of those work in the production whereas the rest work in development, service or sales. As fluctuations in demand always have been high and unpredictable working time flexibility has been implemented. The first written works agreement between the employee representatives and the management on working time flexibility was formulated in 1982, where flexitime (“Gleitzeit”) was introduced as a form of *individual daily variations* (i.e. the possibility of meeting or leaving a few hours earlier or later within fixed limits). Nevertheless, the company still had to hire and fire employees in temporary jobs and make extensive use of overtime, and therefore a new works agreement on time banks was written in 1996 in order to reduce expensive overtime, enhance flexibility in production and thereby secure full time open ended contracts for a larger number of employees (*Normalarbeitsverhältnis*). The agreement was last revised in spring 2005. Today both *collective weekly*, *collective daily* and *individual daily variations* in form of “Gleitzeit” are used in the company. All time banks – except “Gleitzeit” – are managed by the line manager, and all plus hours should be taken as time off in lieu in agreement with the management - but not within a certain reference period. There are additional works agreements for employees in sales, development and service, which mainly regulate shift work or on call work (variations in working time *scheduling*). For employees working with development the normal weekly working hours have been permanently increased to 45 hours/week thereby violating the “Pforzheim agreement”, where companies under certain conditions can raise normal working hours to maximum 40 hours per week. IG Metall is aware of this agreement and has accepted it. The employee representatives have in the negotiating process benefited from a network of representatives in Baden-Württemberg, which IG Metall has been building since 1997, where experiences have been exchanged.

DE2 – a department in a large German multinational production company

The company has 6000 employees worldwide. There are 1830 employees in the department in Baden-Württemberg of which 610 work in the production and 1220 work in sales, service or development. All work is affected by large and unpredictable fluctuations. In the 1980’s the company tried to handle the fluctuations by written works agreements on “Gleitzeit”, but neither the management nor the employee representatives found that to be a fully satisfactory solution. In 1995 the local partners therefore made a supplementary company agreement (*Ergänzungstarifvertrag*) that introduced time banks without reference periods in order to enhance both *collective weekly*, *collective daily* and *individual daily variations* in working time and secured saved hours for employees. Prior to this it was a problem for employees to take all saved hours off in lieu in the framework of “Gleitzeit”. An important element of the agreement was to secure jobs in the company and to prevent dismissals. The supplementary company agreement had elements, which violated the framework agree-

ment in Baden-Württemberg. The trade union, IG Metall, took part in the negotiations and accepted the deviance. The agreement was changed in 2000 and 2005 in order to meet the increasing competition in the world market. Each time IG Metall was involved. The agreement from 2005 consists of two main elements. Firstly, it regulates the normal working week to 39,5 or 44,5 hours for different groups of employees, and here it deviates from the collective agreements at sector level (including *Pforzheim*). Secondly, it governs a framework time bank with identical upper and lower limits for the majority of the employees. Not all of the surplus hours are saved, but this is a legal deviation using the “Pforzheim agreement”. There are additional agreements for employees in sales, development and service, but they mainly regulate shift work or on call work (variations in working time *scheduling*). The line manager manages all time banks except the *individual daily variations*, which the employees manage themselves within the frames of “Gleitzeit”. Time off in lieu as days off are agreed with the management.

Regulating working time flexibility at company level – a first comparison and discussion

In this section an introductory analysis of the five cases is presented. Important similarities and differences in the regulation are discussed, and an overview of the main features in this comparison is given in Table 3.

Flexibilities and formal regulation

The cases illustrate that the use of variations in distribution has developed over the last 10-20 years, and that more than one type of variation has often been implemented. In larger firms like DK3, DE1 and DE2 both *collective weekly*, *collective daily* and *individual daily variations* are used. This has not only to do with the increasing competition, but also with the fact that different groups of employees have different tasks and fluctuations in their work, which suits different working time flexibilities.

A common experience among the employee representatives is the need for a *formal regulation* of the variations in distribution of working time at company level, which the local partners in all five cases have made in form of written works- /company agreements. Both management and employees can exploit *informal* verbal agreements, like in case DK2, or some employees can end up with extremely high numbers of surplus hours that are impossible to phase out like in case DK3. Thus, it is important, according to the experience of the employee representatives that written agreements are changed in accordance with the developments in the time banks and the company's conditions. In cases DK1 and DK2 where no limits on time banks are agreed, the number of surplus hours paid in cash is discussed from time to time in order to keep the employees motivated in working surplus hours and to prevent hiring and firing. In DE1 and DE2 the change from time banks with fixed reference periods to framework time banks with no reference periods helps prevent firing when demands are low.

It is worth noting that the employee representatives in all five cases report on violations on the existing regulation on flexible working hours. Firstly, this questions if the regulation on flexible working time in both Denmark and Germany is wide enough as it is. Secondly, it is questioning the legitimacy of the formal regulation and thereby the protection of employees. In all three Danish cases, the usual working hours to some extent have deviated from the 48-hour rule implemented in the sector agreement with no opening clause. Still, the pattern of the deviation points at the fact that the violation is to be found among certain groups of employees like service workers (DK1, DK2) or certain individuals (DK3). In the two German cases the violations are not only found in practice but also in the written agreements. In these cases the violations consist of extensions of the normal weekly working hours beyond the existing rules (DE1, DE2). Only two large case-companies – DK3 and DE2 – make in their agreements use of the possibility of legal deviations using the opening clauses

at sector level –in “Industriens Overenskomst” and the “Pforzheim agreement” respectively.

The deviations in the five cases may indicate why the prevalence of legal deviations in both Denmark and Germany is fairly low in the statistics. Deviations are not only expressed in deviating written agreements addressing the opening clauses but are – probably in both countries – also part of an informal practice. The lacking integration in the written agreements could be caused by the fact that the deviations go beyond existing laws and agreements (including possible opening clauses), but it might also be a question of lacking resources for local representatives in smaller companies. In the three large case-companies most of the deviations – violating existing regulation or not – have been integrated into their written agreements. Deviations in small and medium sized companies could therefore be hidden to the statistics.

Decentralisation and regulation of working time flexibility
Our preliminary investigations show that the violations of existing rules in Denmark are found in the working time patterns of certain groups of employees. In Germany the violations are integrated in the written agreements. This apparent difference in the violations between Denmark and Germany might be explained by the differences in the regulation systems.

In the Danish cases *individual daily variations* are to a wider extent managed by the employees themselves than in the German cases - both when it comes to small (DK1, DK2) and large (DK3) Danish firms. First and foremost, *individual daily variations* are not framed as flexitime (“Gleitzeit”) like in the German cases, where the self-management is limited to certain hours at the beginning or the end of the working day. Second, the employees in two of the Danish cases (DK2, DK3) can take time off in lieu as days off without involving the manager. This opens up for a partly *informal* regulation of flexible working time in the Danish cases for those groups of employees with individual daily variations. In addition the company-based agreements in both small and large firms seem to be more differentiated in Denmark than in Germany. In case DK2 they have two separate agreements on variations in distribution although only a total of 108 employees, and in case DK3 they have 4 separate agreements among 1500 employees with different work functions. In each of the two German cases only one general agreement on variations in distribution of working time is in force.

Although our data is very limited and does not allow for quantitative conclusions, it does suggest that the regulation of variations in distribution is more decentralised in Denmark than in Germany and the specification of the variations takes place closer to the single employee or the single group of employees. The strongly decentralised and some times even informal regulation of flexible working time in Denmark paves the way for deviations that go beyond existing regulation. On the other hand, the strongly formalised and homogenous regulation in Germany does not seem to prevent violations of the regulation.

Local trade offs

All five cases demonstrate via their written agreements that it is possible for the management and the employee representatives in Denmark and Germany to agree on balanced company level trade offs, where working time flexibility plays a central part. It is difficult to estimate if one of the trade offs is a more “just” or balanced one than the others, because they are very different in both content and complexity, but they all seem to express a certain balance of benefits for both employers and employees. In four of the cases variations in distribution of working time is traded with the avoidance of “hiring and firing”. Looking at this trade off from a flexicurity perspective you can say that *numerical external flexibility* is traded with *job security* (Wilthagen et al. 2003: 7). In DK1 and DK2 over time payment is used as a tool to regulate the employees motivation in working more than normal hours and thereby bridge gaps between demand and number of employees. In DE1 and DE2 the employers want to cut expenses including over time payment through variations in distribution, which mean longer working hours, but the employees accepted that in exchange for job security. The agreement in DE2 is the most complex one. It is not only built on a trade off on safeguarding jobs, but also on increasing security for older workers, health and qualifications.

The chairman of the works council from DE1 underlines that it is seldom to find these balanced trade offs in small end medium sized companies in Germany. In the network of employee representatives in Baden-Württemberg he often hears about flexible working time arrangements in this type of companies, which only represent “insufficient copies” of works agreements in larger companies. The lacking union presence and perhaps also lacking presence of a works council does not leave the employees with many competencies in negotiating a balanced works agreement on variations in distribution. Here the horizontal exchange of experiences among employee representatives in the representatives’ network has, according the chairman, in several cases been important for mutual support. The situation in the two small Danish companies – DK1 and DK2 respectively – with employee representatives, who also represent the union, is not likely to be found in small German companies.

The trade off in the large Danish company – DK3 – seems at a first glance to represent a trade off, which benefits the employees the most. The aim with their company agreement was to set upper and lower limits on time banks in order to protect employees since there had been examples of employees with too many surplus hours not only violating the 48 hours rule, but also causing problems if they leave their job. This agreement illustrates a difference to the German regulation – there is no demand in the Danish sector agreements that the local partners should agree on upper and lower limits for time banks with no reference periods. This demand is an integrated part of the new agreement on flexible working hours in Baden-Württemberg from 2005.

Case-companies	DK1	DK2	DK3	DE1	DE2
Size	Small	Small	Large	Medium	Large
Type of working time flexibility	Individual daily variations	Individual daily variations	Collective weekly, collective daily and individual daily variations	Collective weekly, collective daily and individual daily variations	Collective weekly, collective daily and individual daily variations
Lower and upper limit on time bank	No	No	Yes	Yes	Yes
Management of time banks	Mainly self-management. Management should be asked when taking time off in lieu as days off.	Self management	Managed by line manager. Groups with individual daily variations have self-management.	Managed by line manager. Limited self-management in "Gleitzeit".	Managed by line manager. Limited self-management in "Gleitzeit".
Union presence at company level	Yes, one shop steward.	Yes, one shop steward.	Yes, several shop stewards.	Yes, they occupy all seats in the works council.	Yes, they occupy 2/3 of the seats in the works council.
Written local agreement on variations in distribution of working time	Yes	Yes. Separate agreement for white-collar workers.	Yes, four separate agreements for different groups of employees.	One general works agreement and additional agreements for employees in service, sales and development.	One general "Ergänzungstarifvertrag" and additional works agreements for employees in service, sales and development.
Aim of agreement	Avoid hiring and firing	Motivate employees to work overtime by using flexitime. Prepare employers membership of employers' association.	To control the fluctuation in time banks in order to protect employees	Reduction of overtime payment, increase flexibility in production, safeguarding jobs.	Reduce expenses, increase flexibility and competitiveness, increase security for older workers, increase health of employees, increase qualifications, increase job security and employment
Deviation in works -/ company agreement from collective agreement/law	No, but in practice frequent violations of the 48-hours rule.	No, but in practice violations of the 48-hours rule from time to time.	Yes, one of the company agreements deviates. Earlier examples of violations of the 48-hours rule.	Yes, a deviation for employees working in development on 45 normal working hours, which violates existing regulation.	Yes, legal deviations regarding saving hours. A deviation with 39,5 or 44,5 normal weekly working hours violates existing regulation.

Table 3:
Overview
of cases

Differences and similarities in the regulation of working time flexibilities

The analysis of the five case-companies has pointed at the following differences and similarities in the regulation: 1) Flexible working hours is generally more widespread in Germany than in Denmark. 2) The regulation and the management of flexible working hours is decentralised in both countries but even more differentiated and individualised in Denmark than in Germany. 3) The violations of the existing regulation seem to be more formalised in Germany than in Denmark. How can we explain these variations in flexibility and regulation in light of the different contexts, and do they explain the differences in the discussion on working time in Denmark and Germany? This question will be discussed in the following sections.

Although the prevalence of flexible working hours seems to be rising in Denmark and Germany, it is still higher in Germany than Denmark. This is a rather surprising fact considering that German regulation is often described as more rigid than the Danish regulation, which has become still more decentralised (Due & Madsen 2003a: 9-11). One explanation could be that the German companies use working time flexibility more often than Danish companies, because other forms of flexibilities like *external numerical flexibility* are easier to use in Denmark (i.e. firing and hiring of employees) and thereby supplement working time flexibility (Wilthagen et al. 2003: 7). The overall strictness of employment protection regulation (EPL) is thus remarkably higher in Germany than Denmark (OECD 2004: 70-72; Andersen & Mailand 2005: 11-14).

However, our preliminary findings suggest that the difference in the prevalence of working time flexibility is not to be found in all types of variable hours. In the Danish cases, the employees with *individual daily variations* to a wider extent manage these variations *themselves* than the employees in the German cases leaving the Danish employees with a greater degree of time sovereignty. The question is, however, if these examples illustrate a general tendency of larger *employee discretion* on variable hours in Denmark. The European Working Conditions Surveys from 2000 and 2001 asking employees in Europe if they can adapt the start and finishing times to their personal needs (like in “Gleitzeit”) show interesting results regarding Germany and Denmark. Even though the use of variable hours is more widespread in Germany than Denmark, the use of this specific flexibility seems to be more or less identical in the two countries. Approximately half of the employees in both Denmark and Germany report to have this possibility to some extent (European foundation 2005b: 26). Even though these figures cover all employees and not only employees in the metal industries, it is surprising that it is this widespread in Denmark, when only one third of the companies in the metal industries have made formal company agreements on variable hours. The use of self-management and thereby informal regulation of variable hours in the three Danish cases could even suggest that comparative statistics on “Gleitzeit” does not grasp the scope of the self-management for the Danish workers.

If we sum up the rules on flexible working time - the laws and the collective agreements - the rules are generally very wide, and there are only few differences in Denmark and Germany (Baden-Württemberg). In both countries it is possible to agree on varying working hours with no reference period, as long as the rest hour rule and the 48-hour rule in each country are respected. The only exception is that the local partners in Baden-Württemberg must agree on a +/- hours limit of the time banks if they want time banks without reference periods – this is not necessary in Denmark. Furthermore, in both countries it is possible to agree on legally deviating works -/ company agreements on flexible working time, but the companies have only made little use of this possibility.

When wanting to explain the varying flexibilities an analysis of the different regulation procedures becomes important. The negotiation on variable hours seems to be more decentralised and individualised in Denmark, where the *level of specification* of the variations on working time distribution can even be an individual agreement between the single employee and his manager. Also the degree of self-management by individual daily variations seems to be larger in Denmark. This might imply that in Denmark informal employee discretion plays a greater role than in Germany, where the specification of the rules concerning flexible working hours takes place at more centralised negotiations. Former studies of the use of time accounts in Germany support this thesis, since the use in Germany here is concluded to be a controlled flexibility with a strong formal regulation and limited time sovereignty for employees (Seifert 2003: 27,34-36).

Organised decentralisation and the discussion on working time flexibility

Organised decentralisation - more than one type?

The regulation of working time flexibility in Denmark and Germany reveal some distinctive differences in the process of decentralised collective bargaining in each country. Even though the process in both countries can be categorized as *organized decentralisation* with a high degree of coordination of bargaining activities (Traxler 1995: 6-8), qualitative differences in the coordination strategies suggest a distinction between two forms of organised decentralisation.

The decentralisation in Germany has often been characterised as a *controlled decentralisation* in a German context (Schulten 2005: 6). This implies that the process of decentralisation has been strongly controlled at sector level by the trade unions and the employers' associations, who have coordinated horizontally between the different regions (*Bezirke*). This makes the decentralisation in Germany a classic example of *organised decentralisation* (Andersen 2001: 169-170; Traxler 1995: 6-8). The decentralisation of the collective bargaining system in Denmark has been characterised slightly differently as a *centralised decentralisation* in order to point to the reproduction of the power relations and the consensus-based negotiations between the sector level partners at company level (Due et al. 1994). In centralised decentralisation the coordination of bar-

gaining activities is generated from the sector level making a hierarchical process moving from top to bottom like in the controlled decentralisation, although the element of control is less emphasized (Andersen 2001: 171-172).

Further, it can be argued that in the Danish and German cases the local partners all operate in systems characterised by *multi-level governance*, where vertical and horizontal coordination processes determine the final output of flexible working hours (Madsen et al. 2001: 23-26,28-32). Influence on the coordination processes is generated at different levels; for instance the company level, sector level or inter-sectoral level. The experience of all the employee representatives in the German and Danish cases is that there is an accelerated growth of deviating company-based agreements or deviating practices among companies in order to implement firm specific flexibility. This means a pressure from the company level to decentralize the regulation of flexible working hours.

Still, the response to this pressure from the social partners in the metal sector differs between Denmark and Germany - something, which also reveals differences in the coordination processes. According to the representatives from the trade union and employers' organisations in Germany, the trade union tries to maintain control of the bargaining processes at company level and therefore only tends to transfer bargaining competencies if they are forced to do so. This could be characterized as a *reactive organised decentralisation* in which the trade union within a dual system tries to frame and control the processes generated from company level. Although the trade union plays a key role in maintaining sector level control, the representative from the employers' organisation in Baden-Württemberg also admits to hold on to some control of this process. Many employers found the limited self-management in "Gleitzeit" problematic and therefore they want to prevent any further individualization of the management of time banks.

In Denmark the social partners in the metal sector have opened up for the possibility of deviation from several chapters in the collective agreement in order to stimulate the bargaining at company level. The only option is that the sector level partners are to be informed on such agreements. This new initiative in the sector level agreement is clearly linked to the decentralisation of bargaining competencies that has developed since the late 1980s. All in all the process could be characterized as a *proactive organised decentralisation* in which the social partners at sector level play an active role in vitalizing company level bargaining.

There are a number of possible explanations for these differences in the development of "organised decentralisations" in Germany and Denmark. The potential power and influence of the social partners, especially among the trade unions, differs between the two countries. There are marked differences in membership ratios. The union density is according to the newest comparable figures much lower in Germany than in Denmark – in year 2000 it was 25% in Germany compared to 74% in Denmark (OECD 2004: 145) – but it is also decreas-

ing more rapidly. Over recent years IG Metall has lost a significant number of members, whereas CO-industri only has experienced a minor decline in the membership ratio¹².

Further, while the Danish industrial relation system is based on general agreements (*hovedaftaler*) defining the framework for collective bargaining and employee representation at company level, the German industrial relation system is characterised by its dual system of laws and agreements, and where legislation by and large set the framework for relations between management and labour (Keller 2004: 250-251; Jacobi et al. 1998: 190-191). These differences are likely to affect the regulation of flexible working time in at least two different ways.

Firstly, in Germany company-based negotiations takes place between works councils representatives and management. Works councils are based on legislation and members might/might not be organised in trade unions. Consequently, the decentralisation of bargaining competencies, especially in a period of membership decline, threatens to weaken the trade union influence at work place level and seldom result in centralised decentralisation. Thus, a trade union like IG Metall tends to remain sceptical towards further decentralisation of bargaining competencies. In Denmark both the system of company level cooperation and negotiations is regulated by collective agreements, and combined with the higher membership rate this prevents a separation of the two systems allowing the trade unions a more open attitude in the decentralisation process. This also includes that company level negotiations take place between the shop steward (i.e. the trade union representative) and management. Secondly, between the two countries the degree to which rules on flexible working time are based on legislation or collective agreements varies. Accordingly, in Denmark flexible working time is solely specified by collective agreements and individual agreements at company level and thereby strongly decentralised. In Germany the rules on flexible working time are specified both in laws, in collective agreements at regional level and in works agreements or "Ergänzungstarifverträge" at company level, meaning that the *level of specification* therefore all in all is more centralised in Germany than in Denmark.

In addition, the culture or ideology of the German and the Danish industrial relations systems differs. Several studies suggest that cooperation between the social partners especially at the central level in Denmark is more consensus-oriented than in Germany (Streeck 2005; Vitols 2005; Due et al. 1994; Due & Madsen 2003a). However, it can be questioned how this might influence the cooperation at company level considering the dual structure of the German system. Studies show that the law-regulated works councils often work closely

¹² With a drop in the membership rate for IG Metall from 1991 to 1997 of 26,6% - and a drop in year 2004 alone of 4,0% - the loss of members seem to be remarkably faster than in Denmark (EIRO 1998; EIRO 2005b). CO-industri lost only 1,7% of their members from 2000 to 2005 (Calculated from membership rates given by CO-industri). This small decrease in the membership rates 2000 to 2005 should though also be seen in the light of CO-industri accepting new member organisations in this period.

together with the management, and that the local partners are often more willing to compromise than the representatives at regional level (Jacobi et al. 1998: 221).

A further dimension that influences the position of first and foremost the trade unions, but also employers' organisations, is the general state of the economy and the level of unemployment. While all key-figures are relatively positive with regards to the Danish economy and maybe more importantly unemployment remains comparatively low at around 5 % of the workforce, Germany has in recent years continuingly been marked by levels of unemployment of around 10 % and very low growth rates. Surprisingly, this has not led to an increase in the union density in Germany (see earlier page). Comparatively this weakens the position of the German trade unions and might force them to act cautiously concerning the decentralisation of bargaining competencies.

Summing up there seems to be several reasons why particularly German trade unions are more *reactive* than *proactive* when it comes to pressures for a more flexible regulation at company level. With regard to Denmark it is worth mentioning that it was the industrial employers who back in the 1980s and onwards pushed for a decentralisation of the bargaining system. In this sense the trade unions in the Danish metal sector were forced to *react*. Nevertheless, over time they seem to have been more successful than their German colleagues in acting *proactively* and, together with the employers, in formulating and implementing the decentralisation of the bargaining system while maintaining their own position and membership base.

Differences in the discussion

If the difference in the discussion cannot be explained by the prevalence of flexible working hours, the difference in the trade union strategy seems to contribute to the explanation. Sector level partner representatives in both Denmark and Germany note that the debate on working time in the 1980's in both countries focused on the traditional conflict of trade unions fighting for reduced weekly working hours and employers' associations wanting to keep status quo or even longer working hours. In both countries an embryonic discussion on flexible working hours existed, but it did not really gain foothold until the 1990's. In this period the discussion in Denmark and Germany began to divert. In Denmark the discussion on weekly working hours was replaced by discussions on pension schemes and extra holidays. Since the early 1990's the implementation of labour market pensions has been an especially dominant, if not the dominant, issue in the recurrent rounds of collective bargaining. Today around 90 percent of the employees are covered by labour market pensions where approximately 10-15 percent of the wage sum via the collective agreements are set-aside for pensions (Due & Madsen 2003b). Furthermore, the unions succeeded step by step through the 1990's to reach agreements with the employers on extra holidays for their members resulting in an extra week of holidays from 2003. Accordingly, this development did not leave room for a reduction of weekly working hours, a fact also recognised by the trade unions.

In Germany the discussion on normal weekly working hours is still vibrantly alive¹³ – a fact also confirmed by the interviewed representatives from both the trade union and the employers' association. The issue of weekly working hours is intimately related to the discussion on flexible working hours. The trade union representatives fear that the employers' organisation tries to sneak a working time enlargement from 35 to 40 weekly working hours through the back-door, whereas the interviewed representative from the employers' organisations admits that they try to make longer working hours possible through working time flexibility. The discussion on flexible distribution of working time is thereby to some extent expropriated by the classical discussion on total number of hours worked. This mix up of discussions offers a possible explanation to the paradox in Germany, where working time flexibility is fairly widespread, but nevertheless the discussion on working time flexibility remains a heated issue. But why does this mix-up persist? The economic crisis in Germany in the 1990's after the reunification, the dual structure of employee representation, the declining trade union membership rates and thereby lacking presence of union representatives in companies and the more conflict oriented ideology among the social partners all invite to a fear of loss of control. This fear is likely to be the engine behind both the blocking of trade offs on flexible working time through a reactive strategy from especially the trade union as well as behind the mix up of working time discussions.

Risks in different organised decentralisations

The regulation of flexible working hours in the different industrial relations systems of Germany and Denmark and in the varying contexts of these systems seems to imply different risks with regard to the regulation.

In Germany the trade union representatives from the metal industry want to focus on keeping, or even increasing, control in the large companies where they already have representatives, in order to fight against an extension of weekly working hours. The cases from Germany are examples showing that this strategy is only partly effective. Both the German case-companies have deviating agreements allowing extensions that go beyond the normal weekly working hours up to 44,5-45 hours per week (and on top of that flexible working hours within limits). These agreements are closed with acceptance from the IG Metall. On the other hand the chairmen of the works councils from the two German case-companies do not report extraordinarily long working hours like the shop stewards in the three Danish cases, who all have experienced violations of the 48 hour rule.

Further, the, in the Danish context, relative lower rate of unionisation in the German metal sector poses special problems for the union. The chairmen in the two German case-companies along side with the representatives from the trade

¹³ The trade union, IG Metall, fought for example in the beginning of 2004 to reduce the normal weekly working hours in former Eastern Germany from 37 to 35 hours, but it did not succeed.

union state that the lacking presence of the trade unions and of works councils at small or medium sized companies in Germany impose a risk to their regulation of working time. Lacking competencies on the side of the employees can in their opinion make employees agree on unbalanced trade offs, accepting what is called “insufficient copies” of agreements concluded in larger companies.

The violation of the 48-hours rule in the Danish cases is found both in large and small companies. The strong decentralisation (or even individualization) of the working time regulation and the lacking demand on +/- hours limits on time banks without reference periods in the Danish metal industry is part of the set up including strong union presence in companies and broad sector agreements, which make balanced trade offs in company agreements possible and stimulates informal employee discretion. This Danish version of organised decentralisation on the other hand impose risk for certain groups of employees, who by especially self managed working time flexibility can experience extraordinary long weekly working hours. This could indicate that some groups of employees in Denmark have longer working weeks than comparable groups of employees in Germany.

Conclusion

Varying flexibilities – varying regulation systems

Despite the apparently more widespread use of flexible working time in the German metal industry than in the Danish metal industry the debate on further flexibilisation of working time stays a heated issue in Germany, while it is virtually a non-issue in Denmark. This paradox might be explained by qualitative differences in the types of variations in the distribution of working time and differences in the regulation systems – i.e. in the two industrial relation systems. But also the interwoven discussions on the duration and the distribution of working time may intensify the Germany debate. In contrast to these divergent tendencies the content of the rules on variations in distribution of working time in both the German and Danish metal sector are fairly wide and to some extent converging. One important example in this context is that in both countries it is possible to use opening clauses in works -/company agreements on flexible working time. So far, however, the use of these clauses is limited in both countries. Still, the basic structures of and characteristics of the regulation systems remain divergent and frame different risks and potentials in the regulation.

As mentioned this article is based on a pilot-study, which is supposed to qualify research questions and data collection in the larger research project. Accordingly, our conclusion here take the form of three preliminary explanatory theses that will be further developed, analysed and discussed in future research activities:

1) The use of flexible working time is generally more widespread in Germany than in Denmark, but apparently not all types. The typical flexible working time in Germany is specified in works agreements and controlled by the management, whereas the typical flexible working time in Denmark is specified in collective or individual agreements at company level and is more often controlled by the employees themselves. In both countries *collective weekly variations* and *collective daily variations* are common types of flexible working hours in large and medium sized companies, but *individual daily variations* with unlimited self-management is more prevalent in Denmark than in Germany. In Denmark there are often several agreements directed at different groups of employees and thereby also a larger differentiation. All in all the *level of specification* of working time flexibility in Denmark is closer to the single employee or the single group of employees.

2) The employee representatives in both Denmark and Germany underline the importance of having specific formal company based agreements to regulate the growing use of flexible working hours in order to safeguard the interests of the employees and the company. Though the trade unions response to this pressure from the company level can be described as a form of *organised decentralisation* in both countries, the response within the Danish collective bargaining system can be characterised as a *proactive organised decentralisation* while the response of the German system should rather be interpreted as a *reactive organised decentralisation*. Due to the dual system and the low membership rates in Germany (and thereby decreasing presence in companies) the German trade unions are not willing to give up all competencies to the company level like in Denmark and tries instead to keep control of the companies. The more conflict-oriented ideology in the German system provides furthermore a less fertile ground for finding trade offs than the mainly consensus-based ideology in Denmark. The sector level partners in Germany have therefore never been able to isolate the discussion on flexible working time in Germany from the classical conflict on prolonging or reducing the normal weekly working hours.

3) The varying regulation of working time flexibility in Germany and Denmark imply varying risks in the regulation. In Germany the lacking presence of the trade union and of works councils especially at small or medium-sized companies leads to an insufficient or even risky use of working time flexibility. According to the employee representatives poor competencies often lead to *unbalanced trade offs*. The broad collective agreements, the strong decentralisation on flexible working time regulation, the one-line structure and widespread presence of the trade unions make locally adjusted and highly balanced trade offs on flexible working time possible in all sizes of companies in Denmark. The strong decentralisation combined with a lacking demand on +/- hours limits on time banks without reference periods impose though risks for certain groups of employees. Some groups in both small and large companies in Denmark have *extraordinary long working hours* that violate the 48-hour rule. This is not found in the German metal industry, where the increase of the working time due to a solely formal regulation seems to be more moderate.

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Appendix

Danish cases	DK1	DK2	DK3
Number of employees	12	14 (company in total 108)	1500 (company in total 6000)
Type of work	Service	Service	Production, sales, services, development.
Fluctuation in demand	High	High	1) Production, sales: medium 2) Services, development, production work off machines: High
Predictability of fluctuation	Low	Very low	1) Medium 2) Low
Type of flexibility requested	Individual daily variations	Individual daily variations	1) Collective weekly, collective daily 2) Individual daily variations
Notice requested	Yes, but not in practice. Supplementary notice pay instead.	Yes, but not in practice. Supplementary notice pay instead.	1) Yes, the week before. 2) No
Written local agreement on variations in distribution of working time	Yes	Yes. Separate agreement for white-collar workers.	Yes, four different agreements.
Union presence at company level	Yes, one local representative	Yes, one local representative	Yes, several local representatives
Use of guidance from the local union	None, the former representative had a parallel career in the union.	None, the local representative ascribes the local consensus to a favourable market situation.	Yes, always by agreements on working time in order to secure employee interests and seek inspiration.
Aim of agreement	Avoid hiring and firing	Motivate employees to work overtime by using flexitime. Prepare employers membership of "Dansk Industri".	To control the fluctuation in time banks in order to protect employees.
Limits on time banks and management of time banks	Unlimited, but should mainly be taken as time off in lieu in agreement with the management. Employees control balance on time banks themselves.	Unlimited. Employees can choose between overtime payment and time off in lieu. They control their time banks themselves and coordinate time off with their colleges.	Production: +/- 24 hours over one or three months All others: +/- 20 hours over three months. Supplementary hours are lost. All saved hours should be taken as time off in lieu. 1) Time banks are managed by the line manager, and deviations are only allowed in written agreement with the management. 2) Employees (incl. production workers off machines) manage the time banks incl. time off in lieu and deviations themselves.
Maximum number of paid overtime hours	16 per month, but overtime supplement is paid for all overtime hours.	Unlimited	None, but overtime supplement is paid for all overtime hours.
Deviation in local agreement from collective agreement or the law	No, but in practice frequent violations of the 48-hours rule.	No, but in practice violations of the 48-hours rule from time to time.	Yes, one of the company agreements deviates. Earlier examples of violations of the 48-hours rule.

German cases	DE1	DE2
Number of employees	750	1830 (company in total 6000)
Type of work	Production, development, service, sales	Production, development, service, sales
Fluctuation in demand	High	High
Predictability	Low	Low
Type of flexibility requested	Collective weekly, collective daily and individual daily variations with limited self-management (Gleitzeit).	Collective weekly, collective daily and individual daily variations with limited self management (Gleitzeit).
Notice requested	Yes, the week before for collective variations.	Yes, the week before for collective variations.
Written local agreement on variations in distribution of working time	Yes. One general <i>Betriebsvereinbarung</i> and additional agreements for employees in service, sales and development.	Yes. One general <i>Ergänzungstarifvertrag</i> and additional agreements for employees in service, sales and development.
Union presence at company level	Yes, they occupy all seats in the Betriebsrat.	Yes, they occupy 2/3 of the seats in the Betriebsrat
Use of guidance from the local union	Yes, support at the negotiation. Guidance on framework rules.	Yes, support at the negotiation.
Aim of agreement	Reduction of overtime payment, increase flexibility in production, safeguarding jobs.	Reduce expenses, increase flexibility and competitiveness, increase security for older workers, increase health of employees, increase qualifications, increase job security and employment
Limits on time banks and management of time banks	<i>Gleitzeit</i> alone +35 and -28 over 18 months. In total + 195 and - 189. Saved hours must be taken as time off in lieu. The line manager manages the time banks (except <i>Gleitzeit</i>) and days off are agreed with him and the colleges.	<i>Gleitzeit</i> alone +20 and - 40 over one year. In total + 250 and - 200. Obligation to minimum +129, of which 70 are unpaid and the rest are earmarked to securing older workers and bonus pay. Only additional saved hours (over 129 per year) can be taken as time off in lieu. The line manager manages the time banks (except <i>Gleitzeit</i>) and days off are agreed with him and the colleges.
Maximum number of paid overtime hours	60 per 18 month, but only payment every 18 month. Employees can choose only to get the supplementary pay and save the hours.	50 per year.
Deviation from collective agreement or the law	Yes, a deviation for employees working in development on 45 normal working hours, which violates existing regulation.	Yes, legal deviations regarding saving hours. A deviation with 39,5 or 44,5 normal weekly working hours violates existing regulation.