

# 5 SYMPOSIUM 23.5.2019 ARBEITSZEITRECHT: SEGEN ODER FLUCH?

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Spanisches Arbeits-(zeit)recht

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# LABOUR MARKET SPAIN

## FIGURES(SOURCE INE)

• Population	46.660.000
• Employed Persons	19.471.100
• Unemployed Persons	3.147.420
• <u>Unemployment Rate</u>	<u>14.70 %</u>
• Part Time Employment	2.900.700 15%
• Full Time Employment	16.570.400 85%
• <u>Labor Force Participation Rate</u>	<u>58.35 %</u>
• Employment Rate	63.58 %
• <u>Youth Unemployment Rate</u>	<u>33.70%.</u>
• Average Wages monthly	2.039.01 Euros
• Minimum Wages monthly	1050.00 Euros

# HISTORICAL EVOLUTION SPAIN

- 1870. Law of emancipation of the slaves of Cuba and Puerto Rico.
- 1873. Benot Law (prohibition of work for children under 10 years of age) .
- 1919. Decree of April 3 on maximum working day of 8 hours.
- 1980. The Statute of the Workers establishes the maximum weekly working day of 44 hours.
- 1983. Law 4/1983, of June 29, of setting the maximum legal working day in 40 weekly hours and annual holidays of 30 days.

# HISTORICAL OVERVIEW

- At the time of the Franco dictatorship (1939/1975), Trade Unions were prohibited.
- The dictatorship created the Spanish Trade Union Organization , better known as the Vertical Union.
- The Vertical Union was characterized by the mandatory membership of all workers.
- Entrepreneurs were also framed in it, but they had greater autonomy and retained the possibility of organizing on their own.
- The Vertical Union was a public law entity that excluded any possibility of autonomy for the working class and subordinated the interests of workers to those of the State.
- The right to strike, of course, was prohibited

# HISTORICAL PRESENT SPAIN

- In 2007, after a decade of strong economic growth, the unemployment rate in Spain was 8.2%, quite similar to the average for the euro area as a whole (7.4%). The number of employed reached 20.6 million.
- In 2013, the unemployment reached to 26.1%.
- From 2008 to 2012 Spain lost 3,2 millions of working places(18%).
- From 2008 to 2012 Spain lost 5,6% of GDP.
- Normally, States have two tools to stabilize their economies in the event of a great economic crisis: monetary policy and budgetary policy. However, the euro has dispossessed States of these two tools without the Treaty having provided alternative tools .
- Instead devaluation of currency, Spain opted, as the only possibility, by the devaluation of salaries and working conditions .
- Law 3/2012, of July 6, on urgent measures for the reform of the labor market.
- Priority of the Company Agreement over the national, regional or local collective Agreement.

# EVOLUTION OF WORKING TIME

- The regulation of working time in the Spanish legal system has evolved –especially since 2012– in terms of increasing business flexibility in managing working time of its workers.
- The possibility to compensate overtime with equivalent rest periods, the employer's ability to irregularly distribute 10% of workers annual working time) and the legal framework of supplementary hours in the part-time contract) have exponentially increased the employer's flexibility in the management of working time and the ability to adapt it to the company's productive needs.

# SPANISH CONSTITUTION

## Section 40.2

*2. Likewise, the public authorities shall promote a policy guaranteeing professional training and retraining; they shall ensure labor safety and hygiene and shall provide for the need of rest by limiting the duration of working day, by periodic paid holidays, and by promoting suitable centers.*

# PERSONAL SCOPE . EXCLUSIONS

- Workers voluntarily rendering their services for compensation on behalf of another party, within the scope of the organization and management of another, physical or legal person, called the employer or entrepreneur.:
- **Exclusions** :
  - Civil servants
  - Activities that are purely limited to the mere performance of the functions of a director or member of the administrative organs.
  - Jobs done on account of friendship, benevolence or good- neighbour relationships.
  - Family tasks, unless the salaried-worker status of those carrying these out is demonstrated



# WORKERS' STATUTE

- Article 34. The Working Day.
- The duration of the working day shall be that agreed upon in the collective bargaining agreements or work contracts. The maximum duration of the ordinary working day shall be forty hours a week of actual work on average in the yearly computation.
- Between the end of one working day and the beginning of the next, there shall be at least twelve hours. The actual number of ordinary working hours may not exceed nine daily, unless another distribution of daily working time is established by collective bargaining or, in its absence, agreement between the company and the workers' representatives, respecting ,In any case, the rest period between working days.
- Workers less than eighteen years of age may not work more than eight actual hours a day, including, as applicable, the time devoted to training and, if they work for several employers, the hours worked with each of them

# WORKERS' STATUTE

- The irregular distribution of the working day throughout the year may be established through collective bargaining or, in its absence, through agreement between the company and the workers' representatives. In the absence of a pact, the company may distribute irregularly throughout the year ten percent of the working day. Said distribution must, in any case, respect the minimum periods of daily and weekly rest provided for in this Statute.
- Whenever the duration of the continuous working day exceeds six hours, a rest period of not less than fifteen minutes shall be established during the same. This rest period shall be considered as time of actual work when thus established by the collective bargaining agreement or work contract.
- In the case of workers less than eighteen years of age, the rest period shall have a minimum duration of thirty minutes and shall be established whenever the duration of the continuous working day exceeds four hours and a half.

# EU HARMONIZATION

- Improving health and safety at work has been an important issue for the EU since 1980.
- The introduction of legislation at European level set minimum standards for the protection of workers, while allowing Member States to maintain or introduce more stringent measures.
- One of the main areas covered by EU labour law is working conditions.
- Article 151 TFEU *"The Union and the Member shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation..."*
- Article 153 TFEU *"With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields:*
  - (a) *improvement in particular of the working environment to protect workers' health and safety;*
  - (b) *working conditions;"*

COUNCIL DIRECTIVE 94/33/EC  
of 22 June 1994  
on the protection of young people at work

- *The duration of work must, in particular, be limited — without it being possible to circumvent this limitation through recourse to overtime — and night work prohibited in the case of workers of under eighteen years of age, save in the case of certain jobs laid down in national legislation or regulations*
- *Whereas the maximum working time of young people should be strictly limited and night work by young people should be prohibited, with the exception of certain jobs specified by national legislation or rules.*
- *Whereas time spent on training by young persons working under a theoretical and/or practical combined work/training scheme or an in-plant work-experience should be counted as working time;*
- *Whereas, in order to ensure the safety and health of young people, the latter should be granted minimum daily, weekly and annual periods of rest and adequate breaks*

# Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time

- *the average working time for each seven day period must not exceed 48 hours, including overtime.*
- *A rest break during working hours if the worker is on duty for longer than 6 hours*
- *In every 24 hours a worker is entitled to a minimum of 11 consecutive hours of rest*
- *For each 7-day period a worker is entitled to a minimum of 24 uninterrupted hours in addition to the 11 hours' daily rest*
- *Paid annual leave of at least 4 weeks per year*
- *Average working hours must not exceed 8 hours per 24-hour period, in case of night work.*
- *Member States may allow an individual worker to opt-out from maximum weekly working time subject to strict conditions on the worker's consent, in particular the fact that he/she should not suffer any detriment if he/she refuses to opt-out, and to specific provisions on retaining records of opt-out decisions*

## Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC - Annex : Framework agreement on part-time work .

- *In respect of employment conditions, part-time workers shall not be treated in a less favorable manner than comparable full-time workers solely because they work part time unless different treatment is justified on objective ground.*
- *A worker's refusal to transfer from full-time to part-time work or vice-versa should not in itself constitute a valid reason for termination of employment, without prejudice to termination in accordance with national law, collective agreements and practice, for other reasons such as may arise from the operational requirements of the establishment concerned.*

# SOME FIGURES. SPAIN

- Weekly maximum hour of work 40 hours
- Daily maximum work hour 9 hours
- Daily rest 12 hours
- Weekly rest period 1 day and 1/2
- Minimum annual holidays 30 calendar days
- Maximum annual number of overtime hours 80 overtime hours

# MAXIMUM ANNUAL WORKING SPAIN

- 1,826 hours and 27 minutes of work (averaging 40 hours per week minus holidays, weekly and yearly breaks and holidays).
- It is normally set at 1,780 hours. However, in some collective agreements, the hours for the annual calculation are approximately 1800 hours. In addition, in numerous Company agreements the time regulation is 1826 hours



# Maximum working hours. Special Sectors

- Night workers have a stricter regulation of working time; specifically of 8 hours a day in a period of 15 days and are not allowed overtime .
- For minor workers 8 hours a day. This maximum of 8 working hours is an absolute maximum, as it includes the time spent on training as well as all hours worked by different employers.
- Another examples :12 hours a day for guards and non-railway watchmen, workers in the agricultural sector when seasonal circumstances determine the need to intensify work; workers in the hotel industry; transporters and workers at sea; etc. For flight personnel a maximum of 2,000 working hours, of which flight time shall not exceed 900 hours.
- On the contrary, 35 hours a week for work inside mines.

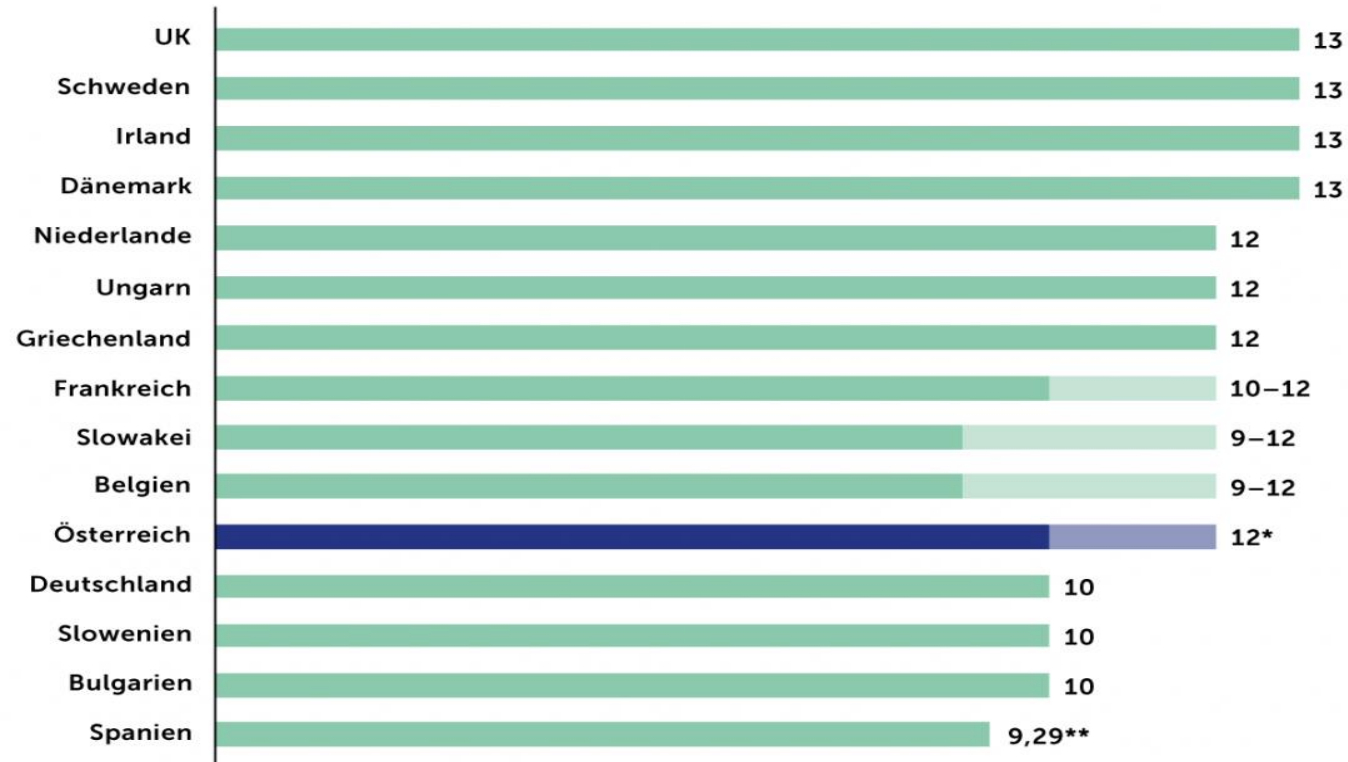
# ANNUAL REST PERIODS

30 days per year of service of paid vacations.

- Annual rest periods, 14 paid holidays a year (Christmas, New Year, Labor Day, National Day of Spain, etc.)
- Colectiv Agreement and Individual contract may establish better conditions .

# Tägliche Maximalarbeitszeit

## Tägliche Maximalarbeitszeit (inkl. Überstunden) – in Stunden

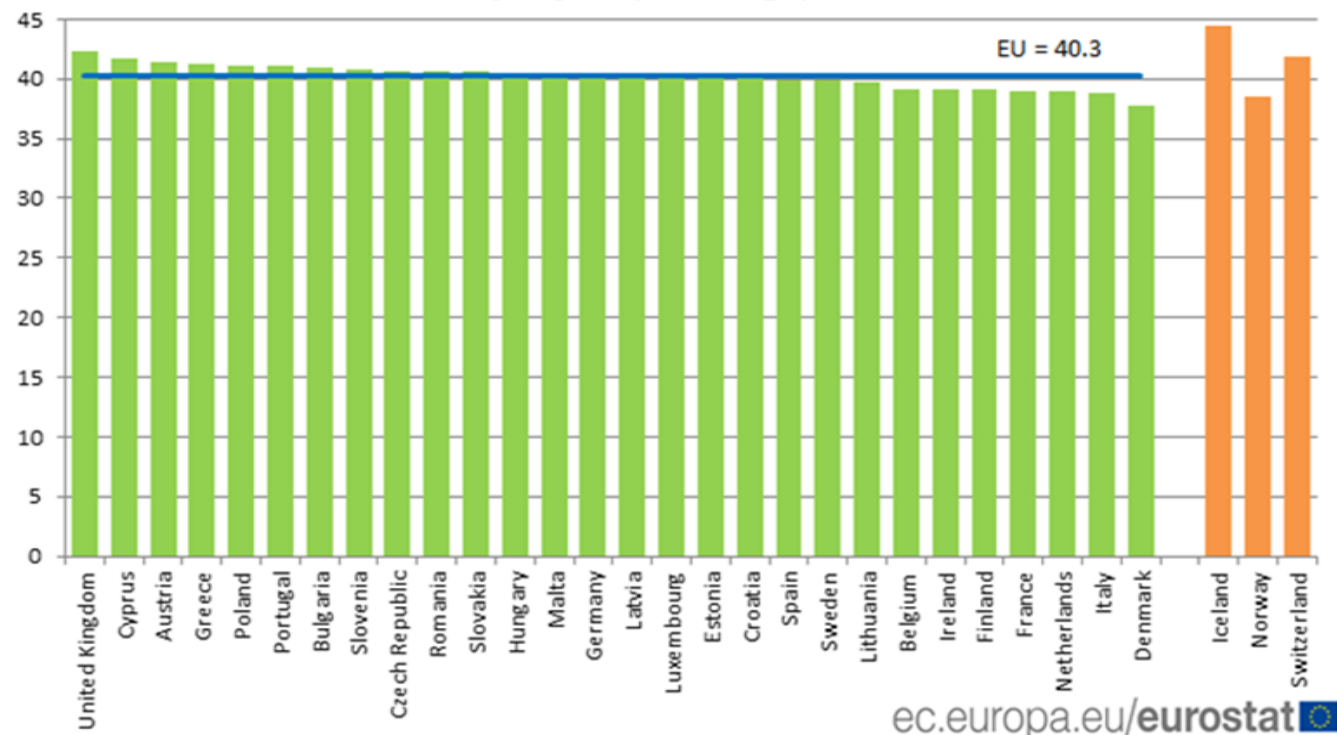


Quelle: Eurofound (2017): Developments in working time 2015–2016, Publications Office of the European Union, Luxembourg.

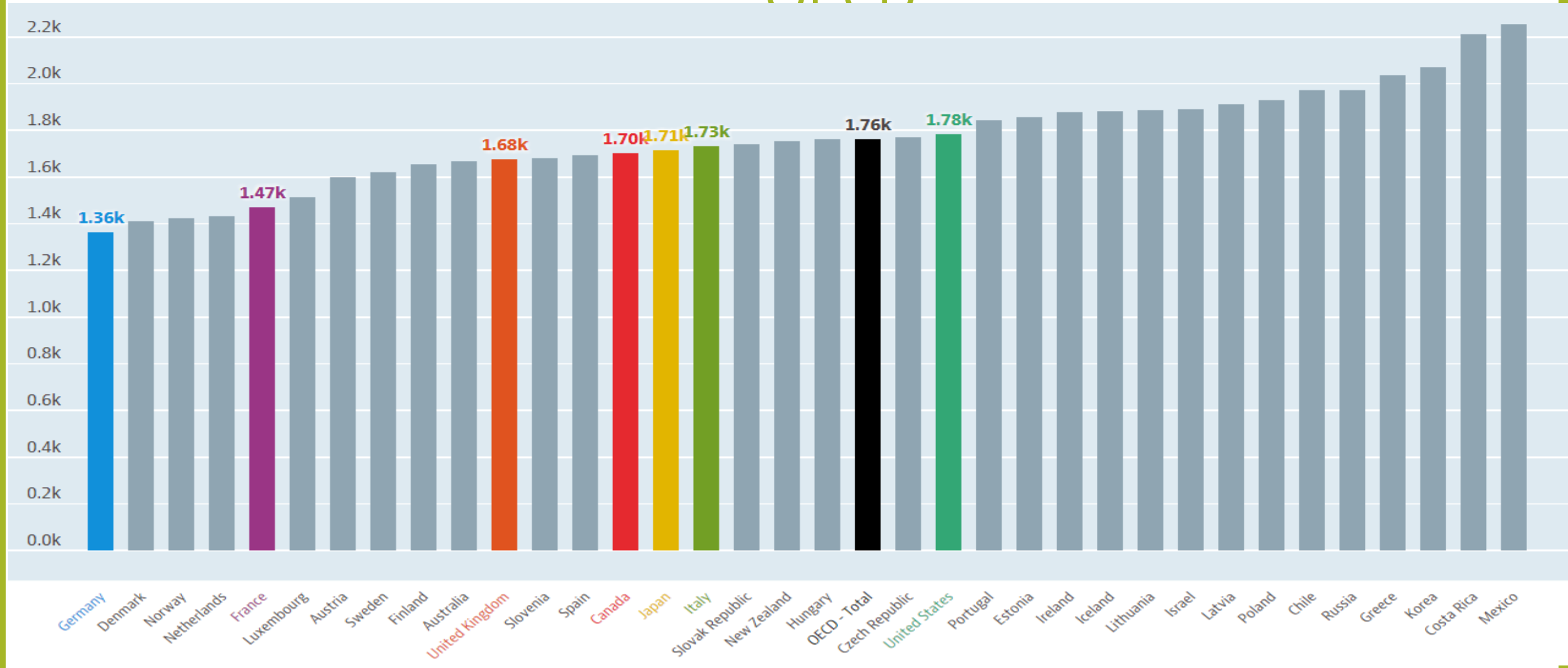
Anmerkungen: \*Geplant ab 01.01.2019. \*\*Als Berechnungsgrundlage für Spanien dienen die jährlich maximalen Überstunden.

# EUROP WEEKLY HOURS

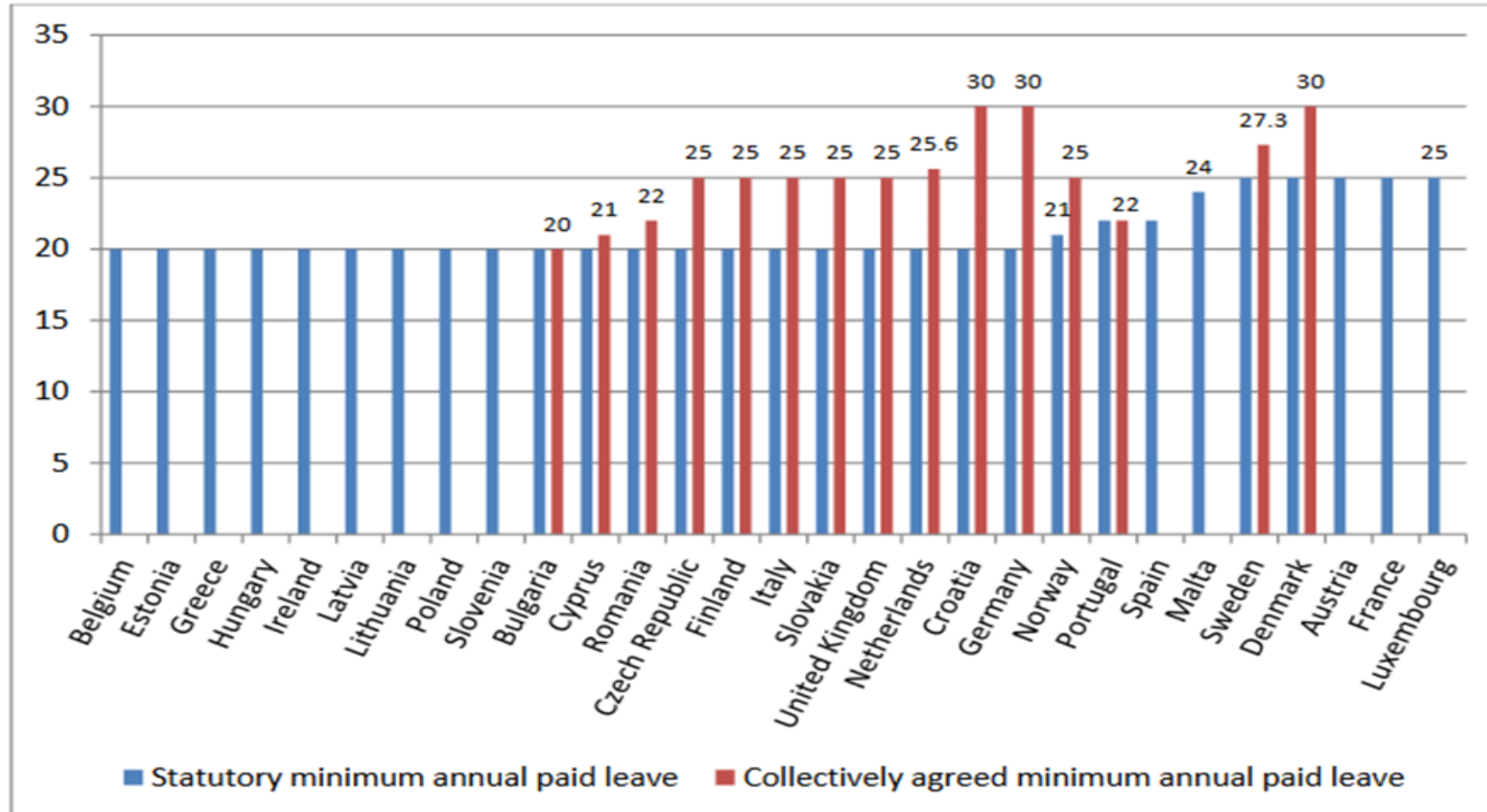
Usual weekly hours in the main job for full time employees, average, 2016



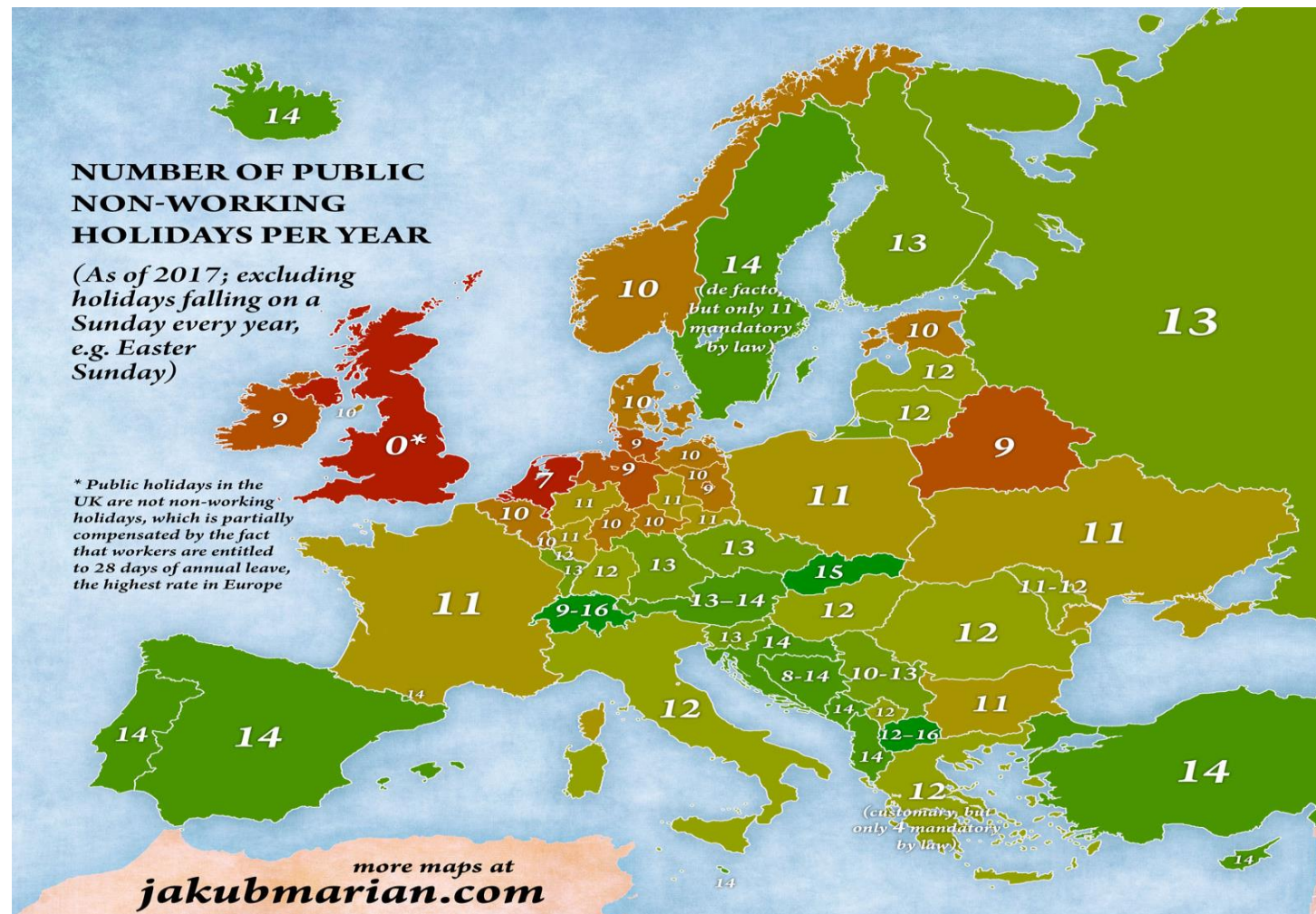
# WORKING HOURS IN THE WORLD. SOURCE OECD



# ANNUAL PAID LEAVE EUROP



# NUMBER OF PUBLIC NON-WORKING HOLIDAYS PER YEAR EUROPE



# MINIMUM DAY LABOUR BREAK

- The Spanish Labour law establishes that when the duration of the daily work hours is more than 6 hours, the worker is entitled to a minimum rest of 15 minutes, although a longer duration may be negotiated.
- This labour break is considered effective working time when it is included in the collective agreement or in the work contract.
- In the case of workers less than 18 years old, the break has to be of a minimum of 30 minutes when the duration of the daily work exceeds 4 hours and 30 minutes.



# MINIMUM DAILY REST PERIOD MINIMUM WEEKLY REST PERIOD

- The workers are entitled to an uninterrupted rest period of at least one and a half days per week (usually the Saturday afternoon or the morning Monday and Sunday all day).
- The collective agreement or individual contract may introduce a cumulative weekly rest period of a maximum of 14 days, so that worker work 11 consecutive days and rest 3 days consecutively. In this case, the weekly rest period can not be supplemented by the daily rest period of 12 hours.
- For persons under the age of 18, the weekly rest period must be two consecutive days and may not be accumulated for periods longer than one week.
- According to Law 7/1980 of 5 July of religious freedom, agreements are made between the government and the Protestant, Jewish and Islamic churches so that the employer and the employee can agree on the change of the day of rest.
- Between the end of a day and the beginning of the next at least 12 hours must convey.

# NIGHT WORKERS

- Work done between ten o'clock at night and six o'clock in the morning shall be considered night-time work.
- The working day for night-time workers may not exceed eight hours daily on average in a reference period of fifteen days.
- Night workers may not perform overtime.
- Worker normally spending a part of his working day not inferior to three hours during the night-time period, as well as that worker who may be foreseen to do a part of his work not inferior to one third of his working day in annual terms during the night-time period, shall be considered a night-time worker.
- Specific compensation

# OVERTIME

- Maximal overtime 80 hours a year
- Overtime is voluntary for the worker.
- Overtime must be paid according to that established in the collective agreement, but it can never be less than the price of an ordinary working hour or compensated for with time off.
- The number of overtime hours may not exceed eighty a year if the employer decides to pay for them, and overtime hours are not counted as compensated for by time off within the following four months.
- Minor workers are not allowed to carry out overtime
- Night workers are not allowed to carry out overtime

# WORK TIME CONTROL

- On 12 May 2019, a new provision came into force .
- Companies are required to record and register daily the hours of work of their employees, which must include the beginning and the end of the day.
- The company is required to keep the records of its employees for four years and must remain available to workers, trade unions and the Labor and Social Security Inspectorate.
- Even before the entry into force of this provision, companies were obliged to keep records of the overtime worked and the number of employees at the end of the month and the representation of employees

C-55/18 COMISIONES OBRERAS (CCOO) V DEUTSCHE BANK .  
JUDGMENT 14 MAY 2019

- *“Articles 3, 5 and 6 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, and Article 4(1), Article 11(3) and Article 16(3) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, must be interpreted as precluding a law of a Member State that, according to the interpretation given to it in national case-law, does not require employers to set up a system enabling the duration of time worked each day by each worker to be measured”.*

# PART-TIME WORKERS

- Complementary agreed hours. The employee and the company, at the time of the signing the contract or after, may agree to perform complementary hours, which in no case can exceed 30% of the ordinary hours or the percentage established in the collective agreement, which cannot be lower than 30% and not exceed 60%.
- Only part-time worker with minimum 10 hours per week on a yearly basis may subscribe this agreement .
- Voluntary complementary hours. Part-time workers with an indefinite contract and minimum 10 hours per week on a yearly basis can perform voluntary complementary hours .The company may offer workers to perform voluntary complementary hours, which may not exceed 15% of ordinary hours or 30% if agreed in the collective agreement

# DISTRIBUTION WORKING TIME

- The distribution of the ordinary working day is the freedom of the parties.
- In Collective agreement or individual contract are specified the ordinary work and rest periods. However, this freedom is subject to some limitations and conditions of a legal nature.
- The worker has the right to adapt the duration and distribution of the working day to make effective his right to conciliation of personal, family and work life.
- It is possible to establish the irregular distribution of the working time throughout the year by collective agreement or by agreement between the company and the legal representatives of the workers. In the absence of a pact, the company may distribute irregularly throughout the year 10% of the working day. Said distribution must respect, in any case, the minimum periods of daily and weekly rest

# CONCILIATION OF WORK, PERSONAL AND FAMILY LIFE

- Workers with children have the right to apply for an adjustment of the working time until the children are twelve years old. In collective bargaining, the exercise of this right is agreed. In the event that no settlement exists in the collective agreements, the company must initiate the negotiation process with the employee on the basis of his request for adjustment within the next thirty days.
- Upon childbirth or adoption, workers are entitled to one hour's absence from work for up to nine months' breastfeeding.
- In the case of preterm birth or, for whatever reason, the child has to stay in hospital after giving birth, the mother or father has the right to stay off work for one hour.
- Workers are entitled in some cases (for children under the age of 12, relatives in need of care, children suffering from cancer ...) to a reduction in the daily working time of at least one eighth and at most half of the working time, whereby the salary is proportionally reduced,



# SPRÜCHE

- *Arbeit gibt uns mehr als den Lebensunterhalt, sie gibt uns das Leben.* Henry Ford (1863-1947).
- *Es ist unglaublich, welche Arbeiten der Mensch auf sich nimmt, um nicht arbeiten zu müssen.* Miguel de Unamuno (1864-1936)

**Vielen Dank  
für Ihre  
Aufmerksamkeit**