



**Europe-wide
obligation to register
working time**

On May 14th, the European Court of Justice issued a judgment requiring all Member States to make it mandatory for employers to lay down and maintain a system for registration of the working hours of their employees.

Preliminary question national court

The reason for this judgment was a national dispute between the Spanish trade union CCOO and Deutsche Bank. In a class action before the Spanish court, the trade union demanded that Deutsche Bank would be obliged to introduce a system for recording the working time of its employees, in order to make it possible to verify compliance with the working times stipulated, and the obligation to provide union representatives with information on overtime worked each month. At that time, Deutsche Bank had a system that could only record the absence of whole days, but not the number of working hours and overtime.

When the case came before the Spanish court, the court referred questions to the Court of Justice for a preliminary ruling. By its questions, the referring court asks whether the Spanish law, which does not require employers to set up a system enabling the duration of time worked each day by each worker to be measured, is contrary to European regulation.

Ruling Court of Justice

The Court stresses that under the Charter of Fundamental Rights of the European Union, employees have a fundamental right to enjoy daily rest periods and weekly maximum working hours. The Working Hours Directive and the Health and Safety Framework Directive give specific form to this fundamental right. The Member States have the task of incorporating the provisions of these Directives into their national law, thereby ensuring that this fundamental right is guaranteed for employees in their Member State.

Without an objective and reliable determination of the number of hours worked per day and per week, it is not possible to verify whether the working time regulation has been observed, and it is extremely difficult, if not impossible, for employees to enforce their rights. An obligation to only register overtime or the possibility for

the employee to substantiate their claim regarding working hours with evidence in court, is not sufficient in this context. Furthermore, without a registration system, the labour inspectorate is deprived of objective and reliable data to exercise their supervisory function.

The Court states that this means that Member States must impose an obligation on employers to set up an objective, reliable and accessible system that register the daily working time of each employee. Member States will have to determine specific arrangements for implementing such a system, in particular the form it must take, taking into account the specific nature of all branches concerned and even the specific characteristics of certain companies, such as their size. The national legislator has, however, some discretion in this matter.

Lastly, the Court emphasizes that the obligation of the Member States to take measures to comply with European regulation applies not only to the authorities of the Member States, but also, to a certain extent, to the national courts. This means that national settled case law that is contrary to the purpose of European regulation, must be revised.

Implications

All member states will have to follow up on this judgment, and must therefore check whether their national legislation complies with the guidelines that the Court has given. In those Member States where employers are not yet required to register, legislation will have to be amended. Until this judgement is correctly implemented, judges in those Member States will, in any disputes that arise in this context, have to find a solution that is in line with European rules as much as possible.

Considering these implications, we would advise organizations in Member States where registration is not yet required, to make preparations to do so. In order to ensure compliance with the working hours regulation, the system is likely to have to record the start and end time of each employee, as well as any breaks. The exact implementation of the Court's guidelines is however up to the national legislators.

It is not a question whether such a system will be compulsory, but when.

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