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The obligation to register working time: A Comparative study of the reception of C-55/18 CCOO in Denmark, Finland, Norway, and Sweden

Innholdsfortegnelse

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1 Introduction

1.1 Judgment C-55/18 CCOO

The Grand Chamber of the CJEU delivered its judgment in C-55/18 CCOO on 14 May 2019. The background to the case was that a Spanish trade union (Comisiones Obreras, CCOO) brought proceedings against Deutsche Bank, alleging that the bank had failed to implement a system for recording employees' working hours, thereby breaching its obligations under the EU Working Time Directive.

The Court emphasised that limitations on working time constitute a fundamental right under Article 31(2) of the Charter, and reiterated that the purpose of harmonising working time regulations across the EU is to enhance the protection of workers' health and safety. This is to be achieved by establishing minimum rest periods – particularly daily and weekly rest – and sufficient breaks, as well as limiting maximum weekly working hours.

The central finding of the Court was that, in order to ensure the effectiveness of both the rights laid down in the Working Time Directive, as well as the fundamental right enshrined in Article 31(2) of the Charter, *Member States must require employers to establish an objective, reliable and accessible system for recording the daily working time of each worker*.

1.2 A comparative study

In light of the Court's interpretation in C-55/18 CCOO, the following sections examine how the Nordic countries (Denmark, Finland, Norway, and Sweden) have responded to the obligation on the Member States to have an objective, reliable, and accessible system for recording working time, as required under EU and EEA law.

This article presents a comparative analysis of how the findings from C-55/18 CCOO have been received and implemented in the Nordic countries. While the Nordic countries share a tradition of strong social partners and collective bargaining, their legal responses vary considerably. Denmark has enacted explicit legislation, whereas Finland, Norway, and Sweden each rely on existing frameworks that differ in precision and enforceability. The following country sections set out the main rules on working time, enforcement mechanisms, and any legislative or practical adjustments after the C-55/18 CCOO judgment. The article concludes with reflections on the similarities and differences across the Nordic countries.

2 Denmark

2.1 Regulation of working hours and the Danish labour market model

2.1.1 Introduction

The Danish labour market model ('the Danish model') entails that pay and working conditions are determined primarily by way of negotiating collective agreements, in both public and private sector employment. Consequently, rules on working time and especially remuneration for working time are traditionally regulated by collective agreements. However, principally due to the implementation of the Working Time Directive in Danish law, some rules on working time are also found in statutory law.

This section of the article presents a brief overview of the working time regulation in Denmark and is intended to illustrate the impact of EU law on the working time regulation, with a special focus on the *CCOO* judgment.

2.1.2 Implementation of the Working Time Directive in Denmark

In Denmark, the Working Time Directive is implemented through three different statutory acts, as well as through collective agreements.

Rules on maximum weekly working time, breaks, and night work are found in the *Working Time Act*. Maximum weekly working time, including overtime, is, as a main rule, limited to 48 hours, calculated over a four-month reference period (cf. section 4). The Act now also allows for derogation from the 48-hour rule, under certain circumstances. The Act also contains an obligation for employers to register daily working time (see below). The material scope is broad and covers all employees, that is to say, in both the public and private sectors.

Certain parts of the Act are inapplicable, to the extent that the Working Time Directive is implemented by collective agreements. There are examples of such implementing collective agreements in both the public and private sectors. Under Danish law, collective agreements typically cover all employees within their material scope (irrespective of union membership), and there is no requirement that workers be trade union members.

Rules on daily and weekly rest periods are laid down in the *Act on Occupational Health and Safety (OSH Act)*. The Act prescribes a minimum daily rest period of 11 consecutive hours per 24-hour period. As for the weekly rest period, the Act prescribes one weekly rest day, which must be in immediate proximity to a daily rest period (cf. section 51). The Act applies primarily to 'work performed for an employer'. Both the public and private sectors are covered.

An Executive Order on Daily and Weekly Rest Periods supplements the OSH Act. It follows from this executive order that social partners may, under certain circumstances, derogate from the rules on daily and weekly rest periods by written collective agreement. It is a general precondition that the general level of protection in the Directive must be respected.

2.2 Enforcement and sanctions

The plurality of legal sources for rules on working time complicates the enforcement of the rules and sanctions for non-compliance. Enforcement and sanctions differ among the different legal bases. Most notably, the Act on Occupational Health and Safety differs from the other statutory acts because of its character as a public law regulation.

Enforcement of the *Working Time Act* must be pursued by the individual employee (or their representative) in cases of non-compliance by the employer, and claims must be pursued in civil court. The sanction for non-compliance is financial compensation (cf. section 8(1)). According to Danish Supreme Court case law, the normal level of compensation for transgression of the 48-hour rule is 25,000 DKK (3,352 EUR), unless there are mitigating or aggravating circumstances. It is only in very special situations the the the level of compensation may exceed 50,000 DKK. In one ruling on this, the employee was awarded 50,000 DKK in compensation for working more than 48 hours on average per week in 32 reference periods over four years. In recent years, there have been further examples of large settlements for non-compliance with the 48-hour rule.

The *Act on Occupational Health and Safety* is enforced by the public authority, the Working Environment Authority (*Arbejdstilsynet*). In cases of non-compliance with rules on occupational health and safety, which include rules on daily and weekly rest periods, the Working Environment Authority will normally respond with a decision (*påbud*) that obliges the company to comply with the relevant rules with immediate effect. If the company does not comply with the decision, the Working Environment Authority may, inter alia, initiate a criminal case. Under certain circumstances, in a case of clear breach of the rules, where there is a risk of detrimental health effects, the Working Environment Authority may also initiate a criminal case without a prior administrative decision. The sanctions for breach of the Act on Occupational Health and Safety are fines and imprisonment for up to 1 year (up to 2 years if the breach of rules has led to serious personal injury or death). To date, imprisonment does not appear to have been used as a sanction for breach of the Act. For imprisonment to apply as a potential sanction, fines must total at least 24,600 DKK (approximately 3,300 EUR) for a breach of substantial duties, but this level may be increased, taking various factors into account.

As for *collective agreements,* claims are pursued within the industrial dispute resolution system. The social partners are obliged, first, to engage in a mandatory negotiation and conciliation procedure, after which claims of a breach of collective agreement may be subject to judicial review by the Labour Court (*Arbejdsretten*). The sanction for a breach of collective agreement is the imposition of a 'penalty' (*bod*). For employees who are not members of a party to the applicable collective agreement (either or not organised), access is available to judicial review by the civil courts. For employees who are union members, the union shall pursue a breach of the collective agreement through the industrial dispute resolution system (ie. the Labour Court). Only in a situation in which the union does not want to pursue a (unionised) employee's claim may an individual employee initiate legal proceedings in the civil court (cf. the Act on Labour Court section 11(2)).

The question of whether rules on working time have been implemented correctly in collective agreements may be made subject to judicial proceedings (cf. the industrial arbitration ruling of 16 July 2020 (FV 2020.348)). In the ruling, the arbitrator found that the sectoral collective agreement did not contain sufficiently clear and specific rules to ensure correct and full implementation of the Working Time Directive article 8 on the duration of night work. The arbitrator stated that the question of correct implementation in collective agreements must be assessed for each specific right under the Directive.

2.3 The impact of the *CCOO* judgment on the obligation to register working time in Danish law

Judgment C-55/18 *CCOO* has given rise to reflections on the implementation of the Working Time Directive in Danish law. The Danish legislator has taken action as a response to the judgment. As of 1 July 2024, Danish law now establishes a positive duty for employers to register workers' daily working time. Such a duty is laid down in statutory law, namely the Working Time Act, which applies to both public and private sector employees. Before 1 July 2024 there was no such duty to register working time for Danish employers.

The new provision, the Working Time Act section 4 b, stipulates that the employer must introduce an *objective, reliable and accessible* system for working time registration, which makes it possible to measure the daily working time of each worker. The purpose is to ensure compliance with applicable rules on daily and weekly resting time and maximum weekly working time. The preparatory works explain that the employer has freedom to choose the methods used for measuring working time.

Employers can, according to the Ministry of Employment, choose a system in which daily working time has to be registered by the employee only on days when actual working time deviates from the agreed/scheduled working time. The employer is free to *choose* a method of measurement that includes registration of the exact periods of work during the day, but it is sufficient under the new rules to register the employee's daily working time. It is thus sufficient, according to the Ministry, to register the total number of hours worked during a 24-hour period, to adhere to the new registration requirement. Nonetheless, and especially following the *Loredas* judgment, in which the Court phrased the obligation as covering 'both the number of hours worked by the worker and their distribution over time...', it has been discussed whether that approach is sufficient to comply with EU law obligations.

Some workers may be exempted from the employer's duty to register working time. As part of the new legislation, Denmark chose to implement the exemption clause in the Working Time Directive article 17(1) for autonomous workers in the Danish Working Time Act.

Before 1 July 2024, the option in the Directive to exempt certain autonomous employees from the 48-hour rule had been used only in a Ministerial Order to the Act on Occupational Health and Safety for the *daily and weekly rest periods*.

The new provision in the Working Time Act, section 1(6), uses the option in article 17(1)(a) to exempt employees with genuinely autonomous or managerial roles, where working time cannot be measured or predetermined.

The provision requires that, if the worker meets the definition of 'autonomous worker', *the employer shall not be obliged to register daily working time*, as they are also already exempt from the rules on daily and weekly rest periods in the Executive Order to the Act on Occupational Health and Safety.

There has been some discussion on the scope of the exemption clause, namely regarding which workers may be regarded as 'autonomous'. In the preparatory works, the Ministry of Employment explains that the scope of Article 17 depends on an individual assessment of what applies in terms of work planning in the specific employment relationship, and that the scope of the exemption is thus expected to be fairly limited. Neither the wording of the provision, nor of the preparatory works, appear to give a very precise answer to the question of which groups of employees are expected to be exempt from the 48-hour weekly maximum. The first ruling that may provide some clarification on scope was delivered in 2025.

Overall, the response to the *CCOO* judgment in Denmark highlights the pitfalls of the original Danish implementation strategy for the Working Time Directive of 2002. With the new requirement to register working time, it is not clear that it aims to safeguard both rights under the Working Time Act (the 48-hour rule), as well as rights under the Act on Occupational Health and Safety (rules on rest periods). This is emphasised by the Ministry's opinion that there is no duty to register when work is performed during the day, but only the total number of daily working hours. In the 2024 response to the *CCOO*, the Danish legislator had an opportunity to rethink the Danish working time regulation as such, which could have served to make the health and safety aspects of the rules clearer, but instead chose a moderate response in only amending the existing regulation, even though 'the shoe does not really fit'.

3 Finland

3.1 Regulation of working hours and the Finnish labour market model

3.1.1 Introduction

The first Working Hours Act was enacted in Finland in 1917. At the same time, an 8-hour workday was introduced. The Working Hours Act has been revised several times since then. The latest update to the Working Hours Act came into force in 2020. The reform was influenced by changes in the labour market, more specifically that work is less time- and location-dependent than formerly. Moreover, compatibility with the Working Time Directive and international conventions was taken into account, and flexitime, flexible working hours and a statutory working hours' bank were all enacted in law.

3.1.2 Legislation – regular working hours in brief

The Working Hours Act (WHA) is applicable to all work performed under an employment contract or public service relationship (WHA 1 §). There are derogations from the Act's scope of application, but they should be interpreted narrowly because of the Working Time Directive and the principle of working time protection.

Regulation of working time is based on two key concepts: working hours and rest time. The Working Hours Act states the main rule for determining regular working hours: 'Regular working time shall not exceed eight hours per day or 40 hours per week.' In addition to the main rule, regular weekly working time can be arranged such that it averages 40 hours a week over a period of no more than 52 weeks without exceeding the regular daily working time of eight hours (WHA 5 §).

In addition to regular working hours, mandatory daily rest and weekly rest time are regulated under the WHA. Moreover, to determine what constitutes overtime, a distinction must be made between daily and weekly overtime. In the average regular working time regime, daily overtime is work that exceeds eight hours per day, while weekly overtime is work that exceeds 40 hours per week, but without daily overtime (WHA 16.2. §). However, it is important to note that the determination of overtime is linked to the form of working time. Thus, the definition of overtime differs, depending on whether the work is performed within a regime based on average regular working time, period-based work, flexible working hours or flexiwork (WHA 16 § sub-sections 3-6 §).

3.1.3 Flexible working time arrangements – especially flexiwork (WHA 13§)

In Finland, the regulation of working hours has been trending towards increased flexibility. The motivation here has been both to accommodate employers' and business needs, and to increase workers' ability to reconcile work and family life. It is therefore illustrative that after the reform of the Working Hours Act, chapter 4, entitled 'Regular working time based on agreement', stipulates six types of flexible working arrangements. In what follows, the analysis focuses solely on flexiwork.

Flexiwork is a new type of working time arrangement in Finland, introduced in connection with the revision of the Working Hours Act in 2020. In the government's draft amendment, flexible work was justified by the need for flexible working hours, especially in demanding expert work. Flexible work is strongly linked to knowledge work that can be performed irrespective of time and place. Thus, it would not be possible to agree on flexiwork if the employer determined the location and timing of the work. In fact, flexiwork has been described as extended telework, which is also governed by the legislation. Moreover, when flexiwork was regulated, the legislation was updated to correspond to existing practices in certain jobs.

Flexiwork requires an agreement between employer and employee. A prerequisite is that the employee may decide independently on the time and place of the performance of at least half the working time involved in the work. When employer and employee decide on flexiwork, a minimum of the following four issues shall be agreed (WHA 13 §): (1) the days on which the employee may allocate the working hours, (2) the timing of the weekly rest period such that Sundays are free, (3) fixed working hours, if any, may not be between 23:00 and 06:00, and (4) the working time applicable after expiration of the agreement on flexiwork.

In flexiwork, responsibility for monitoring working hours lies with the employees themselves. They are free to decide how to achieve the set goals, complete the tasks, and meet their responsibilities. In practice, therefore, the function of supervision is to ensure that the agreed tasks are completed.

The Working Hours Act states that in flexiwork the employee shall provide the employer with a list of hours worked during regular working time for each pay period. The list shall indicate the weekly working time and weekly rest period (WTA 32 §). The employer completes the working time register on the basis of a list provided by the employee. Thus, the employer fulfils their obligation to maintain a register of working hours and, simultaneously, supervises the maximum working hours and rest periods of the employee.

Based on the ECJ's findings in C-55/18 CCOO, Lamponen has criticised the regulation of flexiwork, since it is the employee's responsibility to record working hours, but the legislation has not specified the system to be used by the employer, as required by the ruling in C-55/18 *CCOO*. Furthermore, Riipinen claims that in flexiwork, recording working hours on a weekly basis does not meet the requirement established by the *CCOO* case, namely that working hours be recorded on a daily, not weekly basis. Also, Hiilesniemi has pointed out that new regulation of flexiwork, and employers' obligation to keep a working hours register, would not be compatible with EU regulations. Although flexiwork is not compatible with the CCOO case, at the same time it must be taken into account that working in certain types of work is more autonomous and flexible, which is also reflected in how working time is registered.

3.1.4 Working time and collective agreements

The Working Hours Act does not apply to work, specifically prescribed by law, with regard to which a national collective agreement ensures protection equivalent to the Working Hours Act, in terms of rest periods and maximum working hours. The Government proposal justifies this with reference to Article 18 of the Working Time Directive. An illustrative example of its application is teaching and research personnel, who, owing to the nature of their work, have the right to determine a substantial part of their working hours themselves (WHA 2 § subsection 3, point 1). This exception is applied, for example, in the collective agreement of universities.

3.2 Enforcement and sanctions

According to the Working Hours Act (Section 32), employers shall record hours worked and the remuneration paid to each employee. The working time register should include: (1) regular working hours, (2) additional working hours, (3) overtime working hours,

(4) emergency working hours, and (5) Sunday working hours. In addition to working hours, the employer shall register the remuneration paid, broken down into the aforementioned components.

In flexiwork, the obligation to register working hours is lighter than for normal, regular working hours. When flexiwork has been agreed with the employee, the employee must provide the employer with a list of hours worked per pay period. The list must include the employee's weekly working hours and weekly rest. Thereafter, the employer compiles the working time records based on the list provided by the employee.

The Working Hours Act is supervised by the occupational safety and health authorities (WHA 47 §). At their request, the employer must provide a copy of the working time register. In addition, a shop steward, elected representative, or other employee representative, has the right to see the working time register (WHA 32 §). The occupational health and safety authorities possess three means of supervision: (1) written advice for minor faults, (2) an improvement notice, and (3) a mandatory decision that can be enforced by imposing a conditional fine.

The Working Hours Act is part of the working time protection legislation. For example, it regulates working time violations (WHA 45 §). By contrast, the Criminal Code governs working hours protection offences. For instance, if an employer, to the detriment of an employee, fails to keep records of working hours, keeps them erroneously, destroys them, or otherwise acts in breach of the legislation on working hours, despite an order issued by the occupational safety and health authorities, then the employer can be sued under the provisions of the Working Time Act. Criminal liability, however, requires that the employer has acted intentionally or through gross negligence (Criminal Code, Chapter 47, Section 2).

In one criminal case, the Finnish Supreme Court assessed whether working time legislation should be interpreted as occupation health and safety regulation. To that end, it employed *pro et contra* argumentation. In relation to the maximum amount of overtime, the Supreme Court found that, based on *CCOO*, para 61 and C-254/18 *Syndicat des cadres de la sécurité intérieure*, para 32, the Working Hours Act could be interpreted as an occupational health and safety regulation in the manner intended by the Criminal Code, Chapter 47, Section 1. Ultimately, however, the Supreme Court reached a different conclusion, by relying on the argumentation in *Vaditrans*, C-102/16, para 56, because the Directive cannot define or impose criminal liability. In the end, the case was thus settled on the basis of criminal law principles, not on the basis of the CCOO case, even though its reasoning was referenced.

3.3 The impact of C-55/18 *CCOO* on the obligation to register working time in Finnish law

When drafting the Working Hours Act, which entered into force in 2020, legislators were aware of the content of C-55/18 *CCOO*. However, despite this, the case was not mentioned in the preparatory works of the Working Hours Act. Moreover, *CCOO* did not lead to any changes in Finnish legislation. Although *CCOO* did not explicitly affect the content of the Working Hours Act, the parliamentary Employment and Equality Committee underlined, in its statement on working hours, the importance of monitoring working time in flexiwork, as working hours are monitored on a weekly basis. Therefore, it is of particular importance that employees' tasks and objectives are defined, such that no circumvention of the overtime regulations is possible and employees are not overburdened. By contrast, the parliamentary Constitutional Law Committee paid no attention to the relationship between working time records in flexiwork, working time protection and the *CCOO* case.

However, a contradiction has been noted in the legal literature, between the more flexible forms of working hours in the revised Working Time Act and the *CCOO* solution. Some Finnish authors have found it problematic that the obligation to keep working time records rests primarily with the employee rather than the employer. However, even prior to the reforms, it was common for employees to record the hours they had worked and submit them to the employer at the end of the working week. The employer then compiled the statutory working time register based on the information reported by the employee.

Although, in flexiwork, the working time register can be seen as weakening the regulation of working hours and rest periods, at the same time it is important to recognise that this is only the perspective taken by the Working Hours Act. Namely, on the basis of the Occupational Saftey and Health Act, the employer is obliged to reduce and avoid excessive workloads on employees (Act on Occupational Safety and Health, Chapter 25).

4 Norway

4.1 Regulation of working hours and the Norwegian labour market model

4.1.1 Introduction

Working time is regulated in [chapter 10] of the Norwegian Working Environment Act (WEA). The chapter has been aligned with the requirements laid down by the Working Time Directive. As a general rule, working time is defined as being the time when workers are at the disposal of their employer. Daily and weekly rest periods, maximum weekly working time, breaks, and night work, basically follow the directive's minimum requirements. Accordingly, regular working hours may, for example, not exceed 40 hours per week.

It is possible to deviate from the provisions in [chapter 10] via collective agreements.

4.1.2 Registration of working time

WEA § 10-7 is the key provision when it comes to registration of working hours. This says that a record must be kept that demonstrates how much an individual worker has worked.

It is part of the employer's responsibility to ensure that working hours are recorded, as laid down in § 10-7, and that an overview be maintained. The provision thus supplements the general employer responsibilities laid down in § 2-1 and § 2-2 to the WEA. Merely referencing the existence of a work schedule is insufficient. A system must be established whereby working hours can be recorded.

It is the employer's responsibility to determine how this record of working time shall be structured and to designate who will maintain it. While concrete execution is delegated to the worker, ultimate responsibility remains with the employer.

Additionally, under WEA § 3-1, the employer is responsible for safeguarding employees' health, environment, and safety, ensuring that systematic health, environment, and safety work is conducted at all levels of the organisation.

Moreover, WEA § 4-1 lays down general requirements for the working environment. The organisation, facilitation, and management of work, including working time schedules, should be structured to ensure that employees are not subjected to adverse physical or psychological stress, and that safety considerations are upheld.

It is important to note that both WEA § 10-2 (1) and § 4-1 have independent significance for workers who are exempted from Chapter 10. Two categories of employee are exempted: first, employees in senior positions (*ledende stillinger*), and second, employees in particularly independent positions (*særlig uavhengige stillinger*).

Despite these exceptions, there is still a requirement that working hours shall be arranged in such a way that workers are not exposed to adverse physical or mental strain, as laid down in WEA § 10-2 (1) and § 4-1.

De lege ferenda, or rather, from a reform law perspective, the abovementioned provision may also help to ensure that a worker's working time is respected, as the Labour Inspection Authority (*Arbeidstilsynet*) has submitted a proposal for the reform of WEA § 4-3 for consultation. The proposal includes adding a new subsection (2) to clarify that a fully responsible psychosocial working environment entails protecting employees against adverse pressures resulting from, among other things, *workload and time pressure that create an imbalance between the work to be performed and the time available*.

If WEA § 4-3 is strengthened and interpreted as encompassing registration of working time as part of working time organisation, as argued here, this provision could play a pivotal role in safeguarding the working time rights of employees who currently do not benefit from the additional protection outlined in WEA § 10-7.

Maintaining a record of working hours is crucial in determining a worker's eligibility for overtime pay and compensatory time off. A number of cases coming before the judiciary have involved scenarios in which the proof of such a record of potential overtime work was questioned, and the courts had to clarify whether the employee or the employer was responsible for maintaining such a record.

An Appeal Court judgment determined that it is the employer's responsibility to ensure that a working time record is kept. The case revolved around determining the number of hours worked, which was essential for calculating financial compensation for overtime. The Court of Appeal concluded that the employer was unable to provide an accurate record of the claimant's actual working hours. Consequently, the employer was found to have violated the WEA § 10-7 requirement to maintain such a record. The court stated that this constitutes neglect on the employer's part that must be taken into consideration in an overall assessment of the evidence. It ruled, finally, that the employer had to pay NOK 130,000 (approximately €11,300) for overtime work.

4.2 Enforcement and sanctions

The enforcement of chapter 10 and related control and sanction mechanisms are laid down in chapters 18 and 19 of the WEA. The Norwegian Labour Inspection Authority (the Authority) is the central governmental supervisory body.

The Authority has four instruments at its disposal with which to address violations. *First,* if statutes and regulations are violated, the authority may issue an order for the enterprise to rectify the situation within a specified timeframe. This order is provided in writing, and the recipient has the right of appeal. *Second*, if the order is not followed, coercive fines may be imposed. The amount of the fine depends on various factors, but the primary principle is that non-compliance with the WEA should not be beneficial. *Third*, in scenarios in which employees' life and health are in imminent danger, the authority may shut down enterprises immediately. Such shutdowns can also be enforced if enterprises fail to comply with orders. *Finally*, the Labour Inspectorate (*Arbeidstilsynet*) may report enterprises to the police for serious breaches of the Act. Severe violations can lead to fines or, in the worst case as an *ultima ratio* last resort, even imprisonment.

One prominent example of the latter is the Norwegian Supreme Court case of 12 February 2020, namely the *Veireno* case. The case concerned serious violations of the WEA's provisions on working time. The CEO of the company Veireno was convicted of allowing his employees to work excessive overtime and failing to comply with rest periods, leading to significant breaches of the WEA. The CEO was sentenced to 120 days of unconditional imprisonment for his role in permitting the illegal overtime, which is a historically severe sentence.

The judgment sets a precedent as the first in which a violation of WEA provisions has led to imprisonment and demonstrates that the Supreme Court, in line with previous instances, wants to stress general preventive considerations.

The Veireno case has had a significant impact on the level of compliance with the WEA, sending a clear message to employers on the importance of adhering to working time requirements.

4.3 The impact of the *CCOO* judgment on the obligation to register working time in Norwegian law

Regarding the impact of the C-55/18 *CCOO* judgment de lege lata, no legal amendments have, as the law stands, been enacted to ensure conformity of Norwegian law with EU and EEA law.

What is particularly noteworthy is that the CJEU, consistent with its previous rulings on the interpretation of the Working Time Directive, has once again underscored the importance of the Charter of Fundamental Rights of the European Union and its [article 31].

From the perspective of Norway as an EEA and EFTA member, but not an EU member, this is not unproblematic. The Working Time Directive has been incorporated into the EEA agreement, while the Charter has not. This divergence has been described as '*widening the gap problematic'*. It is argued that when interpreting Norwegian national law in light of the Working Time Directive, which has been incorporated into the Norwegian WEA, one must consider the judgments of the CJEU. Consequently, when taking these judgments into account, the fundamental rights dimension and the Charter necessarily come into play.

Regarding the conformity of WEA [§ 10-7] with EU and EEA law, the following can be determined. At first glance, Norwegian labour law, through WEA [§ 10-7], already includes a provision that mandates the recording of working hours. The crucial question is whether this provision aligns with EU and EEA law, as interpreted by the CJEU in the *CCOO* and *Loredas* cases. The key outcome of these latest two CJEU cases on the requirement to register working time was reaffirmation of employers' obligation to implement an objective, reliable, and accessible system to record the time worked by each employee.

The Court placed particular emphasis on the fact that the effectiveness of the rights under the Working Time Directive can be guaranteed only through such a system. Against this backdrop, the key question is whether WEA [§ 10-7] meets these requirements. Taking a closer look at its wording, WEA [§ 10-7] is rather vague. Recording working hours is not explicitly mentioned as a compulsory requirement. The *modus operandi* of registering working time is left to the employer. The issue of how registration of working time should be done is neither specified in collective agreements, nor further clarified in the preparatory acts to the WEA. The detailed design and assurance of recording working time are therefore the responsibility of employers.

The assurance element, in particular, should not be underestimated, in light of the strict *Veireno* ruling. The obligation to ensure the recording of working time must be viewed in conjunction with the stringent control and sanction mechanisms in chapters [18] and [19], as well as the corresponding case law from the Norwegian Supreme Court.

The fear of severe sanctions thus acts as an implicit safety valve, ensuring that working time recording is transparent and verifiable by the inspection authorities. When reading WEA § 10-7, not in isolation but in conjunction with chapters 18 and 19, it can be argued that it meets the requirements of EU and EEA law and the fundamental rights impetus, as specified in the *CCOO* and *Loredas* judgments.

Critics have thus argued that a stricter standard is applied in the private sector than in the public sector, thereby violating the principle of equality before the law. The critics are correct in asserting that labour market crimes should be prosecuted with the same (penal) severity in both the private and public sectors. It must be acknowledged that a violation of the working time provisions of the WEA can constitute a labour market crime. There must not be double standards.

It is also important to consider that the increasing categorisation of positions, as senior or independent, risks undermining the application of working time protection regulations, as these job categories are, in particular, exempt from the requirement of recording working hours. Protecting these employees ultimately depends on the effectiveness of the WEA's general protective provisions. There is particular hope for a reform of WEA § 4-3, which aims to address psychosocial risk factors, including poor time management.

5 Sweden

5.1 Regulation of working hours and the Swedish labour market model

5.1.1 Introduction

The Swedish Working Time Act (1982:673, *Arbetstidslagen*) is public law and compliance with it is monitored by the Swedish Work Environment Authority (*Arbetsmiljöverket*).

Importantly, working time is also, to a significant degree, a work environment issue. Several provisions in the Swedish Work Environment Act (Arbetsmiljölagen, SFS 1977:1160)), and in the corresponding regulations issued by the Work Environment Authority, are relevant when assessing compliance with working time rules. Moreover, the right to annual leave is regulated separately under the Annual Leave Act (Semesterlagen, SFS 1977:480).

It is possible to deviate from the Act via collective agreement. Working time is also regulated by collective agreements for most workers. When working time is regulated by such agreements, the agreements usually replaces the Act and the trade unions have the responsibility to monitor compliance with the agreement's rules on working time. The deviations from the Act may not be less favourable for workers than the minimum standards established under the Working Time Directive.

5.1.2 Legislation – limitations on working time

According to section 5 of the Working Time Act, regular working hours may not exceed 40 hours per week. However, when required because of the nature of the work or working conditions, the 40-hour maximum may be calculated as an average over a four-week period. Provisions regarding on-call time are found in section 6, and limitations on overtime (working hours beyond regular working hours and on-call time) are specified in section 7. For part-time employees, the corresponding limitation is regulated in Section 10.

The Working Time Directive's limitation on total weekly working hours has been incorporated into section 10b of the Working Time Act. It specifies that total working hours during any seven-day period may amount to a maximum of 48 hours on average over a calculation period of up to four months. When calculating total working hours, vacation and sick leave, during periods when the employee would otherwise have worked, are to be equated with hours worked.

The provisions of the Working Time Directive regarding daily and weekly rest (article 5) have been implemented in sections 13, 13a and 14 of the Working Time Act. These sections also include a prohibition on night work (section 13), although exemptions can be made by way of a permit from the Swedish Work Environment Authority (section 19) or through collective agreements (section 3).

5.2 Enforcement and sanctions

Above we have shown that there are variety of regulatory frameworks governing working hours. The consequences for rule violations differ, depending on the applicable laws and agreements. Employers may face fines or sanction fees imposed by the Swedish Work Environment Authority for legislative violations, while breaches of collective agreements can result in damages being claimed by unions.

The imposition of sanction fees is one of the primary consequences for employers who violate working hours regulations, alongside union claims for damages in cases covered by collective agreements, as well as preventive fines aimed at deterring future violations. For employees who have worked excessive hours, primary recourse lies in claims against the employer, such as for unpaid wages. However, only limited legal tools are available for tackling ongoing violations of working hours rules.

The calculation of sanction fees is specified in section 26, paragraph 2 of the Working Time Act. The fee amounts to SEK 570 (€57) per hour. The total amount of the sanction fee is based on each hour of unauthorised working time or on-call time, and for each employee engaged in violation of the daily rest rules.

The Swedish Work Environment Authority decides on the imposition of sanction fees and determines their amount. The Authority calculates the fee, based on information about the scope of the violation, and its reasonableness is assessed before it is levied. Evidence, such as employers' or employees' records of hours worked, plays a significant role in determining the extent of unlawfully worked hours.

5.3 Impact of the *CCOO* judgment on the obligation to register working time in Swedish law

Under section 11 of the Working Time Act, the employer has an obligation to keep records of on-call time, overtime, and additional work. According to the same provision, employees or their representative organisations have the right to access these records.

The section also states that the government, or an authority designated by it, shall issue regulations on how such records are to be kept. The Swedish Work Environment Authority has issued such regulations, under AFS 2023:2 on the planning and organisation of work environment management, chapter 9, section 3. The records shall, according to section 4, include the employer's name, the designation of the workplace, the employee's name, and the employee's personal identity number or employee number.

The records must indicate the time period to which they refer. The period shall be specified by year, as well as either the start date and end date, week number, or calendar month. According to section 5, the required records according to section 3 shall distinguish between: on-call time, general overtime, extra overtime, general additional work, emergency overtime, and additional work for emergency tasks (emergency additional work).

The obligation to keep a record, however, *does not cover all working time*. In this respect, Sweden has not clearly imposed an obligation on employers to record daily working time reliably for each employee.

As has been demonstrated, employers have an obligation to record working hours, but not to do so comprehensively, in a manner that makes it possible to measure total daily working hours. Under section 24 of the Working Time Act, the recording obligation laid down in section 11 of the Act or in the regulations issued under it are subject to criminal sanctions and may lead to fines. This means that the Swedish legislator has not clearly implemented systems for measuring working time, as required by the *CCOO* judgment.

There may be incentives for employers to keep complete records (due to the lack of clarity in the provisions); however, since the CCOO ruling is directed at the *Member States*, it is clear that Sweden does not fulfil the obligation set out in the ruling, namely to require employers to document daily working hours.

6 Conclusions

The reception across the Nordic countries of the CJEU's judgment in C-55/18 *CCOO* reflects both shared features of the Nordic labour market models and divergences in how working time is regulated and enforced. All four jurisdictions acknowledge the importance of protecting employees' health and safety through limitations on working hours, but their approaches to registration differ.

Denmark is the only country to have enacted explicit legislative changes in response to C-55/18 *CCOO*. Since July 2024, employers have been required to implement an objective, reliable, and accessible system for recording daily working hours. The reform, shaped in dialogue with the social partners, includes a narrow exemption for autonomous workers.

In *Finland*, no direct reference to *CCOO* was made in the 2020 reform of Working Time Act, in which 'flexiwork' was introduced, which allows employees to self-report working hours. This model has been criticised for falling short of the standards set by the CJEU, especially where collective agreements exempt employers from having to implement time registration systems.

Norway, as an EEA and EFTA country, is bound by the Working Time Directive, but not by the EU Charter. While no reform followed *CCOO*, existing legal provisions, combined with strong enforcement mechanisms are considered to meet EEA obligations, although some uncertainty remains regarding exemptions and employer discretion.

Sweden maintains a dual system of statutory rules and collective agreements, but lacks a general obligation for employers to register daily working hours. Although employers may keep records to avoid sanctions, the legal obligation is unclear.

Taken together, these national experiences illustrate that while the Nordic countries share strong traditions of social dialogue and institutionalised labour market governance, their responses to C-55/18 *CCOO* are far from uniform. Denmark stands out as the only jurisdiction to have enacted explicit legislative changes, while Finland and Sweden, because of their vague or insufficient employer obligations, risk non-compliance with EU law. Norway, operating within the EEA framework, may formally meet the Directive's requirements through a system of interlinked legal provisions and enforcement practices, but questions remain regarding exemptions and practical implementation. The comparative analysis thus reveals a tension between the autonomy of the national legislator, collective self-regulation, and supranational labour law obligations.

In terms of enforcement mechanisms, Denmark is the only country among the four in which individual employees have the explicit right to bring a civil action for violations of the Working Time Act itself. This allows for direct claims for financial compensation in cases of non-compliance with statutory working time provisions.

In the other countries, enforcement typically relies on public law instruments, such as administrative fines, improvement notices, or criminal sanctions. Although individual claims may be possible in certain contexts – such as in disputes over unpaid wages or in cases involving breaches of collective agreements – the possibility of initiating proceedings based solely on violations of statutory working time rules remains limited. Further research may be warranted to assess how enforcement practices operate in sectors in which time registration is delegated or partially exempted by collective agreements.

The future development of issues that *CCOO* raises is partly dependent on other parallel or overlapping lines of development. Examples include work-life balance and the increased emphasis on working hours and the availability of flexible work arrangements as a work environment issue. The psychosocial aspect of respecting employees' working time may gain momentum in the future, especially as EU-level initiatives by social partners have called for a new EU Directive on protection against psychosocial risks at work.

In conclusion, it may be noted that the effects of *CCOO* may vary and that the future will show how the obligations imposed by the judgment are further handled in each country. What is clear, however, is that judgment C-55/18 *CCOO* is innovative and introduces an obligation on the employer that does not follow explicitly from the Working Time Directive. But such an employer obligation can be seen as resulting from the fact that the Directive concretises article 31 CFREU. According to the line of argumentation established by the CJEU in *Bauer and Willmeroth* and now confirmed in *Loredas*, working time is considered a fundamental rights issue. It is, in our view, questionable whether it also introduces an individual right for employees, as the duty of registration is linked 'merely' to effective enforcement of the (existing) rights under the Directive. Nonetheless, it applies to virtually all workplaces. Having said that, there has been little debate about the judgment, at least compared with Nordic discussions concerning *Laval* and the Directive on Adequate Minimum Wages. Nevertheless, the actual effects of C-55/18 *CCOO* have been greater than the latter two items just mentioned, which from a Nordic perspective are considered 'monsters' of EU law.

Hopefully, this article can contribute to further discussion and comparisons regarding the issues addressed: the dimensions of the Nordic model and adoption of EU regulations in Member States.