



Press and Information

Court of Justice of the European Union

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Judgment in Case C-55/18

Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE

Member States must require employers to set up a system enabling the duration of daily working time to be measured

The Spanish trade union, Federación de Servicios de Comisiones Obreras (CCOO), brought an action before the Audiencia Nacional (National High Court, Spain), seeking a judgment declaring Deutsche Bank SAE to be under an obligation to set up a system for recording the time worked each day by its members of staff. The union considered that such a system would make it possible to verify compliance with the stipulated working times and the obligation, laid down in national law, to provide union representatives with information on overtime worked each month. According to CCOO, the obligation to set up such a recording system is derived not only from national law but also from the Charter of Fundamental Rights of the European Union ('the Charter') and the Working Time Directive¹. Deutsche Bank contends that it follows from the case-law of the Tribunal Supremo (Supreme Court, Spain) that Spanish law does not lay down such an obligation of general application. It argues that that case-law shows that Spanish law requires only, except where there is an agreement to the contrary, that a record be kept of overtime hours worked by workers and the communication, at the end of each month, to workers and their representatives of the number of hours overtime thus worked.

The Audiencia Nacional had doubts as to whether the interpretation of Spanish law by the Tribunal Supremo complies with EU law and referred questions on that matter to the Court of Justice. According to information provided by that court to the Court of Justice, 53.7% of overtime hours worked in Spain are not recorded. In addition, the Spanish Minister for Employment and Social Security considers that it is necessary, in order to determine whether overtime has been worked, to know precisely the number of normal hours worked. The Audiencia Nacional notes that the interpretation of Spanish law given by the Tribunal Supremo in practice, first, deprives workers of an item of evidence essential for demonstrating that they have worked in excess of maximum working time limits and, second, deprives their representatives of the necessary means for verifying whether the applicable rules on the matter were complied with. Consequently, according to that court, Spanish law is not able to ensure the effective compliance with the obligations laid down by the Working Time Directive or the Directive on the health and safety of workers at work².

By today's judgment, **the Court declares that those directives, read in the light of the Charter, preclude a national law 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.**

The Court notes, first of all, the importance of the fundamental right of every worker to a limitation on the maximum number of working hours and to daily and weekly rest periods, which is enshrined in the Charter and given specific detail in the Working Time Directive. Member States are required to ensure that workers actually benefit from the rights that are conferred on them, without the

¹ 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 (OJ 2003 L 299, p.9)

² 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 (OJ 1989 L 183, p.1)

specific arrangements chosen to implement the directive being liable to render those rights meaningless. The Court recalls that the worker must be regarded as the weaker party in the employment relationship, such that it is necessary to prevent the employer from being in a position to impose a restriction of his rights on him.

The Court holds that, in the absence of a system enabling the duration of time worked each day by each worker to be measured, it is not possible to determine, objectively and reliably, either the number of hours worked and when that work was done, or the number of hours of overtime worked, which makes it excessively difficult, if not impossible in practice, for workers to ensure that their rights are complied with.

The objective and reliable determination of the number of hours worked each day and each week is essential in order to establish whether the maximum weekly working time – including overtime – and minimum daily and weekly rest periods have been complied with. The Court considers therefore that a national law which does not provide for an obligation to have recourse to an instrument that enables that determination does not guarantee the effectiveness of the rights conferred by the Charter and the Working Time Directive, since it deprives both employers and workers of the possibility of verifying whether those rights are complied with. Such a law could also compromise the directive's objective of ensuring better protection of the safety and health of workers, which is the case irrespective of the duration of the maximum weekly working time laid down in national law. By contrast, a system enabling the time worked by workers each day to be measured offers those workers a particularly effective means of easily accessing objective and reliable data as regards the duration of time actually worked, which facilitates both the proof by those workers of a breach of their rights and also the verification by the competent authorities and national courts of the actual observance of those rights.

Consequently, **in order to ensure the effectiveness of the rights provided for in the Working Time Directive and the Charter, the Member States must require employers to set up an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured.** It is for the Member States to define the specific arrangements for implementing such a system, in particular the form that it must take, having regard, as necessary, to the particular characteristics of each sector of activity concerned, or the specific characteristics of certain undertakings concerning, inter alia, their size.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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