In its judgement issued on May 14, 2019, the European Court of Justice (ECJ) states that all companies operating in EU member states must set up a system to record the working time of their employees. The ECJ states that Community regulations impose the obligation on employers to implement an objective, reliable and accessible system that allows recording of the daily workday performed by each worker.

In the press release no. 61/19 the ECJ added that “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.”

In this newsletter, Dentons European Employment Group has summarized the current situation on recording working time in different EU countries. The newsletter also offers an overview on countries, which are not members of the EU, where Dentons has offices, and that might be relevant for your international business. Finally, comments are indicated on how the decision will influence the current legal situation in different countries, and which possibilities (if any) companies can use in order to save costs.

Please do not hesitate to contact your Dentons Employment team for further questions.

- Czech Republic
- France
- Germany
- Hungary
- Italy
- Luxembourg
- Netherlands
- Poland
- Romania
- Slovak Republic
- Turkey
- United Kingdom
Czech Republic

Is there a statutory obligation to record working time?

Yes, employers have an obligation to keep a record for each of their employees stating the beginning and end of:

a. Regular working shifts;
b. Overtime;
c. Night work;
d. Work emergency;
e. The period of time worked by the employee during his/her working emergency.

If yes, which exemptions exist?

There are no exceptions to the statutory obligation to record working time for employees, working based on an employment contract.

However, the employer is not obliged to record working time for employees, working based on agreements other than employment contracts (such as temporary jobs).

How does local law deal with payment of overtime?

Overtime work is work performed by an employee, on the instruction of the employer or with the employer’s consent, which exceeds standard weekly working hours (max. 40 hours) outside of working hours or regular shifts.

As regards part-timers, overtime means any work exceeding their predetermined weekly working hours; however, part-timers may not be ordered to work overtime.

Where the employer provides the employee with compensatory time off at the employee’s request and the employee performs work for such time off, this is not regarded as overtime.

An employee may not be ordered to do more than 8 hours of overtime work within an individual week and 150 hours of overtime work within one calendar year.

The total scope of overtime work (i.e. overtime work ordered by the employer and other overtime work agreed between employer and employee) may not exceed on average 8 hours per week calculated over a period of no more than 26 consecutive weeks.

An employee is entitled to a wage for overtime work and a premium of at least 25% of his/her average earnings, unless the employer and the employee have agreed that instead of the premium for overtime work the employee will take compensatory time off.

However, where a wage is agreed with regard to potential overtime work, the employee is not entitled to the wage plus premium or to the compensatory time off for such overtime time. The wage may be agreed with regard to potential overtime work, provided that overtime hours are within the scope of 150 hours in one calendar year. The maximum limit for overtime hours for managerial employees is 416 hours per calendar year.
How are employee representatives (like works councils) involved in this regard?
Statutory working time and conditions for overtime may be agreed in the collective bargaining agreement.

How will the decision affect the current legal situation?
There is no legal impact in this matter, as Czech laws already strictly require recording working time, in particular for reasons of payment of overtime.

France
Katell Deniel-Allioux

Is there a statutory obligation to record working time?
French labor law requires the employer to control and monitor the working time of its employees to check that they comply with maximum working hours rules, rest periods, etc.

The modalities of control depend upon the working organization in place within the company and upon the categories of employees (clock-in/clock-out, individual declaration for executives having autonomy in their organization).

If yes, which exemptions exist?
Senior executives are out of the scope of the 35- working hour regulations but the definition of such “senior executives” is very strict. Only executives involved in the strategic orientations/management of the company, with a great level of autonomy and at the highest level of the compensation system in force within a company could be considered as “senior executives” or “cadres dirigeants”.

How does local law deal with payment of overtime?
Employees can work overtime up to an annual quota, fixed by law at 220 hours per year. However, it is possible to set a different quota (lower or higher) by an in-house agreement or a collective bargaining agreement.

Overtime pay is subject to one or more premium rates, fixed by the applied collective bargaining agreement or by a specific in-house agreement applied within the company. The minimum premium rate is 10%.

In the absence of any collective bargaining agreement or in-house agreement, the legal hourly premium rates are the following:

a. 25% for the first 8 hours of overtime worked in a given week (36th to 43rd hours);
b. 50% for any additional hours.

An equivalent compensatory rest can replace, in whole or in part, payment for overtime. In this case, the duration of this rest period is equivalent to the increased remuneration.

For any hours performed over the annual quota of overtime, a compensatory rest is mandatory.

In the absence of more favorable provisions provided by agreement, the premium is set at:

a. 50% of overtime hours worked over the annual quota;
b. 100% of the same hours if the company has more than 20 employees.
How are employee representatives (like works councils) involved in this regard?

Employee representatives are involved at several levels in the regulation of working time.

Most topics relating to working time are divided into three parts by the Labour Code:

a. Public policy (provisions from which it is impossible to derogate);
b. Areas where negotiation with unions or Works Council is possible;
c. Supplementary provisions (if there is no negotiation).

Employee representatives are involved in the negotiation of agreements on working time and the right to disconnect from work (late at night, over the weekend, etc.).

In addition, employers must inform and consult the Works Council (CSE) on matters concerning the organization, the management and general running of the company, in particular on: organization of working hours or new conditions of employment, major changes in health and safety conditions or working conditions.

How will the decision affect the current legal situation?

This decision will not have any impact on French law since the employer already has to control employees' working time. Provisions concerning the evaluation of the workload of employees, not subject to hourly organization, are already in place in order to respect workers' health and safety requirements. French Judges verify the control of the working hours/professional workload to determine whether or not employers are complying with their obligations.

Germany

Markus Diepold

Is there a statutory obligation to record working time?

According to Section 17 para 1 Minimum Wage Act ("Mindestlohngesetz"), employers are subject to an obligation to record working hours if an employee:

a. Is marginally employed ("geringfügige Beschäftigung", e.g. a "mini-job"); or
b. Performs work in one of the economic sectors or branches listed in Section 2a of the Act to Combat Undeclared Work,

Outside these statutory regulations, an employer in Germany only has to record the working time that exceeds the daily working time of 8 hours (sec. 16 para 2 Working Time Act – "Arbeitszeitgesetz"). However, this obligation can also be assigned to the employee.

In addition, obligations to record working time often result from collective bargaining agreements or works agreements (depending of the concrete working time scheme).

If yes, which exemptions exist?

The obligation to record working time according to Section 17 Minimum Wage Act was partially restricted by the Federal Ministry of Labor and Social Affairs. The obligation does not apply in the following cases:

a. If the continuous regular remuneration amounts to more than €2,000 gross/month and has been demonstrably paid out in the last 12 months;
b. For employees whose continuous regular monthly gross pay exceeds €2,958;
The Working Hours Act does not apply to managerial employees (”leitende Angestellte”) and managing directors, who do currently not qualify as employees in the meaning of the Working Hours Act.

Special arrangements exist for employees working in the public service, aviation sector, inland waterway sector and road transport.

**How does local law deal with payment of overtime?**

On basis of an agreement within the employment contract, it is possible to compensate overtime with the contractually agreed remuneration up to a certain premium (approx. 10 % of the weekly working time).

If the employee’s income is above the assessable income limit within the statutory pension insurance (currently €80,400 gross/year in West Germany and €73,800 gross/year in East Germany), it is also possible to compensate all activities of the employee, including any overtime, with the payment of the remuneration.

Collective Bargaining Agreements often contain restrictive clauses on the possibility to perform overtime, and grant employees an additional payment for overtime.

**How are employee representatives (like works councils) involved in this regard?**

German works councils (”Betriebsrat”) have a very far-reaching right of co-determination in working time matters. For example, they must agree to company regulations concerning:

a. Start and end of daily working time including breaks and distribution of working time over the individual weekdays;
b. The temporary shortening or extension of normal working hours (this also includes the instruction of an employer to perform overtime);
c. The introduction of software programs to record working time.

**How will the decision affect the current legal situation?**

As German law is similar to Spanish law on the recording of working time, the decision of the EJC will have a short-term impact in Germany. Legislative changes are already under discussion.

In addition, it is already being discussed whether Section 16 Working Time Act must be interpreted in accordance with the EU Directive on Working Time (2003/88) meaning that any working time must be recorded.

In any case, for companies that have not yet had to record working time, the changes will lead to an increase in costs inter alia due to the purchase of software to record working time and its administration.

More significantly, staff costs are likely to grow, as employees will now increasingly claim overtime. All the more care should be taken to ensure that the costs for overtime are kept low by the correct contract design.

**Hungary**

Anita Horváth

**Is there a statutory obligation to record working time?**

According to Section 134 of Act I of 2012 on the Labor Code, employers shall keep records of:

a. The duration of regular working time and overtime;
b. The duration of stand-by duty;
c. Periods of leave;
d. The duration of overtime work performed under a CBA or the employee’s consent (voluntary overtime).

Records shall be updated on a daily basis and shall contain the start and end time of any regular and overtime work and stand-by duty.

Records of working time of employees working in stand-by jobs and employees who are relatives of the employer or owner shall be kept in accordance with their extended daily working time.

Overtime does not apply to senior managers (cadre supérieur).

If yes, which exemptions exist?

Employers are under no obligation to keep records of working time in the case of:

a. Simplified employment or occasional work relationships (i.e. seasonal work), provided that the employment agreement in concluded using the template annexed to Act LXXV of 2010;
b. Employees working within the framework of flexible working arrangements (i.e. employees who are fully entitled to set their own working time);
c. Job sharing arrangements (i.e. where a single employer contracts more than one employee to fill a position);
d. Distance work arrangements, unless the employment contract provides otherwise;
e. Outworkers (i.e. employees who perform their jobs independently and are remunerated exclusively on the basis of their output); and
f. Executive employees.

How does local law deal with payment of overtime?

Employees shall be entitled to a 50% wage supplement or to time off for overtime work performed (a) in addition to the daily working time shown in the work schedule; or (b) over and above the hours covered within the time banking arrangement or accounting period (where applicable).

Where overtime work is ordered on a scheduled weekly rest day (weekly rest period) or a public holiday, a 100% wage supplement shall be paid. The wage supplement shall be 50% if the employer provides compensatory weekly rest day (weekly rest period).

Rules regarding provision of equal time off:

a. The duration of time off may not be less than the overtime work ordered or performed;
b. Time off shall be remunerated by a commensurate part of the base wage;
c. The time off or the weekly rest period shall be given within one month following the month when the overtime work was performed, or by the end of the time banking period or accounting period (if applicable) in the case of an irregular work schedule;
d. Time off for overtime shall be provided at latest by the end of the next working time banking cycle;
e. By agreement of the parties, time off shall be provided at latest by 31 December of the following year.

Employment agreements may provide for the payment of fixed overtime fees in lieu of statutory wage supplements (employers shall keep records of duration of overtime nonetheless).

How are employee representatives (like works councils) involved in this regard?

Collective bargaining agreements may not deviate from statutory rules on recording working time, but they may
deviate from statutory rules on compensation for overtime work (i.e. calculation of wage supplements) and may elevate the yearly maximum overtime hours from 250 to 300 per employee.

A relatively recent amendment of the Labor Code has made it possible for employers to conclude individual agreements with employees on increasing the yearly maximum overtime by 150 hours (voluntary overtime).

Employees may terminate such agreements unilaterally at any time, with such termination taking effect at the end of the ongoing calendar year.

How will the decision affect the current legal situation?

Hungarian employment regulation is generally compliant with Directive 2003/88 with regard to the recording of working time and overtime work. Labor inspectorates tend to scrutinize record-keeping obligations very strictly. Accordingly, we expect no significant impact on Hungarian employment regulations or on the practice of the Labor Authorities.

However, the CJEU judgement in case C-55/18 may result in a review of the compliance of the Labor Code with Directive 2003/88 as regards some of the exemptions from working time recording, especially the exemption for job-sharing arrangements.

Italy

Davide Boffi

Is there a statutory obligation to record working time?

According to Italian law, the employer does not have any specific obligation to record working hours.

Working time is provided for by Legislative Decree no. 66, dated 8 April 2003, which sets a limit of 40 working hours per week as a normal working time, and by collective bargaining agreements if applied by the employer.

If yes, which exemptions exist?

Not applicable.

How does local law deal with payment of overtime?

Pursuant to art. 5 of Legislative Decree no. 66/2003, overtime discipline is set forth by collective bargaining agreements (CBAs) if applied by the employer.

If no CBAs are applied, overtime shall be allowed:

a. With the prior agreement between the employer and the employee for a period not exceeding 250 hours per year;
b. For exceptional technical and production-related needs;
c. In cases of force majeure or where failure to perform overtime could result in serious and immediate danger or damage to persons or production;
d. On the occasion of special events, such as exhibitions, fairs and events connected with production activities, as well as the preparation of prototypes, models or the like prepared for them.

Overtime must be compensated by the wage increases provided for by the CBAs. As an alternative to, or in addition to, wage increases, employees may be entitled to compensatory rest periods.
The employer is entitled to request the performance of overtime from part-time employees, within the framework of provisions set forth by law and by the CBAs.

Overtime performed by executives or highly qualified employees (e.g. middle managers) shall not be compensated since these categories are not subject to any duration limit of the working time.

**How are employee representatives (like works councils) involved in this regard?**

According to Italian law, CBAs can regulate the implementation of the rules on working time and overtime. Furthermore, with regard to overtime, CBAs may provide for a prior consultation and periodic updates of the employees’ representatives.

**How will the decision affect the current legal situation?**

Italy has correctly implemented the European directives concerning certain aspects of the organization of working time (e.g. minimum periods of daily rest, weekly rest, annual leave, breaks and maximum weekly working time limits). Indeed, Legislative Decree no. 66/2003 provides for a specific discipline of all the working time aspects, including overtime.

Nevertheless, in light of the recent CJEU judgement in case C-55/18, national regulations shall need to be implemented to introduce a general obligation for the employer to provide “an objective, reliable and accessible system enabling the duration of time worked each day to be measured”, which is currently absent in the Italian statutory framework.

As pointed out by the CJEU, national law shall determine specific arrangements for implementing such a system.

Reasonably, the implementation of a system recording the duration of working time performed by the employees will likely lead to:

a. A cost increase for the employers;

b. A more favorable outcome of judicial claims by employees (who currently have the entire burden of proof of the performance of overtime).

**Luxemburg**

Christel Dumont

**Is there a statutory obligation to record working time?**

No. There is no statutory obligation in Luxembourg to record working time.

**If yes, which exemptions exist?**

Not applicable.

**How does local law deal with payment of overtime?**

Overtime is:

a. Either compensated by remunerated time-off at the rate of one hour and a half of time-off per supplementary hour worked; or
b. Booked on the time saving account if a time saving account system exists at the level of the employer.

The labor code only foresees two cases where overtime can be paid:

a. If for internal reasons of organization, the compensation or booking on the time saving account is not possible;
b. If the employee is leaving the company for any reason, prior to having been able to compensate the overtime performed.

How are employee representatives (like works councils) involved in this regard?

In specific cases, employers are obliged to notify or obtain authorization from the Labor Ministry (ITM: Inspection du Travail et des Mines) for overtime. In these cases, the employer shall request the opinion of the employee representative.

These cases are:

a. To prevent the loss of perishable goods or to avoid compromising the technical result of the work;
b. To allow the performance of specific works (e.g. establishment of inventories or annual financial statements);
c. In exceptional cases imposed in the public interest or for events presenting a national danger.

How will the decision affect the current legal situation?

Legal reform might be necessary.

Netherlands

Eugenie Nunes

Is there a statutory obligation to record working time?

Yes, according to article 4:3 of the Dutch Working Time Act, the employer is obliged to keep a proper record of the working and rest times.

If yes, which exemptions exist?

Not applicable.

How does local law deal with payment of overtime?

Under Dutch law, employees are entitled to the minimum wage for payment for overtime.

However, this does not apply if the salary divided by the total worked hours’ amounts to at least the minimum wage (€1,615.80 gross per month as of 1 January 2019).

How are employee representatives (like works councils) involved in this regard?

CBAs may not deviate from statutory rules on recording working time, they may however deviate from statutory rules on compensation for overtime work (i.e.: provide for arrangements in favor of the employee).

How will the decision affect the current legal situation?

There is no legal impact, as employers are already obliged to keep a record of the working time.
Poland

Aleksandra Minkowicz-Flanek

Is there a statutory obligation to record working time?

Yes. According to the Polish Labor Code, employers, as a rule, must keep working time records for all employees.

This is in order to determine the correct monthly remuneration for work (including overtime pay) and other work-related benefits.

The manner in which such a working time register should be kept is however, not regulated by law.

If yes, which exemptions exist?

The employer keeps a working time record for every employee, specifying, amongst others:

a. Days of work;
   b. Days of illness;
   c. Days of vacation;
   d. Detailed working hours in a given working day.

However, the employer is not required to register the working hours in case of specific groups of employees such as:

a. Employees covered by a task-based working time system;
   b. Employees who manage the workplace on the employer's behalf;
   c. Employees paid on a lump-sum basis for overtime or night work.

How does local law deal with payment of overtime?

Overtime is compensated by:

a. regular remuneration increased by overtime allowance (overtime pay); or
   b. time off.

Overtime allowance is:

a. 100% of the remuneration for overtime work performed:
   i. At night;
   ii. On Sundays and holidays other than the employee's working days;
   iii. On a non-working day granted to an employee in exchange for work performed on a Saturday or a holiday;
   iv. Every hour of overtime work in excess of the average weekly working time standard.

b. 50% of the remuneration for overtime work performed on any day other than those referred to in points (a) above.

The employer may also grant the employee time off in exchange for overtime work (in such a case, the employee is not entitled to overtime pay):

a. At the written request of an employee (1 hour for 1 overtime hour);
   b. Without the employee's request, not later than by the end of the settlement period, (1,5 hour for 1 overtime hour).

This may not reduce the employee's remuneration due for the full monthly working time.

Employees employed on a part-time basis are entitled to:
a. Standard remuneration (without the allowance) for hours worked over the employee’s normal (part-time) working hours but not exceeding the maximum permitted number of overtime hours in the contract of employment;
b. Overtime pay (standard hourly rate plus overtime allowance) for hours exceeding the threshold agreed in the contract of employment.

**How are employee representatives (like works councils) involved in this regard?**

In the collective bargaining agreement or internal by-laws (remuneration rules), the employer may agree more beneficial conditions for employees than those set out by law in the.

If trade unions operate at the employer, the CBA and remuneration rules must be agreed with them.

Works Councils, if such exist at the workplace, are not involved in this process.

**How will the decision affect the current legal situation?**

Polish law is generally compliant with the EU law in this respect and we do not expect any major amendments.

**Romania**

Tiberiu Csaki

**Is there a statutory obligation to record working time?**

Yes, Article 119 of the Labor Code requires the employer to keep a record of daily working hours for each employee. The record must indicate the start and end of the working time.

Moreover, the record may be subject to the control of the labor inspectors, and the sanction for those who fail to comply is between 1,500- 3,000 RON, according to article 260.

The employer must keep records of the hours worked by each of the mobile employees or the employees who work from home according to the terms and conditions agreed with the employees and depending on the specific work they carry out.

**If yes, which exemptions exist?**

No exemptions.

**How does local law deal with payment of overtime?**

According to Article 122 and 123 of the Labor Code, overtime must be compensated with paid time off within 60 calendar days after the performance of the overtime.

If the compensation with paid time off is not possible within 60 calendar days, the employee is entitled to receive an allowance calculated pro rata according to the overtime period.

The overtime allowance amount is negotiated and included either in the applicable collective labor agreement or in the individual labor contract, as the case may be, and cannot be lower than 75% of the base salary.

**How are employee representatives (like works councils) involved in this regard?**

In the absence of a union, employee representatives may negotiate the overtime allowance amount to be included in
the collective labor agreement.

**How will the decision affect the current legal situation?**
No impact, the obligation to record the working time has been already implemented in Romania since 2017.

**Russia**

Marina Ryzhkova

**Is there a statutory obligation to record working time?**
Yes. According to Art. 91 (4) of the Russian Labor Code, an employer is obliged to keep a record of time worked by each employee.

**If yes, which exemptions exist?**
No exemptions.

**How does local law deal with payment of overtime?**
Under Art. 152 of the Russian Labor Code, the first two hours of overtime shall be compensated by not less than one and a half times the amount, for subsequent hours – not less than twice the amount. Specific measures of payment for overtime work may be determined by the collective bargaining agreement, local normative act, or employment contract.

Instead of higher payment, employees may request additional vacation to compensate for the overtime, but not less time than the overtime worked.

**How are employee representatives (like works councils) involved in this regard?**
Under Russian law, the employer must obtain written consent to the overtime from employees, and take into consideration the opinion of the elected body of the primary trade union (if any).

If written consent of employees has been obtained, the employer is not obliged to take opinion of the elected body of the PTU into consideration in limited cases, namely:

a. If it is necessary to complete work that has been begun and which could not be completed during the normal working day due to unforeseen technical delays, if non-completion may result in spoiling or loss of property;
b. In the performance of temporary works to repair and restore machinery and structures, where malfunctions may cause a work stoppage for a significant number of employees;
c. To continue work where a shift worker has failed to appear.

Thus, if the employer is unionized, it would be required to consider the opinion of the PTU before asking employees to work overtime.

**How will the decision affect the current legal situation?**
Not applicable, as Russian law is not subject to EU Directives.
Slovak Republic

Linda Mendelová

Is there a statutory obligation to record working time?

Yes, employers have an obligation to keep a record for each of their employees stating the beginning and end of:

a. Regular working time;

b. Overtime work;

c. Night work;

d. Active part of work emergency;

e. Non-active part of work emergency.

The employer is also obliged to keep a record for temporarily assigned employees at the place of work of those employees.

If yes, which exemptions exist?

There are no exceptions to the statutory obligation to record working time for employees working based on an employment contract.

However, for employees working based on agreements other than an employment contract, there are the following exceptions:

a. For employees working based on student work agreements or agreements on work activity, the beginning and end of the time worked shall be recorded;

b. For employees working based on agreements on performance of work, the length of the work per each day shall be recorded.

How does local law deal with payment of overtime?

Overtime is work performed by an employee, on the instruction of the employer or with the employer's consent, which exceeds the standard weekly working hours (max. 40 hours), outside the standard schedule of working hours and shifts.

As regards part-timers, overtime means any work exceeding their predetermined weekly working hours; however, part-timers may not be ordered to work overtime.

Where the employer provides the employee with compensatory time off at the employee's request and the employee performs work for such time off, this is not regarded as overtime.

An employee may be ordered to work a maximum of 150 hours of overtime work within one calendar year. The employee can work another 250 hours of overtime work within a calendar year upon agreement with the employer, so the total scope of overtime for an employee is 400 hours per calendar year.

The total scope of overtime work may not exceed on average 8 hours per week calculated over a period of no more than 4 consecutive months, unless a period up to 12 months is agreed with the employees' representatives.

An employee is entitled to its wage, plus a premium of at least 25% of his/her average earnings (35% for employees performing risky work) for overtime hours worked. Alternatively, the employer and the employee can agree that
instead of the premium for overtime work the employee will take compensatory time off equivalent to the overtime hours worked.

With managerial employees it is possible to agree in writing that the payment for overtime work is included in his/her salary up to 150 hours per calendar year.

How are employee representatives (like works councils) involved in this regard?
The extent and conditions for overtime shall be introduced upon agreement with employees’ representatives.

How will the decision affect the current legal situation?
The Slovak Labor Code is generally compliant with Directive 2003/88 as regards recording of working time and overtime work and with the CJEU judgement in case C-55/18.
The current Slovak case law also tends to interpret this obligation of the employers rather widely. Thus, we expect no significant impact of this ruling on the Slovak labor law relations.

Turkey

Galip Selcuk

Is there a statutory obligation to record working time?
There is no statutory obligation in Turkey to record working time.

If yes, which exemptions exist?
Not applicable.

How does local law deal with payment of overtime?
Under the Turkish Labor Law No. 4857, overtime work is defined as any work performed beyond the normal working hours in a week (i.e. 45 hours). If the employee works more than 45 hours in a week, he/she is entitled to overtime payment.

In companies, where salaries are paid on a monthly basis, the hourly salary is calculated first and then overtime work is remunerated in accordance with one and half times that hourly rate (i.e. salaries for each hour of overtime include an additional payment of 50% of the normal hourly salary). The payments for overtime work must be made at the end of the relevant month, when the employees’ salaries are deposited into their bank account and the payrolls/payslips have to be issued accordingly by the employer.

The employee performing overtime work may choose to use free time of “1 hour and 30 minutes” for each hour of overtime work, instead of overtime payment. If the employee chooses the free time, he/she must submit this request to the employer in writing. The employer must allow the employee to use the requested free time within six months of the day when the overtime work was performed.

The employee’s prior written consent is necessary for overtime work, and it can be included in the employment agreement or obtained separately.

According to the Court of Appeals’ decisions on overtime work, if:
an employment agreement includes a clause stating that overtime work payment is included in the salary; and b. the amount of the salary is enough to cover wages for possible overtime work, then the employer is not obliged to make an additional overtime payment to the employee unless the total amount of the alleged overtime exceeds 270 hours per year or 22.5 hours per month or 5.2 hours per week.

Therefore, depending on the amount of the salary and overtime work hours, the existence of such a clause may be sufficient to counter employee claims for payment of unpaid overtime work.

If the overtime wages are not duly paid, an employee is entitled to terminate the employment agreement based on just cause and to request severance compensation and the unpaid overtime work wages together with the accrued interest within the 5 years from the due date. Depending on whether or not the payslips include accrued overtime work hours and employees’ signatures, the employees may prove overtime work even through witness statements.

How are employee representatives (like works councils) involved in this regard?

Not applicable.

How will the decision affect the current legal situation?

Not applicable.

United Kingdom

Ryan Carthew

Is there a statutory obligation to record working time?

Yes. Regulation 9 of the Working Time Regulations 1998 provides that employers must keep records of working time. The records must be sufficiently adequate to demonstrate compliance that the Regulations’ requirements relating to maximum weekly working time, maximum weekly working time for young workers, limitations on night work, limitations on night work of young workers, health assessments of night workers and rotating night workers to day work.

There is a statutory requirement to retain these records for a minimum of two years.

If yes, which exemptions exist?

Record keeping requirements only apply to the extent that the relevant statutory requirements apply. There are various categories of workers who are either wholly or partially exempted from the requirements of the Regulations.

Further, some statutory requirements (for example, maximum weekly working hour requirements) can be excluded from application by agreement with employees. In these circumstances, there is no requirement to keep records. Further, there is no requirement to keep records of time, which does not qualify as “working time” under the Regulations.

How does local law deal with payment of overtime?

There is no statutory obligation for employers to pay overtime if an employee has fixed hours he or she is not automatically entitled to extra payments for work performed in excess of normal hours. If an employee is paid by the hour, there is no statutory right to special rates for work performed in excess of normal hours, nor at a particular time.

An employee will only be entitled to overtime payments and/or penalty rates if this right is set out in their employment
agreement, or in a collective agreement, which applies to their employment.

**How are employee representatives (like works councils) involved in this regard?**

If trade unions are recognized by an employer (voluntarily or via the applicable statutory procedure) they will be entitled to propose agreement on arrangements relating to working time and overtime, which can be included in the terms of a collective agreement applicable to one or more employers. This can be agreed by negotiation or arbitration if arbitration is agreed. However, outside the public sector only a small percentage of employees are subject to recognized trade union arrangements and/or collective agreements.

**How will the decision affect the current legal situation?**

This decision applies more stringent requirements on the recording of working time than has been applied by UK legislation. The UK Regulations only refer to the requirement to keep "adequate" records and to not explicitly require employers to record data to show that daily and weekly rest periods requirements are being complied with. The ECJ decision makes it clear that there must be an accurate system to measure the time worked by workers each day to ensure that rights can be enforced, irrespective of the terms of their contracts. This will mean more stringent time recording requirements while the UK remains in the European Union.

**Ukraine**

Volodymyr Monastyrskyy

**Is there a statutory obligation to record working time?**

Employers have an obligation to record the time worked by an employee.

There are three types of time record:

a. Daily record;

b. Weekly record;

c. Accrual record.

A daily record applies when the daily duration of the work is the same each day.

A weekly record applies when the daily duration of the work varies by days, but the entire duration cannot exceed 40 hours per week.

An accrual record applies when business process cannot be interrupted and a daily or weekly record of time cannot be established for this reason. The accrual record period can be decade, quarter, six months, period of agricultural works, duration of maritime tour etc. The duration of rest between the shifts may not be less than twice the duration of the preceding shift.

**If yes, which exemptions exist?**

No exemptions.

**How does local law deal with payment of overtime?**

Overtime work is work performed by an employee on the instruction of the employer, which exceeds normal working hours. As a rule, normal working hours constitute 40 hours per week.
Overtime is paid at double rate.

**How are employee representatives (like works councils) involved in this regard?**

Overtime requires instruction of the employer and consent of the trade union (if created).

Overtime cannot exceed 4 hours during two consecutive days and 120 hours per annum.

Overtime can be applied in limited cases only and is not permitted for a woman who is pregnant or has minors under 3 years old, minors under 18 years old and students of general or vocational schools.

Overtime is permitted upon consent of:

a. A woman having children aged between 3 and 14 years old or a disabled child; or
b. A disabled person (provided that overtime does not contradict medical recommendations).

**How will the decision affect the current legal situation?**

Not applicable, as Ukrainian law is not subject to EU Directives.

---

**Your Key Contacts**

**Tomáš Bílek**  
Partner, Prague  
D +420 236 082 226  
tomas.bilek@dentons.com

**Dr. Markus Diepold**  
Partner, Co-Head  
Employment and Labor  
Germany, Berlin  
D +49 30 2 64 73 601  
markus.diepold@dentons.com

**Davide Boffi**  
Partner, Europe Head of Employment and Labor  
Milan  
D +39 02 726 268 00  
M +39 348 23 78 195  
davide.boffi@dentons.com

**Eugenie Nunes**  
Partner, Amsterdam  
D +31 20 795 36 05  
M +31 6 53 84 71 69  
eugenie.nunes@dentons.com

**Katell Déniel-Allioux**  
Partner, Paris  
D +33 1 42 68 48 32  
katell.denielallioux@dentons.com

**Anita Horváth**  
Partner, Budapest  
D +36 1 488 5200  
anita.horvath@dentons.com

**Christel Dumont**  
Senior Counsel, Luxembourg  
D +352 46 83 83 211  
christel.dumont@dentons.com

**Aleksandra Minkowicz-Flanek**  
Partner, Warsaw  
D +48 22 242 56 65  
aleksandra.minkowicz-flanek@dentons.com
Tiberiu Csaki  
Partner, Bucharest  
D +40 21 312 4950  
tiberiu.csaki@dentons.com

Marina Ryzhkova  
Partner, Moscow  
D +7 495 644 0500  
marina.ryzhkova@dentons.com

Galip M. Selçuk  
Türkiye Managing Partner, Istanbul  
Balcıoğlu Selçuk Ardiyok Keki Attorney Partnership  
D +90 212 329 30 00  
gselcuk@baseak.com

Volodymyr Monastyrsyy  
Partner, Kyiv  
D +380 44 494 4774  
volodymyr.monastyrsyy@dentons.com