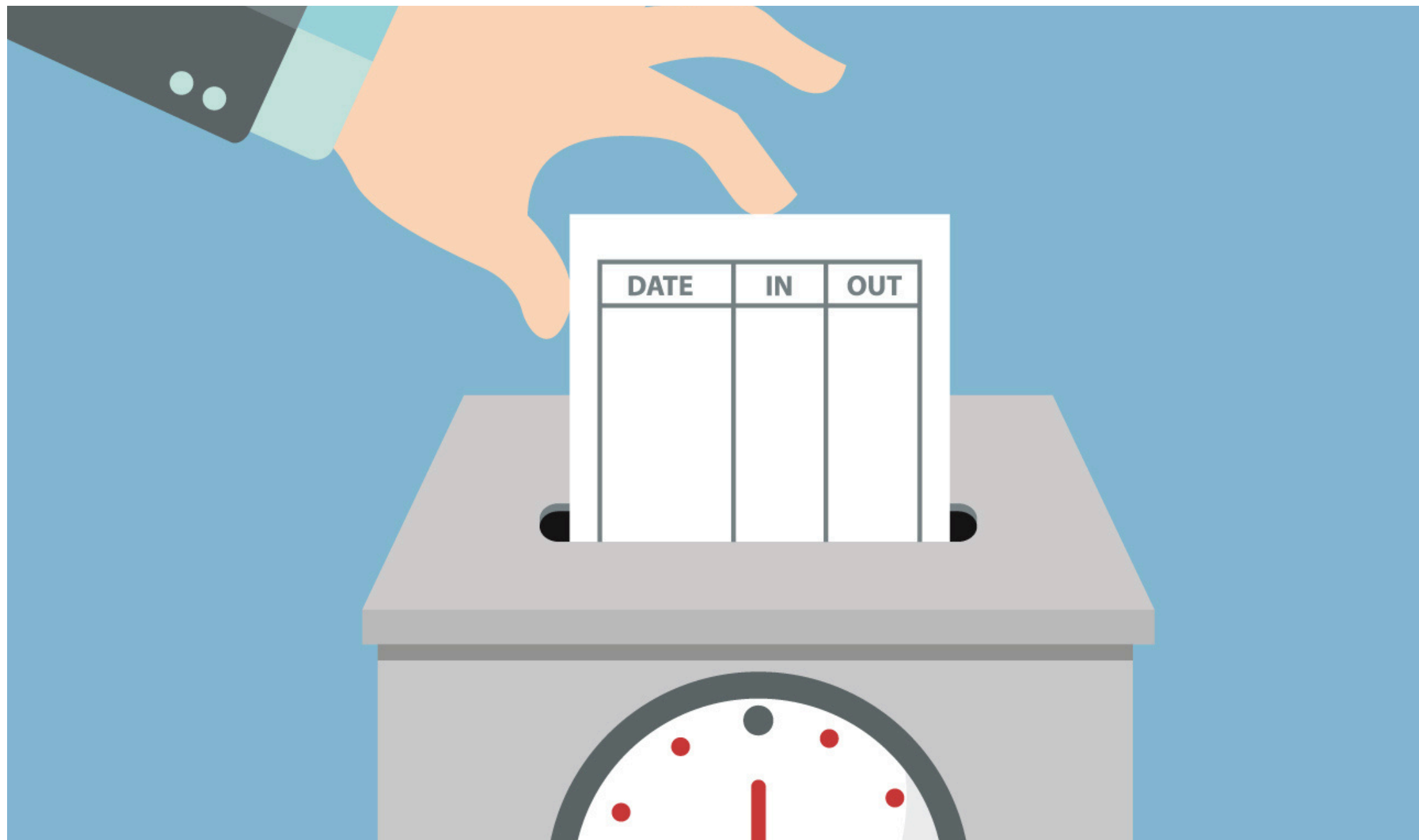


**Working time: to register or not to register...**



On 14 May 2019 the European Court of Justice (the “ECJ”) made a judgment in the so-called “CCOO-case” (C-55/18, Deutsche Bank). In the CCOO-case the ECJ held that member states must ensure that all employers use an objective, reliable, and accessible time registration system to measure each employee’s daily working hours. This applies even though such an obligation is not specially mentioned in the Working Time Directive 2003/88/EC.



## Belgium - Denmark: Introduction



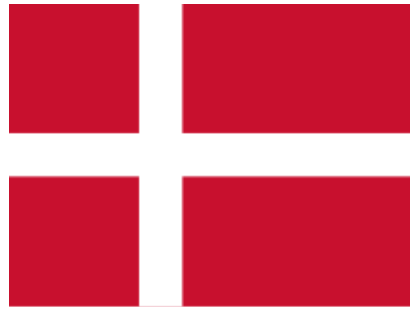
In its working time directive implementation report of 15 March 2023, the EU Commission stated that *“in most Member States, employers are obliged to monitor and register working time, but five have no such obligation or do not define it clearly: Belgium, Denmark, Cyprus, Malta and Sweden.”*

In this article we take a closer look at how two of these countries, Belgium and Denmark, have interpreted the CCOO-ruling, and which effect the CCOO-ruling has had in said countries.



## I. Has there been any legislative changes in both countries due to the CCOO decision?

Up until now, Belgium did not change its legislation in pursuance of the 2019 ECJ ruling. The (current) Belgian government, as well as the major trade union and employers' organizations are reluctant to implement a general working time registration obligation, as they believe that there are no clear indications that current Belgian legislation would not be in line with the Working Time Directive or the ECJ ruling.



## I. Has there been any legislative changes in both countries due to the CCOO decision?

To comply with the ECJ ruling the Danish Parliament adopted new rules on working time registration on 23 January 2024, which amended the Danish Act on Working Time. The rules entered into force on 1 July 2024 and introduced a new obligation for employers to implement an objective, reliable, and accessible time registration system to measure each employee's daily working time. The purpose of the new rules is to ensure compliance with the rules on daily and weekly rest periods.



## II. Is working time registration mandatory in both countries for all employees?

Working time registration is only mandatory for employees that work in a so-called flexible working arrangement, permitting the employees to decide when they start and stop working every day, as long as the framework imposed by the employer is respected (e.g. respecting the average weekly working time within the reference period). This obligation implies registration of the number of worked hours per day, and in case of part-time employment, also the registration of the start and end hour of each workday.

Most (blue collar) employees in Belgium work however according to a fixed working arrangement, on which, in principle, no derogations are allowed (and for which, in principle, working time recording is thus futile). It is in principle forbidden to let an employee work outside the defined work schedule, even if the employee consents, save the exceptions foreseen by law. If and insofar overtime is thus allowed by law, these extra hours should be registered in an “objective, reliable and accessible” manner, without the law imposing a formal framework in this respect.

Moreover, a number of positions are exempted from working time legislation in general, such as employees in managerial positions, or sales representatives. These employees are of course not required to register their working time.



## II. Is working time registration mandatory in both countries for all employees?

In the outset all employees (excluding the managing director) must register their working time in Denmark. However, there is a limited exemption to the time registration obligation in the Danish Working Time Act which applies to a certain category of employees – referred to as “self-organizers”.

An employee can be categorized as a self-organizer, if the duration of the employee’s working hours cannot be measured and/or determined in advance, or if the employee can determine their own working hours due to their ability to make independent decisions, or where they have managerial powers. The concept of self-organizers is not further defined in either the legislation or the legislative guidance, however the definition will be applied strictly and have a narrow scope and will therefore only apply to a limited group of employees.

If the employee fulfils the criteria for being a self-organizer, the employee is exempt from the obligation to register their working time. The exemption also means that the rules in the Danish Working Time Act on daily and weekly rest periods and the 48-hour rule will not apply to the employee/self-organizer.

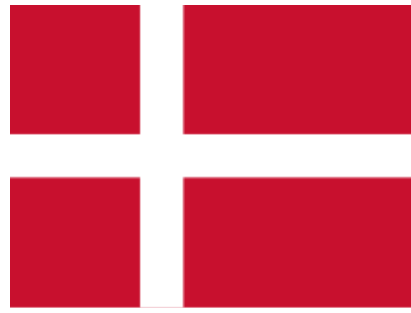


### III. What can be considered as an objective and reliable working time registration in both countries?

Belgian legislation does not impose strict formal requirements in this respect, and thus social inspection services and case law has already accepted a wide range of solutions, such as a puncture clock, a tachograph or daily performance sheet (for drivers) or an excel sheet which is filled out daily and accessible for the concerned employee 24/7 via a shared drive.

When employees claim arrears in overtime pay and submit less formal evidence (e.g. excerpts from own tracked performance times, indirect proof via the opening hours of the shop they work in, etc.) judges are generally more sceptical.





### III. What can be considered as an objective and reliable working time registration in both countries?

In Denmark the employer has a free choice of how to organize the time registration system and law is not prescriptive on the choice of time registration system. An employee's working time can therefore be recorded in either an analogue or digital system.

Currently there is no requirement to register the start and end times of working hours, as the only requirement is to register the total daily working hours. However, the right to a daily rest period of 11-hours still applies, and if the working time registration system is not set up to show the start and end times of each workday, the employer might have difficulties proving that the employee has received 11 hours of rest between two workdays.

Further, the requirement to register the total daily working hours can also be met by only registering deviations in the planned or agreed working hours. This allows for the employer to fill out a schedule of the working hours in advance, to which the employee only needs to register deviations.

Employers must ensure that an employee has access to their own registration information throughout their employment. The rationale for this accessibility is to ensure that the employee can review the information and utilize it to raise potential claims for compensation if there has been a breach of the rest time requirements.



#### IV. What do employers risk when they do not implement the necessary time registration tools (e.g. overtime versus compensatory rest claims)?

Employers that allow employees flexibility in their working time without any form of working time registration, or do not respect working time legislation in general, could be imposed with fines up to 4.000 EUR per employee concerned. For first infringements, the social inspectorate often imposes less severe sanctions (e.g. a warning or a smaller fine).

In general, when working time is not registered properly, employees focus their claims on overtime pay rather than on compensatory rest. Up until now however, Belgian labour tribunals and courts are reluctant to accept such claims, if the sole argument of the employees relate to the absence of a working time registration tool (and the alleged inability of the employee to prove the overtime performed, as a consequence thereof). The 2019 ECJ ruling has thus so far not led to a change in burden of proof or the outcome of cases. Such claims can of course be more successful when they can be substantiated with real proof of performed overtime.



#### IV. What do employers risk when they do not implement the necessary time registration tools (e.g. overtime versus compensatory rest claims)?

Despite the new time registration obligations an employer cannot be directly sanctioned for failing to implement a working time registration system. However, if an employee claims that his or her rights to a daily rest period of 11 hours, a weekly rest period of 24 uninterrupted hours rest in addition to the 11 hours' daily rest, or that the average working time for each seven-day period has exceeded 48 hours over a 4-month reference period, the courts could draw an adverse inference from an employer's failure to comply with the time registration requirements. Non-compliance with the 48-hour rule can lead to a compensation of DKK 25,000 corresponding to approximately 3,350 EUR.



## Belgium - Denmark: Conclusion



The impact of CCOO-ruling has been somewhat different in Belgium and in Denmark. Whilst the ruling has led to new legislation and an obligation for employers in Denmark to implement a working time registration system, it has been the assessment in Belgium that national legislation was already in compliance with EU-law.

The main incentive to register working time in Belgium and Denmark is also rather different. Whilst in Belgium employees will primarily focus on claiming overtime pay, the aim of registering working time in Denmark is to ensure that employees receive the rest they are entitled to outside of working hours.

Whilst the differences might seem striking at first glance, the actual impact of the CCOO-ruling in Belgium and in Denmark is perhaps somewhat similar in practice. In both countries there is an absence of strict formal requirements to the working time registration system. Belgian courts have accepted a wide range of working time registration solutions, and in Denmark, despite there being a general obligation to have a working time registration system in place, there is a quite flexible and practical approach to the functionalities of such system.

In Denmark, the absence of a working time registration tool may lead to compensation to the employee, if the employee makes a claim for breach of the 48-hour rule. It is assumed that the courts in such instances will attach importance to the employee's own calculation of working hours. In Belgium, court practice shows that the employee must be able to support a claim for damages with other evidence, even if the employer has failed to implement a working time registration tool.



**Karel Devloo**  
Partner at  
Sotra HR Lawyers

Karel Devloo is Partner at Sotra, the Belgian member of Ellint, and is based in Brussels.

Karel is specialized in labour law, with a particular focus on working time and cross-border employment questions.

He assists his clients in Dutch, English, French and Spanish.

Read more [here](#).



**Mads Bernstorn**  
Partner at  
Mette Klingsten  
Law Firm

Mads Bernstorn is a partner at Mette Klingsten Law Firm, the Danish member of Ellint, and is based in Copenhagen.

Mads is specialized within the field of labour and employment law and data protection. Mads assists companies in Denmark as well as abroad in all matters relating to employees and managing directors.

Read more [here](#).