

Samuli Hiilesniemi

The Regulation of the Measurement of Working Time in Finland

ABSTRACT

Finland has a long history of regulating the recording of working time. The current law is, for the most part, relatively well aligned with Working Time Directive 2003/88/EC, as the primary obligation for employers to maintain a “working time register” is objectively unambiguous and well established in jurisprudence. Recent changes in the law, however, have seen the introduction of highly flexible working time arrangements that are not necessarily in compliance with the minimum requirements of the Directive. These requirements were clarified by the Court of Justice of the European Union in case C-55/18, which has not been widely discussed or assessed in relation to the current legislation in Finland. This paper aims to provide insights as to why the judgment has attracted so little scrutiny in Finland to date and answer the question of whether it still could, or should, lead to changes in the national legislation.

INTRODUCTION

As a Nordic country, the common characteristics of the Nordic labour market model, i.e. the important role of the social partners and the key function of collective agreements as a tool for regulating the labour market, are highly applicable to Finland. Although in recent years there have been marked changes in the country due to political and socio-economic developments, trade union density in Finland remains generally high, and most segments of the labour market are covered by collective agreements at the industry level.¹ Consequently, collective agreements remain the most important tool of

labour market regulation. While there are numerous areas in which derogations from the Working Time Act, Finland’s primary legislative instrument on working time, are allowed in collective agreements at the national level, Section 32, which deals with the recording of working hours, i.e. the “working time register”, is not among them. As a result, the obligations concerning the recording of working time are not stipulated in collective agreements and are, rather exceptionally, found only in the law.

The European Court of Justice (CJEU) delivered its judgment on case C-55/18 – Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE on 14 May 2019. The request for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union (TFEU) submitted by the Audiencia Nacional (the National High Court of Spain) “concerns the interpretation of Article 31(2) of the Charter of Fundamental Rights of the European Union (‘the Charter’), Articles 3, 5, 6, 16 and 22 of 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) and Article 4(1), Article 11(3), and Article 16(3) of 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).” The request was made in the course of “proceedings between the Federación de Servicios de Comisiones Obreras (CCOO) and Deutsche Bank SAE concerning the lack of a system for recording the time worked each day by the workers employed by the latter.” In summary, the outcome of the judgment was that the Working Time Directive “must be interpreted as precluding a law of a Member State 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”.²

In Finland, correctly maintained working time records have been of crucial importance in jurisprudence when disputes have arisen between employers and employees

regarding the number of hours worked and the wages paid. The legislation seeks to ensure that all the necessary information is clear, accessible, and easy to read, without requiring separate calculations or posing any additional difficulties. As a general principle, it should always be easy to determine that the provisions of the law have been complied with.³ So far, the obligation to record working time has not, in and of itself, been a major issue in Finland. While disputes related to working time are not uncommon, they rarely concern the existence of, or access to, these records as such, and therefore it could even be said that at the national level the regulation fulfils its purpose to a large degree. Yet recent developments in the law raise questions about the adequacy of the current regulation. The purpose of this paper is to outline the legal context in Finland on which the C-55/18 judgment could have an effect, to provide some insight into the national discourse on the issue (or lack thereof), and to assess the current legislation with regard to the judgment. Since the current law in Finland contains a provision that corresponds directly to the primary obligation clarified by the CJEU, i.e. the requirement to set up a system for measuring the working time of each employee, this assessment focuses on the interpretation and application of that specific provision. Unless otherwise indicated, the evaluation of other provisions of the national law has intentionally been omitted.⁴

A BRIEF HISTORY OF REGULATIONS ON THE MEASUREMENT OF WORKING TIME IN FINLAND

Given Finland's long history of regulating the recording of working time, which, to some extent, predates the country's declaration of independence on 4 December 1917, it may seem somewhat surprising that the recent ruling of the CJEU in case C-55/18 has provoked little interest, academic debate, or requests to review the current legislation on the measurement of working time. In fact, barring a few exceptions, it could be said that the judgment has been met with silence in the national context. It provoked only a single immediate (public) reaction from the trade unions. Helena Lamponen (LL.D.), Adjunct Professor and Director of Legal Services at Akava Special Branches⁵, openly criticised the national implementation of the Working Time Directive and Finland's then upcoming Working Time Act in view of the CJEU's ruling.⁶

The legal background of the provisions on working time recording can be traced back to the adoption of the law on an eight-hour work day⁷, as approved by the Finnish Parliament on 27 November 1917. This law included the direct obligation for employers to keep "lists"⁸ of the overtime and emergency work hours of their employees as well as the increments paid for this type of work.⁹ These provisions already made it mandatory for employers to present the documentation to labour inspection authorities and employee representatives upon request, and employers were obliged to provide monthly excerpts from these lists to employee representatives free of charge upon request.¹⁰

The obligation established in the 1917 law was also incorporated into the legislation that replaced that law. In the

Working Hours Act of 1946¹¹, only slight changes were made to the wording of the corresponding provision, and it remained under the same Section dealing with work schedules. In essence, apart from a few minor amendments¹², the obligation was left more or less unaltered over several decades.¹³ Although few changes were made to the legislation over the years, certain amendments – or at least clarifications regarding obligations – were made in the course of legal proceedings. For instance, the Supreme Court ruled that employees were entitled to the compensation for overtime provided for in the law calculated on the basis of their own working time records if the employer had failed to keep a working time register and could not prove that these records were incorrect.¹⁴

For the purposes of this paper, it is of little interest to delve further into the history of the regulations on working time recording, especially given that these provisions have neither drawn much scholarly interest nor been revisited very often in the case-law. In this respect, it is reasonable to assume that the legitimacy of the obligation has for the most part gone unquestioned, and therefore the question of its applicability has not been, or at least has not been considered to be, very problematic. The more significant and interesting amendments regarding the obligation were made when the Working Hours Act of 1996 was adopted, which also aimed to implement Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time. The 1996 Act repealed the previous Working Hours Act as well as all other legislation¹⁵ dealing with working time.

INTRODUCTION OF THE WORKING HOURS REGISTER IN THE WORKING HOURS ACT OF 1996

The Working Hours Act entered into force in Finland in 1996, at the same time as the Working Time Directive 93/104/EC became binding for the country. It was drawn up to meet the requirements set out in the Directive, and in this respect the outcome can be described at the very least as satisfactory. Although the law contains several provisions that date back to the working time regulations of the 1940s, the requirements set out in the Directive were carefully and comprehensively assessed and taken account of in the government proposal.¹⁶ Regarding the obligation to record working time, and whether or not the previous provisions are considered to have included a direct obligation to measure all working time or were somewhat inconclusive on the matter (as might be argued in view of the fragmented nature of the legislation and the non-exhaustive jurisprudence), the 1996 Working Hours Act had a different background. Directive 93/104/EC, which, as the government proposal affirms, requires employers to keep records of all the working hours of each employee, is clearly, albeit briefly cited as the legal background of the obligation.¹⁷

Contrary to the previous legislation, this Act no longer referred to working time "lists" but instead introduced a new concept in Section 37 called the "working hours register". SubSection 1 of Section 37 stipulated the employer's obliga-

tion to record the hours worked and the compensation received by each employee without differentiating between regular hours, overtime, or Sunday work. The fragmented character of the previous legislation was acknowledged in the government proposal, which went as far as to suggest that the differences in methods for measuring working time were primarily due to established practices in the different sectors, and that the factual relevance was negligible.¹⁸ In this sense, the obligation was transformed from a somewhat vague and inconsistent burden for employers that varied from sector to sector into a clear-cut obligation based on what at that time was a new supranational law.

The new provision gave employers a choice between two different methods for registering working time, each of which would provide both employees and Occupational Safety and Health inspectors with sufficient information about working hours and the corresponding compensation. Employers were free to choose which of the two methods to apply. Both methods, which are examined in further detail below, are still available and identical with those foreseen in the current law.¹⁹ What is interesting, however, is that the government proposal clearly took the view that the two methods were also analogous with the amended provisions of the 1946 legislation. Considering the fact that there was no legal requirement to extend the working time “lists” to also cover regular working hours before the adoption of the new 1996 Act, this seems a little contradictory.²⁰ Nevertheless, in the view of the Finnish legislators the new regulation was very similar to its predecessor and any differences were minor.

In addition to the two alternatives for measuring working time, the 1996 Working Hours Act introduced certain options for employers to conclude agreements with employees on the payment of additional, overtime and Sunday work as a separate monthly compensation, and to agree on the performance of “preparation and completion work”.²¹ If such an agreement was concluded, the employer was allowed to enter an estimate of the amount of additional, overtime and Sunday working hours per month in the register.²² Employers were obliged to show the working time records to the Occupational Safety and Health inspectors and to the employees’ shop stewards.²³

It was already evident during the drafting of the 1996 Working Hours Act that the importance of flexible working time arrangements would increase. The Act established the possibility for employers and employees’ representatives to conclude local agreements on working hours, which it was believed could potentially have a major impact on the calculation of working time at the local level. This is clearly illustrated in the government proposal, which indicates that employees and their representatives, as well as Occupational Safety and Health inspectors and shop stewards, should be entitled to request a written account of the entries in both the working time register and the work schedule. The government proposal noted that the importance of work schedules as an indicator of regular working hours would increase as flexible working time arrangements became more prevalent. It is reasonable to assume that the idea here was that with flexible arrangements, discrepancies between the general principle established in the law and local agreements offering alternative arrangements to regular working time would increase.

Such discrepancies would not necessarily be identifiable simply by looking at the working hours register indicating the hours worked by an employee unless the “regular” hours agreed locally were also known. Consequently, the importance of work schedules, particularly in the context of disputes concerning the calculation of overtime compensation, is emphasised.²⁴

THE ‘FLEXIBLE’ WORKING TIME ACT OF 2019

In the Working Time Act of 2019, the provisions on the recording of working time are to be found under Chapter 7, entitled “Working time records”. This chapter includes the provisions on the working time adjustment scheme (Section 29), Work schedule (Section 30), Motor vehicle driver’s personal logbook (Section 31) and Working time register (Section 32). Although all the provisions of Chapter 7 are more or less connected to the application of Section 32, the assessment that follows focuses specifically on this Section covering the working time register.

The initial provisions of Section 32 of the Working Time Act are very similar to those in the 1996 Act. The general obligation of employers to keep a record of the hours worked and the remuneration paid thereon for each employee is stipulated and, as in the previous legislation, two options are provided for fulfilling this obligation. With the first option, the working time register contains entries on the regular, additional, overtime, emergency and Sunday work hours as well as the remuneration paid thereon. In other words, such a register documents all the work performed by an employee, regardless of the type of hours worked. This type of register has typically been considered suitable for employees who receive a monthly salary.²⁵ The second option is to keep one register documenting all regular hours worked and a separate register documenting the overtime, emergency, and Sunday work hours and the increments paid. This method would typically be suitable for employees on hourly or incentive pay.²⁶ The employer is free to choose between these two options regardless of the type of work, and the register can be maintained in the context of payroll accounting provided that all the necessary information is documented and can be clearly understood without the need for separate calculations.²⁷ As stated in the government proposal, both methods provide the employee and the Occupational Safety and Health inspector with sufficient information on the hours worked and the remuneration paid.²⁸ It should be noted that in the event of disputes, the working time register is deemed a reliable record of the working hours performed. If an employer does not maintain working time records, the matter will typically be decided in the employee’s favour provided that their claims are not completely unsubstantiated.²⁹

As a minor exception to the primary rule, Section 32 also allows the employer to estimate the number of additional, overtime and Sunday work hours per month if an agreement of the type referred to in Section 38 has been concluded.³⁰ This type of agreement is usually limited to employees working as managers or supervisors. If an agreement

regarding monthly compensation has been concluded only for additional, overtime or Sunday working hours, the estimated number of hours may be recorded in the working time register. Regarding preparation and completion work, the employer and employee may also agree on the payment of separate, for example, monthly compensation, based on the employee's overtime compensation. In this case, too, an estimate of the number of hours may be recorded in the working time register.³¹ The employer is obliged to keep the working time register until the claim period for remuneration as stipulated in Sections 40 and 41 of the Working Time Act has expired.³²

Pursuant to Section 32.2, in “flexiwork”³³ the employee is obliged to provide the employer with a list of hours worked during regular working time for each pay period such that the list indicates the weekly working time and weekly rest period. By way of derogation from SubSection 1, the employer is obliged to record only the information provided by the employee in the working time register. According to Section 32.3, when the employer and the employee have agreed on a “working time account”³⁴ as defined in Section 14, the employer obliges to keep a record of the items saved by the employee into, as well as of taking the items transferred, in the form of time off, from the working time account.

And finally, Section 32.4 stipulates that employees are entitled to receive a written report of the entries that concern them in the work schedules and working time register on request. The employer is also obliged to provide the Occupational Safety and Health inspector and a shop steward, elected representative or other employee representative representing an employee with a copy of the working time register, the agreements concluded pursuant to Sections 11, 13 and 36, the “working time adjustment scheme” referred to in Section 29 and the work schedule referred to in Section 30 on request. Breaches of the obligations regarding the working time register are subject to penalties pursuant to Chapter 47 of the Criminal Code of Finland, along with other employment offences. According to Section 2 of Chapter 47, neglect or misuse of the working time register can be punished as a working hours offence with a fine or imprisonment for up to six months.³⁵

ASSESSMENT OF THE WORKING HOURS REGISTER IN LIGHT OF THE CJEU'S RULING IN C-55/18

At first glance, the provisions of Section 32 of the Working Time Act of 2019 do not seem very different from those of Section 37 of the 1996 law. The mandatory nature of the obligation is, perhaps, more clearly stated, as the government proposal makes it clear that deviations from the working time register provisions are not allowed even in collective agreements at the national level. The two options available to employers regarding how to register the working hours of their employees are identical to those in the previous legislation. There are, however, certain aspects that merit further assessment. The first is the working time account as estab-

lished in Section 14 of the 2019 Act. This Section defines the working time account as “a system for reconciling working time and time off by which working time, earned time off or monetary benefits converted into time off to be saved and combined”.³⁶ The procedure for the recording of working time when an employer and an employee have agreed on a working time account is defined in Section 32.3, as described above.

Second, and perhaps the more interesting and problematic of the two, is the introduction into the law of “flexiwork”, as defined in Section 13 of the Working Time Act. Having due regard to the limited discussion that the C-55/18 ruling has provoked in Finland, this provision is the most prominent issue concerning the measurement of working time under the current law. As stated in the government proposal, flexiwork may lighten the administrative burden for employers, but it also raises questions about the adequacy of the provisions regarding the working time register.³⁷ Flexiwork is essentially a system whereby the employer and employee agree that the employee is allowed to choose the placement and place of performance of at least half of their working time independently.³⁸ Regarding flexiwork, Section 32 (the provision regulating the working time register) establishes that the employer fulfils their obligation to document the employee's working hours simply by adding the weekly working hours reported by the employee to the working time register.

While it may be evident from the wording of Section 32 that the employer's burden is somewhat lighter as regards the recording of working time in connection with flexiwork, this is also acknowledged in the government proposal. The employer is in compliance with Section 32 provided that the working time register is based on the list of hours of regular working time submitted by the employee for each payment period.³⁹ Nevertheless, it is the responsibility of the employer to ensure that the employee provides sufficient information, and that this information is entered into the working time register. The idea here is that the supervision of the employee's rest periods and maximum working hours is carried out simultaneously in this process. If the employer discovers that an employee is not complying with the provisions of the Working Time Act regarding rest periods or maximum working hours, they are obliged to intervene.⁴⁰

Although the government proposal emphasises that it is the employer who is strictly responsible for fulfilling this obligation, there is no mention, nor are any examples given either in the proposal or in the Act, of how such a system in which the employee submits the required information on working hours is to be set up. Furthermore, there is no mention of the employer being responsible for registering any working time-related information other than the working hours. It is not clear if the obligation in this regard extends to the recording of, for example, minimum daily rest.⁴¹ In practice, the working time register based on information supplied by the employee does not allow for the proper recording of daily rest periods or weekly working time because, pursuant to Section 25.1 of the Working Time Act, in the case of flexible working hours or flexiwork the daily rest period may be reduced to seven hours on the employee's initiative.⁴²

As the CJEU stated in case C-55/18, in order to ensure the effectiveness of those rights provided for in Directive 2003/88

and of the fundamental right enshrined in Article 31(2) of 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.”⁴³ With flexiwork, the responsibility for measuring working time as defined in the Working Time Act is, in practice, placed on the employee. The legislation does not define an objective, reliable and accessible system which guarantees the employers’ obligation in this regard.⁴⁴

It was already noted in the feedback gathered during the drafting of the legislation and further acknowledged in the government proposal that questions might arise regarding how the obligation is fulfilled in connection with flexiwork. It is therefore hardly surprising that after the CJEU’s ruling in C-55/18 it can legitimately be argued that the Finnish legislation is not fully in line with the Directive due to shortcomings in the provisions regarding flexiwork. This was also one of the examples presented by Lamponen before the new legislation entered into force.⁴⁵ Lamponen argued that employees employed in flexiwork arrangements do not fall within the scope of the derogations stipulated in Article 17.1 of the Directive⁴⁶ and that they do not have working-time autonomy. Accordingly, flexiwork workers fall within the scope of the full working hours protection set out in Working Time Directive 2003/88/EC. The possibilities for derogating via legislation or collective agreements, as set out in Article 17.2 and 17.3 of Working Time Directive 2003/88/EC, are applicable only to certain, limited functions.⁴⁷ It is therefore clear that it should not be possible to establish a general cross-sectoral exception to the applicability of the Directive simply by referring to the nature of the work in question. Furthermore, as Lamponen points out, even in cases where the criteria set out in Articles 17.2 and 17.3 are met, it would still not be possible to derogate from the maximum weekly working time as stipulated in the Directive.⁴⁸ This argument is quite easy to accept. The Finnish legislation regarding flexiwork may indeed need to be reviewed.

One interesting point that can be made here is that before the 2019 Working Time Act and the flexiwork regulations entered into force, certain typical working time arrangements were, in fact, less problematic as regards compliance with the Directive. For instance, so-called “total working time” arrangements have been – or at least were – typically established in multiple fields of expert work, based on the idea that the employee determines their tasks independently to such a degree that the organisation of working time in this type of work should also be left solely in the hands of the employee.⁴⁹ The legal basis for this type of arrangement was usually the argument that this type of work fell outside the scope of the 1996 Working Hours Act altogether. It must be noted that such arrangements were, of course, easily contested, and have generated a significant amount of case-law at the national level and also been reviewed by the CJEU.⁵⁰ Strictly from the point of view of compliance with the Directive, however, the concept of total working time is not problematic in itself, provided that the actual circumstances of the work conducted correspond to the criteria set out in Article 17. The problem has been the application of this or similar concepts in work where the working time-related independence is more or less

fictional, and where derogations would not be allowed under Article 17.1, i.e. where it is not the work of managing executives or other persons with autonomous decision-taking powers, family workers, or workers officiating at religious ceremonies in churches and religious communities that is at issue. Nevertheless, since the legislator has apparently accepted the idea that today’s labour market needs more flexibility in general, legal provisions for flexible working time were needed. To be precise, it is questionable whether the introduction of flexiwork has established a clear legislative basis for this type of flexible working time arrangement, which was somewhat problematic or effectively not possible in the past. As outlined above, the main issue is that in order for Directive 2003/88/EC to be properly implemented, Section 32 of the Working Time Act would need to be amended.

ENDNOTES

- 1** Unionisation among wage earners was at 67 percent, according to the 2021 annual Working Life Barometer (Finnish: Työolobarometri) published by the Ministry of Economic Affairs and Employment of Finland. According to the latest figures, total collective bargaining coverage is at around 89 percent (88.8 percent, OECD, 2017).
- 2** C-55/18, paras 1,2 and 71.
- 3** Cf. Hietala et al 2020, p. 233.
- 4** For example, the national regulations on daily and weekly rest periods as well as maximum working time per week would, in most cases, be highly relevant. Here, primarily due to the limited scope of this paper, these aspects are not directly assessed.
- 5** Akava Special Branches (Finnish: Akavan Erityisalat) is a multidisciplinary trade union and service organisation with 22 independent member organisations. The members work in expert and managerial positions in the fields of culture, administration, communications and wellbeing. According to Akava, on 1 January 2022, Akava Special Branches had 26,267 active members.
- 6** Lamponen 2019, pp. 32–34; Lamponen's main criticism relates to the regulation of working time and the collective agreement for universities and its application to teaching and research staff.
- 7** This Act (Finnish: laki kahdeksan tunnin työajasta 103/1917) is widely considered a landmark in the development of employee protection under Finnish labour legislation. Despite this, scholars have shown little interest in the obligations which, over time, were enshrined in the concept of the "working time register" and which are in force under the current Working Time Act 872/2019. The historical development of the recording of working time could be the sole topic of an entire paper and is therefore not discussed in further detail here.
- 8** The Finnish term used in the 1917 Act is *luettelo*, which translates to either "list" or "catalogue", depending on the context.
- 9** The general assumption here was apparently that the eight-hour work day was standard and, therefore, lists were needed only to record overtime and emergency work in excess of the typical eight hours.
- 10** Laki kahdeksan tunnin työajasta 103/1917, Section 7.
- 11** The Working Hours Act (Finnish: Työaikalaki 604/1946).
- 12** Section 20 was amended three times while the Act was in force (89/1955, 189/1976, 620/1976). Over the course of the twentieth century, legislators introduced separate acts governing working hours in specific sectors, and in general the regulations on working time became somewhat fragmented. The Working Hours Act on Agricultural Work (31/1970), the Working Hours Act for Caretakers (284/1970), and the Working Hours Act for Shops/Retail and Offices (400/1978), all of which contained similar provisions (in Sections 17, 14 and 12, respectively) are three examples. This list is not exhaustive.
- 13** The obligation for employers to record working time was included in Section 20 of the 1946 Act. The provision is almost identical to that in the original Act regarding the obligation to keep lists of any overtime and emergency work performed, as well as the corresponding increments paid. The 1946 Act did, however, expand the obligation to include Sunday working hours as well as the increments paid for this working time. The obligation to present the documentation was amended and became more nuanced: the term "employees' representative" was replaced with the term "shop steward", the requirement to present monthly excerpts was replaced with the obligation to provide information in writing and on every note or entry included in the list regarding each employee. The information was to be provided to either the employee or their representative.
- 14** KKO 1973 II 55: The case-law on the importance of the obligation to keep "lists" of working hours before the adoption of the 1996 Working Hours Act is not very comprehensive and could be criticised as somewhat inconsistent. Cf. KKO 1995:19, where both the District Court and the Court of Appeal found the employer to be indisputably in breach of the obligation, but the Supreme Court did not consider the fact to be relevant and ruled in favour of the employer who, according to the judgment, was not aware of the individual employee having worked overtime on a daily basis.
- 15** With the exception of the Seamen's Working Hours Act (296/1976), which is still in force today.
- 16** A government proposal (Finnish: Hallituksen esitys, HE), sometimes referred to as a government bill, is the finalised legislative motion which describes the objectives of new legislation to be enacted, justifies the amendments to current law, and indicates the relation of the proposed law to earlier legislation. Government proposals are often referred to when establishing the interpretation and/or purpose of the law, regulation or even a single provision. The finalized government proposal (vp) is issued to the parliament. After the parliament has approved the proposal, it will be confirmed by the President of the Republic and published in the Finlex Data Bank.
- 17** HE 34/1996 vp, p. 28.
- 18** HE 34/1996 vp, p. 66.
- 19** See *infra*, notes 22 and 24.: While there are no statistics, for instance, on which method was prevalent on the labour market and no exact information on the typical technical arrangement of these alternatives, it is evident that nowadays the recording is done by digital means. Since the introduction of the 1996 Act, a wide range of solutions in the form of apps and other systems that provide the means for working time recording has become available. It is reasonable to assume that the keeping of records in written form is now quite rare, and predominantly, if not exclusively, used in smaller enterprises with only limited personnel.
- 20** See KKO 1995:19, *supra* note 14.
- 21** The employer and employee may agree that the employee, without giving separate consent, will be required to perform work that is essential in order for other employees in the workplace to work throughout their normal hours or work that is necessary in shift work to allow information to be exchanged at the change of shifts.
- 22** Working Hours Act 1996, Section 37.
- 23** The term 'shop steward' is consistently used in the English translations of the Finnish law. A distinction should be made between a shop steward, or union steward, and elected representatives or other employee representatives, as the former is always affiliated with a trade union.
- 24** HE 34/1996, pp. 26, 67.
- 25** Hietala et al 2020, p. 233.
- 26** Hietala et al 2020, p. 233; See also Äimälä, Åström and Nyssölä, 2012, p. 112.
- 27** Hietala et al 2020, p. 233.
- 28** HE 158/2018, p. 113.
- 29** See *supra*, note 14.
- 30** In short, the employer and the employee may agree, in writing, on the payment of the remuneration for additional work and overtime and the Sunday work increments as a separate monthly remuneration in respect of employees: 1) whose primary duty is to manage and supervise the work of other employees; or 2) who have concluded an agreement on flexiwork as provided in Section 13. Nevertheless, the amount of the remuneration should be equivalent with the remuneration for overtime determined in accordance with Section 20.

- 31** Hietala et al 2020, pp. 233-234.
- 32** In principle, claims should be filed within two years of the end of the calendar year in which the right to the remuneration arose, or within two years of the end of employment.
- 33** See *infra*, note 38.
- 34** See *infra*, note 36.
- 35** Criminal Code of Finland (39/1889), Chapter 47, Section 2.
- 36** See Working Time Act (872/2019), Section 14; Author's note: Working time accounts as such are nothing new in Finland. Typically, these are arrangements concluded in collective agreements. The working time accounts established at a workplace do not, automatically, fall under the scope of Section 32.3 of the Working Time Act. Therefore, the employer's obligation to record working time when utilising a working time account may vary depending on whether the account is based in the law or in a collective agreement.
- 37** HE 158/2018, p. 41.
- 38** Working Time Act, Section 13; the agreement on flexiwork requires the parties to agree at least on 1) the days to which the employee may allocate the working hours, 2) the placement of the weekly rest period, 3) the fixed working hours, if any, however, not their placement between 23:00 and 06:00, and 4) the working time applicable after the expiration of the agreement on flexiwork. The agreement must be concluded in writing and the weekly regular working time may not exceed 40 hours on average over a period of four months.
- 39** The employee's notes should also indicate the weekly working time and weekly rest periods.
- 40** HE 158/2018, p. 113; Hietala et al 2020, p. 234.
- 41** Lamponen 2019, p. 33.
- 42** *Ibid.*; Lamponen argues that the possibility to reduce daily rest in both flexible working hour and flexiwork arrangements does not meet the criterion of a minimum of 11 hours of rest over a 24-hour period, as stipulated in the Directive, if no compensatory rest is allowed. Authors note: Section 12 on flexible working hours as such does not appear to be problematic, but in theory the problem persists due to Section 25.1.
- 43** C-55/18, para. 60.
- 44** Lamponen 2019, p. 34.
- 45** Lamponen 2019, pp. 33-34
- 46** The member states may derogate from Articles 3 to 6 (daily rest, breaks, weekly rest period and maximum weekly working time) and 16 (reference periods) if the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves in the employment in question. In flexiwork, quite simply, these conditions are not met.
- 47** Here, the Directive allows derogations (a) in the case of activities where the worker's place of work and his place of residence are distant from one another, including offshore work, or where the worker's different places of work are distant from one another, (b) in the case of security and surveillance activities requiring a permanent presence in order to protect property and persons, particularly security guards and caretakers or security firms, (c) in the case of activities involving the need for continuity of service or production, and (d) where there is a foreseeable surge of activity. The subparagraphs (c) and (d) include several examples of these type of activities, where derogations can be made in accordance with Article 17 paragraph 2.
- 48** Lamponen 2019, pp. 33-34.
- 49** The Collective Agreement for Universities includes provisions for the "total working time of teaching and research staff". There are many other examples. For instance, the collective agreement for theatre, the collective agreement for trade union officials, and the collective agreement in the teaching sector have either had or still have active provisions governing total working time. Furthermore, it could be pointed out that in the field of legal expertise, where there are basically no collective agreements, this type of arrangement is typically incorporated into employment contracts. Unfortunately, there are no official statistics on the prevalence of such clauses at present. The Association of Finnish Lawyers issue has occasionally addressed the issue by publicly supporting the view that the work of, for example, an associate in a law firm should fall under the scope of working time regulation.
- 50** Cf. KKO 2018:10 and the preliminary ruling concerning this case, C-175/16 *Hälvä*.

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ABOUT THE AUTHOR

Samuli Hiilesniemi is a legal adviser at the Finnish Confederation of Trade Unions and is doing his PhD at the University of Helsinki. The subject of his PhD project and research interest is the interaction of the European Court of Justice with the Nordic labour markets. As a lawyer, he focuses on European and international labour law.

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