Organisation of working time. Codification

2002/0131(COD) - 31/05/2011 - Follow-up document

This Communication reviews the operation of Article 21 of Directive 2003/88/EC concerning certain aspects of the organisation of working time concerning **workers on board seagoing fishing vessels** flying the flag of a Member State ('SFVs'). The Directive is construed in a restrictive way, meaning that only those provisions concerning exclusively workers on board SFVs (and not any other workers) are analysed.

Article 21 of the Directive excludes workers on board SFVs from the scope of the general provisions of the Directive governing daily rest, breaks, weekly rest periods, maximum weekly working time and the length of night work. It lays down specific rules applicable to such workers regarding:

- entitlement to adequate rest and limitation of the maximum working time, including specific limits of maximum working time and minimum rest;
- entitlement to an uninterrupted rest not split into more than two periods, with a maximum interval between two consecutive periods of rest;
- the possibility of allowing, under certain circumstances, exceptions to the limits set in the Directive;
- work necessary for the immediate safety of the vessel or giving assistance to vessels or persons at distress at sea;
- the option to synchronise annual leave entitlement with the period during which fishing vessels are not allowed to operate.

The Commission carried out an examination based on the responses of the Member States and the social partners at European level to a questionnaire prepared for this purpose, as well as independent expert reports.

General assessment: Member States and the social partners consulted by the Commission were requested to give their overall assessment of Article 21 of the Directive, stating in particular whether its provisions remain appropriate, in particular as far as health and safety are concerned.

The main conclusions are as follows:

- special provisions concerning workers on board SFVs contained in Article 21 of the Directive should continue to apply. The article was considered to be appropriate by 12 Member States and the social partners were strongly in favour of maintaining a specific regulation concerning workers on board SFVs. However, the social partners stated that the clear limitations laid down in Article 21 of the current Directive concerning workers on board fishing vessels must be considered adequate';
- although not all Member States stated their position, nine indicated that they considered the current personal scope of application of the Directive to be adequate. Some Member States raised doubts as to whether the criterion of maximum working time was adequate, in view of the particular work patterns in the fishing industry and the difficulty of control and enforcement. **The difficulty in determining precisely the actual working hours on board** is considered to be the most frequent inspection problem. Moreover, the inspection is usually carried out in ports only. According to some Member States, monitoring rest periods is less difficult to carry out in practice;
- compliance with the uninterrupted six hours of breaks poses practical problems in some Member States. It is generally accepted that Article 8 concerning the length of night work should not apply to workers on SFVs. Specific legislation covering the length of night work of workers on board SFVs was not considered warranted either;
- the scope for granting exclusions from the general working time patterns set for workers on SFVs was considered a necessary mechanism of flexibility.

Conclusions: with full respect for the autonomy of the social partners, the Commission will continue to follow the negotiation process concerning incorporation of aspects of ILO Convention 188 concerning Work in the Fishing Sector (ILO 188) into EU law via a social partners' agreement in order to identify, in close cooperation with the social partners, any potential areas in which EU action is necessary or warranted. It will tie in any such action with the current revision of the Directive.

As a result of the consultation, the Commission has identified a number of areas requiring further attention. These are:

- **the situation of the self-employed**, who usually work on small vessels and are frequently share-fishermen, deserves a special focus, particularly in the context of ratification and implementation of ILO 188 by the Member States.
- the information provided by Member States is not sufficient to ascertain whether the **reference period not exceeding 12 months** referred to in Article 21 is always provided and respected;
- **ILO 188** only refers to minimum rest as a criterion to limit working time, while the Directive allows for alternative use of either minimum rest or maximum working time. Therefore Member States could either implement the minimum rest criterion alone or both maximum working time and minimum rest in order to comply with both instruments. This solution is compatible with this Directive, as long as any provisions of the latter which are more favourable for the workers are respected. The right to uninterrupted periods of rest is particularly important (as no similar provision exists in ILO 188) and should be respected;
- special attention should be paid to the **medical supervision of seafarers** working during night periods. A number of Member States decided to apply their general legislation concerning night work to workers on board SFVs, even though some Member States have specific legislation regulating other aspects of working time on board SFVs. Other Member States stated that there was no indication of any adverse effects of the current lack of regulation regarding the length of night work on the health and safety of workers. Some fishing methods require operation during night time. Poland stated that stricter provisions on night work on board SFVs would be strongly opposed by the workers themselves. France underlined that it would be justified to focus on the medical supervision of fishermen called upon to work at night;
- in one case (Spain) the **exception from working time rules is not justified** under any of the circumstances listed in Article 21.5. Exceptions should be proportional to the circumstances justifying them and should not cover the whole scope of the provision. The Commission will pay particular attention to verifying that the use of exceptions granted under Article 21.5 of the Directive respects these principles.
- in a broader context, the Commission notes that the prime objective of the Community strategy 2007-2012 on health and safety at work, supported by the Council Resolution of 25 June 2007 remains the continued improvement of working conditions, notably through a sizeable reduction in work accidents and occupational diseases. In order to achieve this goal, the correct and effective implementation of EU health and safety legislation must be reinforced while supporting SMEs, particularly in ‘high-risk’ sectors, such as construction, agriculture, fishing and transport. For this purpose, the Commission, through the new PROGRESS programme and in cooperation with the Advisory Committee, is currently preparing non-binding practical guides on the correct application of the Directives, particularly in the fisheries sector (for vessels less than 15 metres in length).