Organisation of working time. Codification

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This report from the Commission examines the operation of the provisions of Directive 2003/88/EC (the Working Time Directive) applicable to offshore workers, as required by Article 20(3) of the Directive. To recall, following the adoption of 2000/34/EC amending Directive 93/104/EC, Community law on the organisation of working time is now applicable to offshore workers. Member States were required to transpose the provisions of Directive 2000/34/EC into their national legislation by 1 August 2003 at the latest. In 2003, the above two Directives were codified and repealed by Directive 2003/88/EC ("the Directive"), which is currently the only text in force. Offshore work concerns only a few Member States and an estimated 30 000 or so workers. A single Member State – the United Kingdom – employs the vast majority (25 000) of offshore workers.

The applicable provisions: the Directive stipulates that derogations may be made from Articles 3 (daily rest), 4 (breaks), 5 (weekly rest period), 8 (length of night work) and 16 (reference periods), provided that the workers concerned are afforded equivalent compensatory rest periods. Member States may derogate from Article 19, and lay down a reference period of not more than twelve months for calculating the maximum weekly working hours.

Certain offshore work as defined in the Directive is performed from vessels or platforms in international waters. In such cases the question may arise as to what law is applicable to the contracts of employment. The report discusses the applicable provisions of the Rome Convention of 1980 which lays down the principle of freedom of choice by the parties concerned in situations where there is a conflict of laws.

Offshore work in the EU: most of the Member States – Austria, Belgium, Cyprus, the Czech Republic, Denmark, Greece, Estonia, Finland, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Portugal, Slovakia, Slovenia and Sweden – have no offshore work on their territory, including in their territorial waters. All these countries, with the exception of Denmark and Portugal, also state that no national companies are performing offshore work outside their territorial waters. In the Member States that have offshore work on their territory or national companies performing offshore work outside their territory, the situation and number of the workers concerned vary considerably. The United Kingdom is clearly in the lead in terms of the number of workers it employs in offshore work.

Use of derogations: the Commission’s report examines the extent to which individual Member States with offshore work on their territory have made use of their right to derogate from these provisions. The majority of Member States have not made use of the option to derogate and offshore workers are therefore covered by national legislation on daily or weekly rest periods, breaks and night work. The United Kingdom is the only Member State to have made full use of the scope for derogations for offshore workers.

Collective agreements: working time is traditionally covered by any collective agreements that exist. Given that the Directive lays down minimum requirements, collective agreements generally lay down rules that are more favourable for the workers, particularly as regard maximum weekly working hours.

Collective agreements may also play an important part in implementing the derogations provided for in the Directive as regards daily and weekly rest periods, breaks, night work and the reference periods (if the Member State in question has not laid down a reference period of one year by law).

The rate of coverage by collective agreements in the offshore sector varies widely. For example, there would appear to be no collective agreements in Poland or Ireland. In the United Kingdom, collective

agreements have been signed as from 1999, but they apply only to workers who are members of the trade unions that signed them and trade-union membership is fairly low (around 4 500 workers). In the

Netherlands, offshore workers are essentially employed by a company that is not covered by any collective agreement, while the collective agreements that exist in Denmark and Spain apply to a large proportion of workers since the rate of coverage by collective agreements is fairly high in those two countries (more than 80%). In Germany, the workers on the single platform that exists are covered by a

company collective agreement applicable to the regular staff on the platform, and a company-level agreement on working hours.

The average weekly working time of Danish offshore workers covered by a collective agreement is around 33 hours (rather than the 48 provided for in the Directive). In Spain, the collective agreement of the company Repsol lays down more favourable conditions as regards rest time (daily, weekly, annual). In Germany, the collective agreement provides for not more than 40 hours of work per week.

Accordingly, it would also appear that collective agreements, where they exist, provide for more favourable arrangements than the minimum requirements laid down in the Directive, particularly as regards maximum weekly working hours and annual paid leave.

Conclusion: the flexibility of the provisions of the Directive as regards offshore workers probably explains why the Member States are fairly unanimous that they are adequate for the sector in question and should not therefore be amended. Employers and employees, on the other hand, have not voiced their opinions following the consultation launched by the Commission.

Given the views expressed by the Member States concerned and the absence of comments by employers and employees, the Commission considers that no changes need to be made to the rules on the organisation of working time for offshore workers.