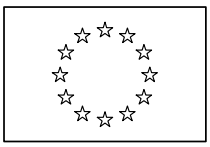

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.2006
COM(2006) 853 final

REPORT FROM THE COMMISSION

on the operation of the provisions of Directive 2003/88/EC applicable to offshore workers

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1. INTRODUCTION

1.1. Legal context

The scope of Council Directive 93/104/EC concerning certain aspects of the organisation of working time[1] excluded several sectors and activities, among which were fishing and other maritime activities. Offshore workers were therefore not covered by this Directive.

In 2000, the European Parliament and the Council adopted Directive 2000/34/EC[2] amending the abovementioned Directive 93/104/EC to cover sectors and activities excluded from that Directive. Following this amendment, 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[3] at the latest.

In 2003, the above two Directives were codified and repealed by Directive 2003/88/EC[4] (hereinafter referred to as "the Directive"), which is currently the only text in force.

1.2. The applicable provisions

Article 2(8) of the Directive defines "offshore work" within the meaning of the Directive as *work performed mainly on or from offshore installations (including drilling rigs), directly or indirectly in connection with the exploration, extraction or exploitation of mineral resources, including hydrocarbons, and diving in connection with such activities, whether performed from an offshore installation or a vessel*.

Article 17(3)(a) 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) *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*. Under the second paragraph of the same Article, however, these derogations are permitted *provided that the workers*

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1 Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, OJ L 307 of 13 December 1993, p.18.

2 Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 amending Council Directive 93/104/EC concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that Directive, OJ L 195 of 1 August 2000, p. 41.

3 See Article 2 of Directive 2000/34/EC.

4 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 L 299 of 18 November 2003, p. 9.

concerned are afforded equivalent periods of compensatory rest or that, in exceptional cases in which it is not possible, for objective reasons, to grant such equivalent periods of compensatory rest, the workers concerned are afforded appropriate protection.

Finally, Article 20(2) stipulates that *subject to compliance with the general principles relating to the protection of the safety and health of workers, and provided that there is consultation of representatives of the employer and employees concerned and efforts to encourage all relevant forms of social dialogue, including negotiation if the parties so wish, Member States may, for objective or technical reasons or reasons concerning the organisation of work, extend the reference period referred to in Article 16(b) to 12 months in respect of workers who mainly perform offshore work*.

To sum up, offshore workers are covered by all the provisions of the Directive. In the case of these workers, however, Member States may derogate from Articles 3, 4, 5, 8 and 16 and, by way of derogation from Article 19, lay down, by law or regulation, 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 Rome Convention of 1980 on the law applicable to contractual obligations[5] lays down the principle of freedom of choice by the parties concerned in situations where there is a conflict of laws. Under Article 3(1) of the Convention, *a contract shall be governed by the law chosen by the parties.* Where the contract of employment is concerned, however, this principle of freedom of choice by the parties is subject to certain restrictions. *Moreover, "a choice of law made by the parties shall not have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law of the country in which he has his habitual residence" (Article 5(2)),* and the Convention also lays down subsidiary rules to be applied if the parties make no choice. According to Article 6(2), in the absence of choice, *a contract of employment shall be governed a) by the law of the country in which the employee habitually carries out his work in performance of the contract, even if he is temporarily employed in another country, or b), if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated, unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract is to be governed by the law of that country*.

1.3. Justification for the report

Article 20(3) of the Directive stipulates that *not later than 1 August 2005 the Commission shall, after consulting the Member States and management and labour at European level, review the operation of the provisions with regard to offshore*

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[5] 1980 Rome Convention on the law applicable to contractual obligations (consolidated version) OJ C 027, of 26 January 1998 p. 34–46.

workers from a health and safety perspective with a view to presenting, if need be, the appropriate modifications.

For this purpose, the Commission drew up a questionnaire addressed to the Member States and consulted employers and employees at Community level. The purpose of this report, therefore, is to meet the obligation laid down in Article 20(3) of the Directive.

2. OFFSHORE WORK IN THE EUROPEAN UNION

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. The following table shows what work is currently being performed and the number of workers involved.

Member State	**In territorial waters**		**Outside territorial waters**	
	Description:	**No of workers**	**Description:**	**No of workers**
DE	Oil rig in North Sea	approx. 75	None	-
DK	None	0	Mærsk Oil and Gas AS Dong Exploration and Production A/S Amerada Hess ApS	approx. 2 000
ES	Gaviota fixed offshore platform (Cantabrian Sea, Bay of Biscay)	-	Casablanca (Mediterranean, off Tarragona) Poseidón (Gulf of Cadiz) fixed offshore platforms.	-

IE	Marathon Oil Ireland Limited	approx. 40		
FR	One-off drilling operations	approx. 50		
NL		approx. 50		approx. 2 300
PL		approx. 330		approx. 580
PT			Saipem Portugal operates 24 vessels and platforms	9
UK	Liverpool Bay Complex, operated by BHP Billiton Beatrice oil rig in the Moray Firth, operated by Talisman	86	85 oil platforms, 18 floating rigs and 167 gas platforms	25 000

3. USE OF DEROGATIONS

As mentioned above, the Directive authorises the Member States to derogate from Articles 3, 4, 5, 8 and 16. They may also lay down, by law or regulation, a reference period of not more than twelve months for calculating the maximum weekly working hours.

The extent to which Member States with offshore work on their territory have made use of their right to derogate from these provisions of the Directive therefore needs to be determined.

3.1. Germany

Working time for workers on the only German platform are governed by the Working Time Act [*Arbeitszeitgesetz*], a collective agreement and a company-level agreement on working time.

Organisation of work varies according to the categories of worker, but is generally based on two weeks on the platform alternating with two weeks' rest on land.

Workers are covered by provisions equivalent to those set out in Articles 3, 4, 5 and 8 of the Directive: daily rest is eleven consecutive hours, workers must have a break of thirty minutes after working for six hours, one day off per week is guaranteed (in principle, Sunday), and night work may not, in principle, exceed eight hours.

Germany has not made use of its right to lay down a reference period of twelve months for calculating the 48 hours, nor does the applicable collective agreement provide for a reference period of more than the normal four months.

Even though German legislation has incorporated a provision transposing Article 22 of the Directive (subject to prior approval by collective agreement), this option has not been applied in this sector.

3.2. Denmark

Denmark has adopted a text regulating working time for offshore workers[6]. It provides for a daily rest period of eleven consecutives hours for each period of 24 hours (equivalent to Article 3 of the Directive), a break after any six-hour period of work (equivalent to Article 4), and three consecutives rest-days on land for each period of two weeks at sea (equivalent to Article 5 in conjunction with Article 16(a)).

The text does not lay down any limit on the duration of night work.

Under Denmark's legislation, the daily rest period may be deferred or reduced by collective agreement. The individual contracts for workers not covered by a collective agreement may permit deferral or reduction (to a minimum of eight hours) of the daily rest period. If there is a derogation, a compensatory period of rest must be provided for.

Denmark's legislation provides for a reference period of one year for offshore workers.

Denmark does not use the option provided for in Article 22 of the Directive (individual derogation).

3.3. Spain

The provisions applicable to offshore workers are the general provisions set out in the *Estatuto de los Trabajadores*. There is no special regime for this sector therefore.

Derogations may be made from the minimum requirements laid down by law only on the basis of collective negotiations.

Similarly, the reference period may be extended to one year only on the basis of a collective agreement.

Spain does not use the option provided for in Article 22 of the Directive (individual derogation) as regards offshore workers.

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[6] Order No 630 of 1 July 2003 on certain aspects of the organisation of working time on offshore installations.

3.4. France

French drilling operations tend to be one-off projects of short duration (one to two months). There are consequently no specific provisions governing offshore workers involving the derogations permitted under the Directive.

3.5. Ireland

The offshore workers of the only company operating in Ireland – Marathon – are entitled to daily rest periods of twelve hours and breaks of 75 minutes. There is no time-limit on night work.

Seven days of work at sea appears to alternate with seven days of rest on land.

The reference period for calculating the maximum weekly working time is twelve months.

Ireland does not use the option provided for in Article 22 of the Directive (individual derogation).

3.6. Netherlands

Offshore workers are entitled to daily rest periods of twelve hours and breaks of one hour. Night work may not exceed 11 hours per period of 24 hours and there may not be more than 28 periods of night work per period of 13 weeks.

The reference period for calculating the maximum weekly working time (fixed at 40 hours) is, in principle thirteen weeks, but is increased to 26 weeks for workers with no fixed regular working hours and may be increased to 52 weeks only if the period of rest on land is interrupted by safety training.

3.7. Poland

Working hours in the sector are regulated by the general rules of the Labour Code. No derogations specific to the sector have been provided for.

Poland does not use the option provided for in Article 22 of the Directive (individual derogation).

3.8. Portugal

Saipem Portugal operates 24 vessels and platforms in various places (Australia, India, Russia, Far East). The company had only nine employee covered by Portuguese legislation, which contains no specific provisions for the sector.

3.9. United Kingdom

The United Kingdom has made use of the possibility of derogating from Articles 3, 4, 5 and 8. In the event of a derogation, workers must be afforded adequate rest.

The United Kingdom has also introduced, by law, a reference period of one year for offshore workers.

It has used the option provided for in Article 22 (individual derogation), but this derogation does not appear to be very widely applied among offshore workers; it is limited to certain specialised fields, such as diving operations and shipbuilding.

4. 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-level 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.

5. CONCLUSIONS

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.

Since the amendment introduced in 2000, the Directive covers offshore workers but gives the Member States the option of derogating from several of its provisions provided that the workers concerned are afforded equivalent compensatory rest periods.

It may be observed, however, that the majority of Member States have not made use of this option 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.

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.

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.