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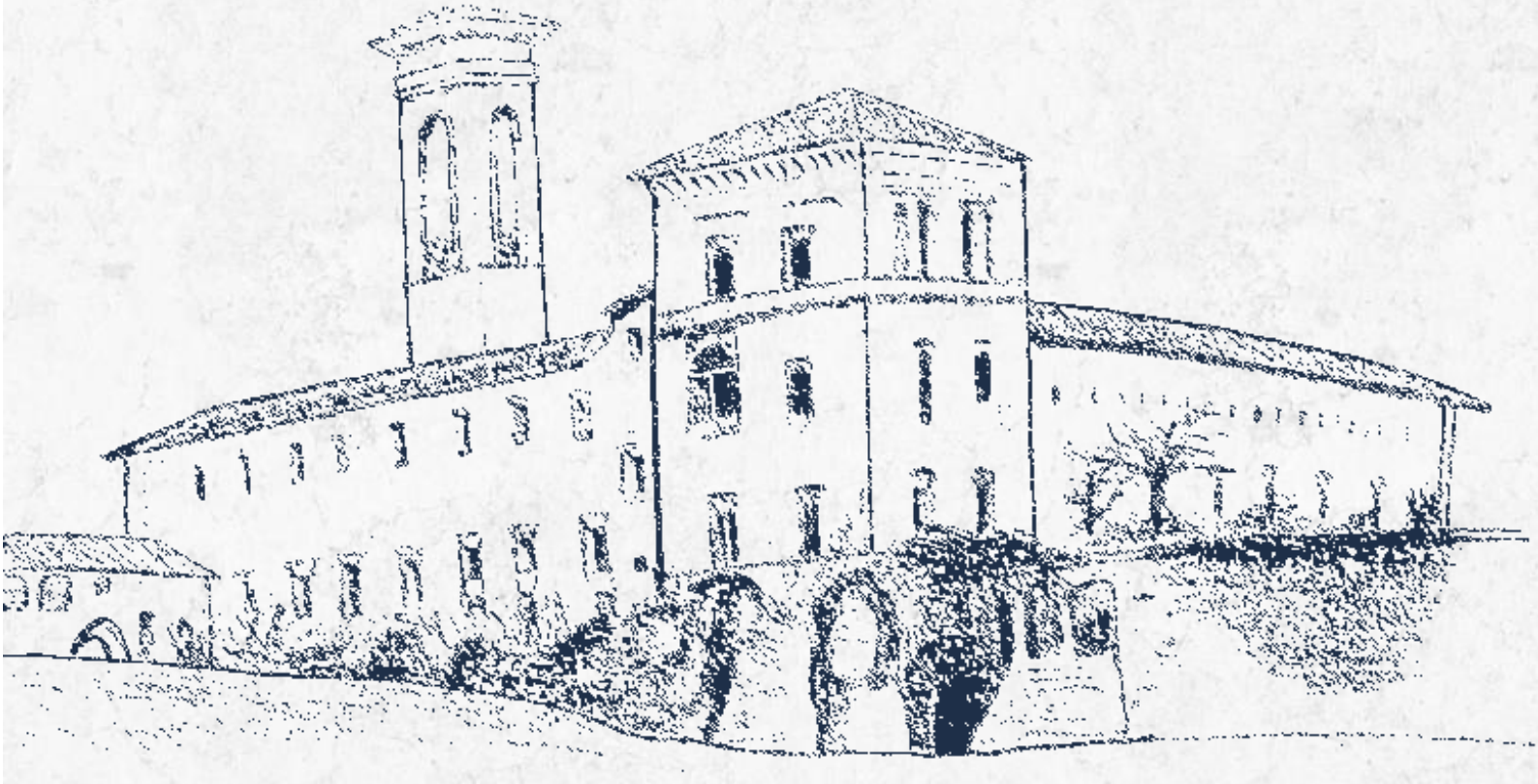

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Should Workers Want to Work on Sundays?

Till Staps [*]

Abstract. This paper examines the legality of designating Sunday as the fixed day of weekly rest, using Germany as a case study while also considering relevant European and international law. It then explores the ongoing debate on the flexibilisation of Sunday work under German working time law, which imposes stricter limits than Article 5 of the European Working Time Directive. The growing push for flexibility – particularly in the context of remote and home-based work – is critically assessed, along with proposed legal reforms at both the German and European levels. The paper concludes by advocating for the retention of Sunday as a fixed rest day, warning against the gradual erosion of workers' health and safety rights under the guise of flexibility. The issue's relevance clearly extends beyond the German legal context.

Keywords: *Daily Rest; European Working Time Directive; Flexibility; Remote Work; Sunday Work; Weekly Rest Period; Work on Sundays; Working from Home; Work-Life Balance.*

1. Introduction

Since the CJEU's ruling in *United Kingdom v. Council*, debates over work-free Sundays have seemingly quietened – but only on the surface. In reality, pressure is mounting against one of the cornerstones of German

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workers' health and safety protections, with the issue increasingly entangled in European and international law.

Prior to this judgment, the weekly rest period under the Working Time Directive (WTD) was generally understood to include Sunday. However, the CJEU held that there was no particular link between Sunday and the protection of workers' health and safety over any other day of the week. As a result, Sunday lost its specific legal significance as a rest day in EU law, and references to Sunday were subsequently removed from Article 5 of the WTD.

Despite this[1], Sunday remains the customary weekly rest day in many EU Member States. Nonetheless, recent years[2] have seen a trend towards liberalisation and deregulation in Sunday work practices. In contrast, there are also calls – particularly in the context of the proposed Directive on the Right to Disconnect[3] - for renewed EU-level protections, including a potential reintroduction of a work-free Sunday. This has brought the topic of Sunday work back to the forefront of European working time law discussions[4].

In Germany[5], the debate is particularly contentious. The German constitution protects Sunday as a day of rest, and calls for greater flexibility – especially in light of the rise in remote and home-based work following the COVID-19 pandemic – have sparked significant legal and political controversy.

This paper provides a detailed insight into the German debate on the flexibilisation of Sunday work, while situating it within the broader European and international legal framework. It explores the similarities and differences in how Sunday work is regulated across the EU's multi-

[1] European Commission, Detailed report on the implementation by Member States of Directive 2003/88/EC concerning certain aspects of the organisation of working time, SWD(2023) 40 final, p. 17.

[2] A. Petričević, *Economic Justifiability of Work on Sunday. Dilemmas and Suggestions*, in C. E. Popa Tache et al. (eds.), Adapting to Change Business Law Insights from Today's International Legal Landscape, Adjuris, Bucharest, 2023, p. 48.

[3] European Sunday Alliance, Joint Statement on the Occasion of the Annual European Day for a Work-Free Sunday on March 3, 2021.

[4] See, for example: J. Frivaldszky, *A vasárnapi kötelező pihenőnap természetjogi alapjai és közpolitikai lehetőségei*, in *Iustum Aequum Salutare*, 2015, vol. 11, no. 1, 59-99; J. Stelina, *Legal Restriction on Work on Sundays and Festive days in Poland*, in Proceedings of the International Conference European Unions's History, Culture and Citizenship 11th Edition, Bucharest, 2018, 105-114.

[5] See also: D. Ulber, T. Staps, *Sonntagsarbeit im Mobile- und Homeoffice – Grundlagen und Grenzen des Verbots der Sonntagsarbeit in der digitalisierten Arbeitswelt*, in *Vierteljahresschrift für Sozial- und Arbeitsrecht* (VSSAR), 2023, vol. 41, no. 1, 55-86.

level legal system, drawing comparisons with other Member States.
The paper begins by outlining the relevance of the issue. It then analyses and critiques the current legal position of Sunday work in EU primary and secondary law, as well as in international law. The particularities of the German constitutional ban on Sunday work are examined in detail, followed by a comparative analysis of different legal frameworks.
Subsequently, the paper discusses criticisms of Germany's current Sunday work regulations and evaluates the main arguments and legislative proposals advocating for greater flexibility. It ultimately questions whether opposition to the Sunday work ban truly reflects workers' interests.
The paper concludes with a political outlook on Sunday work in both Germany and the EU, and makes the case for maintaining regulations that protect Sunday as a rest day – arguing that such protections remain essential for safeguarding workers' health and safety.

2. Relevance of the Topic and Object of Investigation

Before turning to the legal analysis, it is important to briefly outline the relevance of the issues raised. This section also provides an overview of the object of investigation and the methodology employed, in order to clarify the analytical approach taken in this article.

2.1. Current Figures

Sunday work is a reality for many workers today. According to the Sixth European Working Conditions Survey (2015), nearly one-third (30%) of workers across 35 European countries reported working at least one Sunday per month[6]. Even in Germany, where Sunday work is generally prohibited, 8.5% of workers regularly or frequently worked on Sundays in 2023[7]. As noted in the introduction, there are growing calls for the liberalisation of the Sunday work ban in Germany – particularly for those engaged in home-based or remote work. The data suggests considerable potential for flexibilisation in this area, given the rising number of remote workers. As of February 2024, nearly a quarter of workers in Germany

[6] Eurofound, *Sixth European Working Conditions Survey – Overview report*, Publications Office of the European Union, Luxembourg, 2016, p. 58.
[7] https://www.destatis.de/DE/Themen/Arbeit/Arbeitsmarkt/Qualitaet-Arbeit/Dimension-3/wochenendarbeitl.html (accessed April 5, 2025).

worked from home at least part of the time[8]. These figures underscore the need to re-examine the issue of Sunday work more closely.

2.2 Object of Investigation

This paper primarily addresses the legal-dogmatic dimensions of Sunday work. It includes a *de lege ferenda* discussion on potential legal reforms and engages with comparative legal perspectives. Where available, empirical data is also incorporated to substantiate the analysis.
Can the paper therefore answer the provocative question: should workers want to work on Sundays? Given that working time law largely falls under public law, this question is not straightforward. The answer lies in what has been described as the paradox of labour law: that restricting private autonomy can, in fact, enhance individual autonomy by protecting health, safety, and well-being. Through its limitations, labour law can contribute to improving the real-life freedom of workers.

3. Legal Status of Sunday Work in European Law

Apart from one exception in Article 10 of Directive 94/33/EC on the protection of young people at work, neither primary nor secondary Union law explicitly regulates work on Sundays or public holidays. This section first examines the relevant legal framework.

3.1 Primary EU Law

Neither the Treaty on the Functioning of the European Union (TFEU), the Treaty on European Union (TEU), nor the Charter of Fundamental Rights of the European Union (hereinafter CFREU) explicitly regulate Sunday work. Even Article 31 CFREU, which guarantees fair and just working conditions, does not specify whether work on Sundays is permissible. The right to weekly rest, enshrined in Article 31(2) CFREU, does not include a reference to a work-free Sunday.
However, Article 5 of the Working Time Directive (WTD), which regulates weekly rest periods, provides a concrete expression of this fundamental right. As such, Article 5 must be interpreted in light of Article 31 CFREU[9].

[8] https://www.ifo.de/en/facts/2024-03-04/working-home-firmly-established-germany#:~:text=In%20February%2C%2024.1%25%20of%20employees,ifo%20expert%20Jean%2DVictor%20Alipour (accessed April 5, 2025).
[9] CJEU, Judgement of 14. May 2019 – Case C-55/18 (CCOO), marginal no. 31.

3.2 Secondary EU Law

The most notable references to Sunday work in secondary EU legislation are found in the WTD and in Directive 94/33/EC on the protection of young people at work. Given its central role in EU working time legislation, the WTD will be examined first.

3.2.1 The Working Time Directive

Currently, the WTD makes no mention of Sundays – though this was not always the case. Article 5(2) of the former Directive 93/104/EC stated that the minimum rest period referred to in paragraph 1 "shall in principle include Sunday". However, the phrase "in principle" indicated that a work-free Sunday was not mandatory. This was further emphasised in Recital 10 of the directive, which stated:

> Whereas, with respect to the weekly rest period, due account should be taken of the diversity of cultural, ethnic, religious and other factors in the Member States; whereas, in particular, it is ultimately for each Member State to decide whether Sunday should be included in the weekly rest period, and if so to what extent.

This provision was highly controversial from the outset[10], and it is therefore unsurprising that Article 5(2) did not remain in force for long. In 1996, the Court of Justice of the European Union (CJEU) annulled Article 5(2) in *Case C-84/94*, in which the United Kingdom challenged Directive 93/104/EC, or alternatively, several of its provisions, including Article 5(2)[11]. The Court held that:

> [...] the Council has failed to explain why Sunday, as a weekly rest day, is more closely connected with the health and safety of workers than any other day of the week[12].

[10] J. Mackley, *The Making of the Working Time Directive*, in Y. Kravaritou (ed.), The Regulation of Working Time in the European Union, P.I.E.-Peter Lang, Brussels, 1999, p. 132.
[11] CJEU, Judgement of 12. November 1996 – Case C-84/94 (United Kingdom v. Council).
[12] CJEU, Judgement of 12. November 1996 – Case C-84/94 (United Kingdom v. Council), marginal no. 37.

For the CJEU, the cultural and historical tradition of Sunday as a day of rest did not constitute sufficient justification[13]. It remains unclear how the Court might have ruled had the Council provided a more thorough justification. However, the reasoning implies that such a provision could fall within the EU's competence under Article 153 TFEU[14], provided it was adequately substantiated.

Following the CJEU's decision in *C-84/94*, the European Parliament adopted a "Resolution on Sunday Work" offering guidance to Member States, social partners, and the European Commission[15]. As a result, the WTD was revised, and the reference to Sunday was omitted from Directive 2000/34/EC of 22 June 2000.

Today, Article 5(1) WTD states that Member States shall take the necessary measures to ensure that every worker is entitled to a minimum uninterrupted rest period of 24 hours in each seven-day period, in addition to the 11 hours of daily rest provided for in Article 3. No explicit reference to Sunday is made in this provision. Some scholars refer to this as a "factual Sunday" rest period, indicating that while Sunday is no longer mandated, it often continues to serve as the de facto rest day in many Member States[16].

3.2.1.1 Jurisdiction of the CJEU

In addition to Case C-84/94, another major judgment is of considerable relevance. In 2017, the CJEU issued a decisive ruling regarding the placement of the weekly rest period within a seven-day timeframe. In the case of *Maio Marques da Rosa*, the Court held that the weekly rest period does not have to immediately follow "a period of six consecutive working days", but rather must be provided within each seven-day period[17]. This interpretation means that workers may legally work twelve consecutive days without a weekly rest period. Consequently, this decision confirms that Sunday no longer holds any particular significance under Article 5 of the Working Time Directive (WTD).

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[13] J. Stelina, *op. cit.*, p. 107.

[14] D. Ulber, *§ 14 Arbeitszeit*, in U. Preis, A. Sagan (eds.), Europäisches Arbeitsrecht, Otto Schmidt, Cologne, 2024, marginal no. 14.42.

[15] OJEC, No. C20 of 20. January 1997, p. 140.

[16] Concerning this wording, see further: D. Ulber, *Art. 5 Satz 1 der Arbeitszeitrichtlinie als Regelung über einen „faktischen Sonntag"?*, in *Europäische Zeitschrift für Arbeitsrecht* (EuZA), 2018, vol. 11, no. 4, 484-491.

[17] CJEU, Judgement of 9. November 2017 – Case C-306/16 (Maio Marques da Rosa), marginal no. 51.

3.2.1.2 Criticism of the Current Legal Situation and Its Interpretation

It is problematic that Article 5 WTD does not explicitly include Sundays. A non-uniform weekly rest day complicates the potential for the social synchronisation of life. Yet, such synchronisation is crucial for achieving the core objective of the WTD: the protection of health and safety. Bell argues that the growing emphasis on individual autonomy weakens the collective significance of rest periods, ultimately contributing to the rise of an "always-on" culture[18].

When some workers are working while others are off, this can create pressure to remain available and even to work during one's rest period[19]. For instance, on a day off when colleagues are working, there may be a heightened expectation to respond to emails, creating mental pressure to remain connected—an effect less prevalent on a shared rest day. This phenomenon can be empirically illustrated by the behaviour of workers during paid annual leave. According to a 2024[20] survey, 66% of workers in Germany were available during their summer holidays. Half of those surveyed cited pressure from colleagues, and 59% from their superiors[21]. A similar situation is to be expected during irregular weekly rest periods. These expectations are only likely to diminish if rest is synchronised and universally observed.

Moreover, the CJEU's interpretation of Article 5 WTD in the *Maio Marques da Rosa* case must be viewed as a regression in terms of safeguarding worker health and safety, as it permits twelve consecutive working days. These risks undermining both the effect and the regularity of weekly rest periods[22]. In allowing such extended work periods, the Court failed to adequately uphold the primary objective of the WTD: the protection of health and safety[23].

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[18] Concerning the daily rest: M. Bell, *Responding to the 'Rapidification' of Working Life: the Right to Disconnect*, in *Studies: An Irish Quarterly Review*, 2021, vol. 110, no. 440, p. 434.

[19] M. Bell, *op. cit.*, p. 434.

[20] https://www.bitkom.org/Presse/Presseinformation/Erreichbar-fuer-Job-Drittel-schaltet-Urlaub-komplett-ab (accessed April 5, 2025).

[21] https://www.bitkom.org/Presse/Presseinformation/Erreichbar-fuer-Job-Drittel-schaltet-Urlaub-komplett-ab (accessed April 5, 2025).

[22] P. Burger, *Weekly 24-Hour Rest Period to be Provided within Each Seven-Day Period*, in *International Labor Rights Case Law*, 2018, vol. 4, no. 2-3, p. 244.

[23] Conflicting scientific findings were not considered by the CJEU: D. Leist, *Anmerkung zu EuGH, Urteil vom 09.11.2017, Rs. C-306/16*, in *Zeitschrift für europäisches Sozial- und Arbeitsrecht* (ZESAR), 2018, vol. 17, no. 8, p. 339.

This lack of a standardised weekly rest period, combined with the possibility of working twelve days consecutively, also appears inconsistent with the CJEU's evolving interpretation of health. The Court has recently adopted a broad definition of health, aligning with the WHO's understanding of health as "a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity." In recent cases concerning stand-by time during rest periods, the Court has considered the social implications of reduced leisure time[24]. The current interpretation of Article 5 fails to meet this more comprehensive view.

3.2.1.3 How Closely is Sunday Related to Health and Safety?

It remains questionable whether there is, today, a justified reason to consider Sunday as more closely related to health and safety than any other day of rest. The CJEU's decision in Case C-84/94 dates back to 1996, a time when limited research existed on the effects of Sunday work[25]. However, more robust scientific findings are now available. A 2011 study by Wirtz et al. indicates that Sunday work can adversely affect worker safety, health, and work–life balance[26]. One key finding is that the negative effects of Sunday work on health and safety cannot be fully offset by taking another day off during the week[27]. The authors stress that time off on Sundays is particularly valuable for workers' recuperation and regeneration[28].

It must be acknowledged that it remains unclear whether this "negative relationship" between Sunday work and recovery also applies in countries where Sunday is not traditionally a non-working day[29].

Nearly thirty years after the ruling in Case C-84/94, it is evident that the cultural importance of work-free Sundays persists in many Member States. This tradition has not entirely disappeared from EU law. For

[24] Particularly in cases concerning stand-by periods: CJEU, Judgement of 9. March 2021 – Case C-344/19 (Radiotelevizija Slovenija), marginal no. 65.

[25] A. Wirtz et al., *Working on Sundays–Effects on Safety, Health, and Work-life Balance*, in *Chronobiology International*, 2011, vol. 28, no. 4, p. 362.

[26] A. Wirtz et al., *op. cit.*, p. 362.

[27] A. Wirtz et al., *op. cit.*, p. 369; A. Wirtz et al., *Sonntagsarbeit – Auswirkungen auf Sicherheit, Gesundheit und Work-Life-Balance der Beschäftigten*, in *Zeitschrift für Arbeitswissenschaft* (ZfA), 2011, vol. 65, no. 2, p. 144.

[28] A. Wirtz et al., *op. cit.*, p. 369; A. Wirtz et al., *op. cit.*, p. 144.

[29] With a call for further research: L. Vieten, A. M. Wöhrmann, A. Michel, *Boundaryless working hours and recovery in Germany*, in *International Archives of Occupational and Environmental Health*, 2022, vol. 95, no. 1, p. 287.

example, Regulation No. 1182/71 of the Council of 3 June 1971, which defines rules concerning periods, dates, and time limits, states in Article 2(1) that 'working days' exclude public holidays, Sundays, and Saturdays. Furthermore, Article 3(4) provides that if a deadline falls on a Sunday, it shall expire at the end of the following working day. This provision aims to ensure a degree of reliability regarding rest on Sundays.
It can therefore be concluded that Sunday retains a closer connection to the protection of health and safety than other days of the week. The historical significance of Sunday rest in EU Member States now finds additional support in scientific evidence.

3.2.2 Directive 89/391/EEC

Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work is also fully applicable to matters concerning weekly rest periods, according to the most recent judgment of the CJEU. Its applicability extends to minimum weekly rest periods and maximum weekly working time, without prejudice to more stringent and/or specific provisions contained in the Working Time Directive (WTD)[30]. However, Directive 89/391/EEC does not contain any provisions regarding the timing or synchronisation of weekly rest days.

3.2.3 Directive 94/33/EC

A regulation concerning Sunday work is found in Directive 94/33/EC on the protection of young people at work. This is the only directive that establishes specific requirements regarding Sunday work. Article 10 provides that the minimum weekly rest period referred to in the first and second subparagraphs shall, in principle, include Sunday. The phrase "in principle" implies that a work-free Sunday is not mandatory. This interpretation is supported by Recital 19 of the directive, which similarly qualifies the requirement for a work-free Sunday. The wording of this recital closely resembles that of Recital 10 of the former WTD (93/104/EC).

[30] CJEU, Judgement of 9. March 2021 – Case C-344/19 (Radiotelevizija Slovenija), marginal no. 61.

3.2.3.1 The Conformity of Directive 94/33/EC with EU Competences

By including this qualification, the European legislator sought to avoid conflict between EU law and the religious traditions of Member States[31]. It may be argued that the EU lacks the competence to regulate Sunday work, as it arguably does with the WTD. This position is widely held in jurisprudence[32]. However, it is contested here.

The justification for prescribing a work-free Sunday for young people lies in the obligation for children and adolescents to attend school on other weekdays[33]. Without a Sunday rest, it would be impossible to guarantee two weekly rest periods of 24 hours each, as required. On school days, young people do not receive a full 24-hour rest period. This argument is reinforced by Article 3(2)(a) of the ILO Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33). While Article 3(1) permits the employment of children over the age of twelve in light work outside school hours, Article 3(2)(a) expressly excludes Sundays from this exception.

This is relevant because, according to Recital 4 of Directive 94/33/EC, due account must be taken of the principles of the ILO concerning the protection of young people at work. On this basis, the European Union is competent to regulate work-free Sundays in the context of Directive 94/33/EC.

Finally, children and adolescents are often dependent on adults to accompany or support them in their leisure activities. Since most adults typically have Sundays off, it is necessary for young people's rest days to coincide with Sunday to ensure access to such support.

3.3 Interim Conclusion

The WTD requires only a minimum uninterrupted rest period of 24 hours, in addition to the 11 hours of daily rest provided for in Article 3.

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[31] A. Pünkösty, *Certain Aspects of the Relationship Between Religion and the European Union*, in P. L. Láncos et al. (eds.), Union Policies, The Hague, 2016, p. 35.

[32] For example: M. Benecke, *Dir. 94/33*, in E. Ales et al. (eds.), International and European Labour Law, Nomos, Baden-Baden, 2018, marginal no. 52. Benecke calls Art. 5(2) Directive 94/33 a "problematic provision". S. Kolbe, *Art. 10 Ruhezeiten*, in M. Franzen et al. (eds.), Munich, 2024, marginal no. 4. The position of Končar appears unclear: P. Končar, *94/33/EC: Protection of Young People at Work*, in M. Schlachter (ed.), EU Labour Law, Wolters Kluwer, Alphen aan den Rijn, 2015, p. 338.

[33] K. Riesenhuber, *Europäisches Arbeitsrecht*, Berlin/Boston, 2021, p. 656.

In contrast, Directive 94/33/EC is more stringent. Pursuant to Article 10, the minimum weekly rest period shall, in principle, include Sunday. According to the interpretation set out here, this provision falls within the EU's competence.

4. Legal Status of Sunday Work in International Law

Article 2(5) of the European Social Charter (hereinafter ESC) provides that the weekly rest period shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest. In most countries, this day is Sunday[34]. This provision reinforces the right to daily and weekly rest periods as enshrined in Article 31(2) of the Charter of Fundamental Rights of the European Union (CFEU) [35]. Germany has ratified Article 2 of the ESC[36].

The European Committee of Social Rights may determine that a breach of Article 2(5) ESC has occurred if it finds that a significant portion of the workforce in a Member State works on Sundays and takes their weekly rest on another day[37]. However, the practical effectiveness of Article 2(5) ESC should not be overestimated, as the Charter does not provide for binding sanctions to compel Member State compliance[38].

Provisions with similar content can also be found in international labour law, specifically in Article 2 of ILO Convention No. 14 (Weekly Rest (Industry) Convention) and Article 6 of ILO Convention No. 106 (Weekly Rest (Commerce and Offices) Convention)[39]. These ILO conventions have been ratified by 24 and 13 EU Member States, respectively. Germany has not ratified either convention.

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[34] F. Marhold, E. Kovács, *Art. 2 RESC*, in E. Ales et al., International and European Labour Law, Nomos, Baden-Baden, 2018, marginal no. 27; A. M. Świątkowski, *Charter of Social Rights of the Council of Europe*, Alphen aan den Rijn, Kluwer Law, 2007, p. 81.

[35] A. Bogg, M. Ford, *Art. 31 – Fair and Just Working Conditions*, in S. Peers, The EU Charter of Fundamental Rights, Oxford, 2021, marginal no. 31.56.

[36] Bundesgesetzblatt II. 1964, p. 1261.

[37] With further reference to the Conclusions: A. M. Świątkowski, *op. cit.*, p. 81.

[38] See for further criticism regarding the collective complaints system: R. R. Churchill, U. Khaliq, *The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?*, in *European Journal of International Law*, 2004, vol. 15, no. 3, 417–456.

[39] See in addition: P. Burger, *op. cit.*, p. 245.

The relationship between ILO standards and EU law is complex[40]. According to Recital 6 of the Working Time Directive (WTD), due account should be taken of the ILO's principles concerning the organisation of working time. However, how this recital is applied varies. As illustrated in the *Maio Marques da Rosa* case, the CJEU has interpreted the WTD in light of ILO conventions in some cases related to European working time law[41].
In practice, therefore, international legal provisions have no decisive influence on the regulation or prohibition of Sunday work under EU law, even if they contain stricter standards than those provided by the WTD.

5. Legal Status of Sunday Work in German Law

Germany's prohibition of Sunday work and work on public holidays is one of the few regulations in German labour law that is directly enshrined in the German Constitution (*Grundgesetz*, hereinafter GG)[42]. The constitutional provisions are implemented in federal law through the Working Time Act (*Arbeitszeitgesetz*, hereinafter ArbZG). Both the constitutional framework and the statutory provisions are outlined below.

5.1 The German Constitution

The German Constitution expressly prohibits work on Sundays and public holidays. This regulation is unique among European constitutions[43]. However, the prohibition does not hold a central position within the Constitution; it is found in Section XI, which concerns Transitional and Concluding Provisions. Article 140 GG stipulates that Articles 136, 137, 138, 139 and 141 of the Weimar Constitution of 11 August 1919 (*Weimarer Reichsverfassung*, hereinafter WRV) form an integral part of the Basic Law.
Specifically, it is Article 139 WRV that provides for the protection of Sundays and public holidays, stating: "Sundays and public holidays

[40] G. Casale, *International labour standards and EU labour law*, in N. Countouris, M. Freedland (eds.), Resocialising Europe in a time of crisis, Cambridge University Press, Cambridge, 2013, 81-104.
[41] Also: P. Burger, *op. cit.*, p. 245; further on the consideration of Recital 6: L. Brandt, T. Lueken, *Differenzierende tarifliche Nachtarbeitszuschläge vor dem Hintergrund von Unions- und Verfassungsrecht*, in *Arbeit und Recht* (AuR), 2023, vol. 71, no. 1, p. 31.
[42] D. Ulber, T. Staps, *op. cit.*, p. 55.
[43] M. Morlok, *Art. 139 WRV*, in H. Dreier (ed.), Grundgesetz Kommentar Band 3, Mohr Siebeck, Tübingen, 2018, marginal no. 6.

recognised by the state shall remain protected by law as days of rest from work and of spiritual improvement."
It is widely accepted that Article 139 WRV constitutes an *objective legal institutional guarantee*, rather than conferring a subjective individual right[44]. Its historical foundation lies in a combination of "Christian doctrinal influence and the social democratic commitment to the protection of Sundays and public holidays"[45]. Consequently, today's protection afforded by Article 140 GG in conjunction with Article 139 WRV is not confined to religious or ideological meanings of Sundays and holidays[46].

5.2 The German Working Time Act

These constitutional requirements are reflected in two key provisions of the ArbZG. First, § 1(2) ArbZG sets out that one of the Act's purposes is to protect Sundays and public holidays recognised by state law as days of rest from work and of spiritual improvement. Secondly, § 9(1) ArbZG prohibits the employment of workers on Sundays and public holidays between midnight and midnight. The prohibition of Sunday work is widely regarded as a cornerstone of German labour law[47].

5.2.1 The Rule

In fact, the wording of § 9(1) ArbZG extends beyond the term "work", using instead the broader concept of *Beschäftigung*, which encompasses any business-related activity—not just work in the narrower sense[48]. Regarding its personal scope, § 9(1) ArbZG applies exclusively to employees, meaning that self-employed individuals are not covered. This is a

[44] Federal Constitutional Court, Court Order of 18. September 1995 – Case 1 BvR 1456/95, in Neue Juristische Wochenschrift, 1995, vol. 48, no. 51, p. 3379. The content as a subjective right is controversial in detail. See for further arguments: K. Westphal, *Die Garantie der Sonn- und Feiertage als Grundlage subjektiver Rechte*, Tübingen, 2003.
[45] A. Seifert, *Religious Expression in the Workplace, The Case of the Federal Republic of Germany*, in U. Becker et al. (eds.), The Significance of Religion for Today's Labour and Social Legislation, Mohr Siebeck, Tübingen, 2018, p. 132.
[46] Federal Constitutional Court, Judgement of 1. December 2009 – Case 1 BvR 2857/07, 1 BvR 2858/07, in *Neue Zeitschrift für Verwaltungsrecht* (NvWZ), 2010, vol. 29, no. 9, p. 574.
[47] S. Morgenroth, N. Hesser, *Working Hours, Holidays and Health and Safety*, in J. Kirchner et al. (eds.), Key Aspects of German Employment and Labour Law, Springer, Heidelberg, 2018, p. 112.
[48] Federal Labour Court, Decision of 22. September 2005 – Case 6 AZR 579/04, in *Neue Zeitschrift für Arbeitsrecht* (NZA), 2006, vol. 23, no. 6, p. 331.

mandatory statutory provision, and due to the public law nature of working time regulations, workers cannot waive this protection—even voluntarily[49]. The ArbZG is also intended to protect public interests and third parties, not solely individual employees[50]. While restrictions for the self-employed are not covered by the ArbZG, such limitations may arise from state-level public holiday laws[51], which are not explored further here.

5.2.2 The Exception

Beginning with § 9, the entire third section of the ArbZG is dedicated to rest on Sundays and public holidays. The most notable provisions are §§ 10 and 11. Section 10 ArbZG governs exceptions to the Sunday and holiday work ban. *De lege lata*, many of these exceptions already apply to remote or home-based work. For example, § 10(1)(1) ArbZG permits work in emergency and rescue services, as well as in fire brigades. Given the broad interpretation of this exception, private emergency call centres (e.g., operated by automobile clubs) are also included[52].
Additionally, § 11 ArbZG provides for compensatory rest in the event of Sunday or holiday work. Importantly, § 11(1) ArbZG mandates a minimum of 15 work-free Sundays per year. Thus, even where exceptions apply, employees are generally not permitted to work every Sunday—even if they wish to do so.

5.2.3 Exceptions Compatible with Telework?

Are the existing exceptions compatible with teleworking? At first glance, this may appear doubtful, since the statutory wording contains no explicit reference to telework. However, many exceptions can be interpreted as compatible with remote work arrangements. For instance, call centre services covered under § 10(1)(1) ArbZG can now be performed entirely remotely. Another example is § 10(1)(14) ArbZG, which allows Sunday work for the maintenance of data networks and IT systems—services that can likewise be performed through teleworking. This shows that some

[49] Federal Labour Court, Judgement of 24. February 2005 – Case 2 AZR 211/04, in *Neue Zeitschrift für Arbeitsrecht* (NZA), 2005, vol. 22, no. 13, p. 761.
[50] D. Ulber, *Grundfragen des Arbeitszeitrechts im 21. Jahrhundert*, in *Soziales Recht* (SR), 2021, vol. 11, no. 5, 189-204.
[51] With further references: J. Ulber, *§ 9 Sonn- und Feiertagsruhe*, in J. Ulber, R. Buschmann, Arbeitszeitrecht, Bund, Frankfurt am Main, 2019, marginal no. 12.
[52] See the reasoning of the German legislator: Bundestags-Drucksache, 12/5888, p. 29.

existing exceptions already accommodate the realities of modern telework.

5.2.4 Enforcement of Sunday Work

The German Trade Regulation Act (*Gewerbeordnung*, hereinafter GewO) establishes the employer's right to issue directives to employees, including the determination of working hours, pursuant to § 106 GewO. This means that, within the scope of statutory exceptions, employers may lawfully require employees to work on Sundays. The German Federal Labour Court has interpreted this right broadly. Even if an employer refrained from requiring Sunday work for decades, this does not negate the right to do so—subject to legal limitations[53].

Apart from statutory prohibitions, Sunday work may also be excluded by employment contracts or collective agreements. Where the law permits exceptions to the Sunday work ban, the employer may only exercise their directive right within the limits of those exceptions. The prohibition under § 9(1) ArbZG remains a key statutory limitation.

When exercising this right, employers must act within the bounds of *reasonable discretion* (*billiges Ermessen*). For instance, they must consider the employee's fundamental rights, such as freedom of religion and conscience[54]. In a 2005 case, a court ruled in favour of a worker who refused to work on Saturdays for religious reasons (the Sabbath)[55], holding that the worker's fundamental rights took precedence[56]. By analogy, the same applies to employees who wish to avoid Sunday work on religious grounds. This reasoning was confirmed by the Higher Labour Court of Hamm in a case involving a Baptist who refused Sunday work[57].

However, there are limits to this protection. If an employee knowingly enters into an employment contract where Sunday work is an inherent part of the role, they may not subsequently invoke religious grounds to

[53] Federal Labour Court, Judgement of 15. September 2009 – Case 9 AZR 757/08, in *Neue Zeitschrift für Arbeitsrecht* (NZA), 2009, vol. 26, no. 23, p. 1336.

[54] U. Preis, F. Temming, *Individualarbeitsrecht*, Otto Schmidt, Cologne, 2024, marginal no. 582.

[55] Higher Labour Court of Schleswig-Holstein, Judgement of 22. June 2005 – Case 4 Sa 120/05, in *Entscheidungen in Kirchensachen seit 1946* (KirchE), 2009, vol. 47, 246-258.

[56] Higher Labour Court of Schleswig-Holstein, Judgement of 22. June 2005 – Case 4 Sa 120/05, *op. cit.*, pp. 253-258.

[57] Higher Labour Court of Hamm, Judgement of 8. November 2007 – Case 15 Sa 271/07, in *Entscheidungen in Kirchensachen seit 1946* (KirchE), 2011, vol. 50, 317-329.

refuse such work[58]. Moreover, operational necessity may influence the balancing of rights[59]—for example, in hospitals, where Sunday work is part of core duties[60].

5.3 Interim Conclusion

The German Constitution prohibits Sunday work under Article 140 GG in conjunction with Article 139 WRV. This constitutional mandate likely explains why the statutory ban under § 9(1) ArbZG has not been amended following the CJEU's decision in Case C-84/94. Since the entry into force of the ArbZG in 1994, Sunday work has been generally prohibited, subject to numerous exceptions, particularly those found in § 10 ArbZG. Under § 106 GewO, employers may direct employees to work on Sundays, but only within the framework of those statutory exceptions.

6. Comparison of the Legal Frameworks

EU law, international law, and German law do not regulate the protection of Sunday work in a congruent manner. In a direct comparison between EU law and German law, the regulation in § 9(1) ArbZG is less flexible[61]. However, German provisions are in conformity with the WTD, as they are even more favourable[62]. This accords with Art. 15 WTD, which allows Member States to apply or introduce laws, regulations, or administrative provisions more favourable to the protection of the safety and health of workers.

Moreover, a comparison between German law and international law leads to the conclusion that German law is stricter, as it explicitly designates Sunday as a day of rest. This, in fact, is a central point of criticism in German legal discourse.

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[58] Federal Labour Court, Judgement of 24. February 2011 – Case 2 AZR 636/09, in *Neue Zeitschrift für Arbeitsrecht* (NZA), 2011, vol. 28, no. 19, p. 1090.

[59] Higher Labour Court of Schleswig-Holstein, Judgement of 22. June 2005 – Case 4 Sa 120/05, *op. cit.*, pp. 256-257; Federal Labour Court, Judgement of 24. February 2011 – Case 2 AZR 636/09, *op. cit.*, p. 1092.

[60] U. Preis, *Religionsfreiheit im Arbeitsverhältnis zwischen säkularem Staat, Freiheitsrechten und Diskriminierungsverboten*, in *Kirche und Recht* (KuR), 2011, vol. 17, no. 1, p. 53.

[61] H. Hanau, *Zum Flexibilisierungspotenzial der Arbeitszeitrichtlinie*, in *Europäische Zeitschrift für Arbeitsrecht* (EuZA), 2019, vol. 12, no. 4, p. 423.

[62] Federal Labour Court, Judgement of 8. December 2021 – Case 10 AZR 641/19, in *Der Betrieb* (DB), 2022, vol. 75, no. 20, p. 1266.

7. Criticism of the Recent Regulation of Work on Sundays in Germany

As previously mentioned, Germany's current legal framework is subject to considerable criticism due to its strictness. The main point of contention is the lack of flexibility in the Sunday regulation. Many authors argue that it should be relaxed in accordance with Art. 5 WTD, to allow workers a minimum uninterrupted rest period of 24 hours plus the 11 hours of daily rest referred to in Article 3, for each seven-day period[63].
The specific arguments raised and whether they are convincing will be examined below. Two main reasons are frequently cited: the practical needs of the German economy and the individual wishes of workers. Where calls are made for greater flexibility in Sunday regulations for home or remote work, both the personal preferences of workers and economic considerations are referenced. The issue of economic competitiveness will not be further addressed here due to space constraints[64].
There are also concerns that Germany's regulation of a work-free Sunday does not adequately account for the needs of those who wish to work on Sundays for religious reasons. This critique will be assessed, followed by a personal opinion.

7.1 Workers Want to Work on Sundays

The supposed desire of workers to be allowed to work on Sundays is frequently cited in German jurisprudence.

7.1.1 The Dispute

It is argued that workers wish to independently decide how to balance work and private life, and maintain their work-life balance[65]. Improved

[63] See, for example: U. Baeck, M. Deutsch, T. Winzer, *Arbeitszeitgesetz Kommentar*, C.H. Beck, Munich, 2020, p. 230; C. Freyler, *Arbeitszeit- und Urlaubsrecht im Mobile Office*, Mohr Siebeck, Tübingen, 2018, p. 210; H. Hanau, *Schöne digitale Arbeitswelt?*, in *Neue Juristische Wochenschrift* (NJW), 2016, vol. 69, no. 36, p. 2617; J. Holthausen, *Arbeitszeit und ihre Erfassung*, in *Zeitschrift für die Anwaltspraxis* (ZAP), 2023, vol. 35, no. 19, pp. 969-970; C. Picker, *Arbeiten im Homeoffice – Anspruch und Wirklichkeit*, in *Neue Zeitschrift für Arbeitsrecht Beilage* (NZA-Beil.), 2021, vol. 38, no. 1, p. 8.
[64] Summarizing this matter: D. Ulber, T. Staps, *op. cit.*, pp. 80-82.
[65] A. Bissels, I. Meyer-Michaelis, *Arbeiten 4.0 – Arbeitsrechtliche Aspekte einer zeitlich-örtlichen Entgrenzung der Tätigkeit*, in *Der Betrieb* (DB), 2015, vol. 68, no. 40, p. 2334; S. Jacobs, *Schutz vor psychischen Belastungen durch die Individualisierung des Arbeitszeitrechts*, Nomos,

opportunities for organising family life are often emphasised[66]. This reason is especially significant in promoting the employment of women[67]. However, this view is not supported by any empirical evidence.

7.1.2 Statement

Empirical data is generally not provided. Currently, no known survey in Germany indicates that workers want the legal option of working more flexibly on Sundays. A 2017 survey asked German workers whether they would generally accept weekend work as a burden. Only 13 percent responded affirmatively[68]. It remains unclear what the outcome would have been had the question been limited to Sunday work alone.

Similar findings are observed in other Member States. For example, a Croatian survey revealed that over two-thirds of respondents supported a non-working Sunday[69]. It therefore seems reasonable to assume that only a minority of workers actually wish to work on Sundays.

Furthermore, the supposed preference for Sunday work, as assumed by its advocates, presents practical issues. Even if Germany were to introduce a variable weekly rest period, it would still be the employer who determines working hours (§ 106 GewO). There is no statutory guarantee that employers would release workers on a weekday to compensate for working on a Sunday.

Another practical issue is that kindergartens and schools are closed on Sundays, preventing parents from sending their children there. The right to choose the weekly rest day independently could only belong to workers if explicitly provided for in the ArbZG. Currently, the right lies with the employer (§ 106 GewO). Notably, the advocates of greater flexibility do not call for an amendment to the ArbZG to allow workers to freely choose their rest day. European law, including Art. 5 WTD, does not provide for such a right either.

Even if such a right existed, it is unlikely that all employers would be able or willing to offer Sunday work. A comparison with Saturday work

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Baden-Baden, 2019, p. 70; M. Lachmann, *Das Arbeiten an Sonn- und Feiertagen*, in *Arbeitsschutz in Recht und Praxis* (ARP), 2024, vol. 5, no. 10, p. 301; N. Maier, *Erweiterte berufsbezogene Erreichbarkeit*, Springer, Wiesbaden, 2019, p. 158.

[66] N. Maier, *op. cit.*, p. 158.

[67] B. Schiefer, E. Baumann, *Das neue Mutterschutzgesetz*, in *Der Betrieb* (DB), 2017, vol. 70, no. 49, p. 2933.

[68] https://de.statista.com/prognosen/1016566/umfrage-in-deutschland-zur-akzeptanz-von-arbeiten-am-wochenende (accessed April 5, 2025).

[69] A. Petričević, *op. cit.*, pp. 51-52.

illustrates this: although permitted, only 15.9% of workers in Germany worked constantly or regularly on Saturdays in 2023[70].
Increased voluntary Sunday work also entails more involuntary Sunday work. Certain support services are necessary to facilitate voluntary work. For instance, remote workers rely on the maintenance of data networks and IT systems, which requires staff pursuant to § 10(1) no. 14 ArbZG.
Thus, invoking the alleged will of workers appears to be a pseudo-solution. It seems that calls for greater flexibility are largely driven by economic interests, with workers' preferences used merely as a pretext.

7.2 Religious Discrimination?

In the current debate on liberalising Sunday work in Germany, the issue of discrimination against religious minorities is rarely raised. It is notable that even the Federal Constitutional Court did not address this aspect in its most prominent ruling on Sunday work[71]. Nonetheless, the potential for religious discrimination within the Sunday work ban merits examination.

7.2.1 The Contention

The regular work-free Sunday is regarded as a disadvantage for those whose religious practices do not align with Sunday observance, such as Muslim, Buddhist, or Jewish workers[72]. For these individuals, a variable day of rest might be preferable, as it would allow for the selection of a weekly rest day in line with personal religious observance.

7.2.2 Statement

While Sunday has Christian origins, it is no longer legally tied to religious observance. Rather, it has become a widely accepted social practice[73]. This

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70 https://www.destatis.de/DE/Themen/Arbeit/Arbeitsmarkt/Qualitaet-Arbeit/Dimension-3/wochenendarbeitl.html (accessed April 5, 2025).
71 See the critical remark by: J. von Lucius, *Sonntag für alle*, in *Critical Quarterly for Legislation and Law* (CritQ), 2010, vol. 93, no. 2, 190-211.
72 A. Seifert, *op. cit.*, p. 158; likewise: J. T. Czigle, *Religious Holidays at the Workplace in the European Union – Issues, Questions, and a Note on the Achatzi-Case*, in Iustum Aequum Salutare, 2023, vol. 19, no. 1, p. 92 f.
73 With the same argumentation for Austrian law: R. Schindler, *Rechtsfragen zu Arbeitspausen und der Feiertagsruhe*, in R. Resch (ed.), Ruhe- und Erholungszeiten, ÖGB Verlag, Wien, 2013, pp. 54-55.

is reflected in the legal unification of Germany[74], during which the work-free Sunday was formally regulated in the ArbZG.
Even the Labour Code of the former GDR regulated the work-free Sunday in § 168(1)—without any religious connotation. The unification thus supports a non-religious interpretation of Sunday protection. Likewise, the constitutional protection under Art. 140 GG in conjunction with Art. 139 WRV is not restricted to a religious or ideological understanding[75].
Therefore, § 9(1) ArbZG does not serve to privilege Christian workers. Christian workers are no more protected from Sunday work than workers of other faiths. All depend on the employer's discretion under § 106 GewO if they wish to avoid Sunday work. In this regard, no legal distinction is made between religious groups. German law already allows for appropriate solutions on a case-by-case basis under § 106 GewO.

7.2.3 Proposal for Solution

In my view, a potential solution would be the introduction of a new statutory right in the ArbZG to entitle employees to time off for religious observance. This would strengthen the position of religious workers seeking time off. To date, consideration of religious beliefs in the application of § 106 GewO has developed solely through case law. Austrian law could serve as a model for a more explicit legal framework[76].

7.2.3.1 § 8 ARG as an Example?

Section 8 of the Austrian Rest Periods Act (*Arbeitsruhegesetz*, hereinafter ARG) governs time off for religious observance. A freely translated version of § 8 ARG reads:

> An employee who is required to work during the weekly rest period or on a holiday shall, upon request, be granted the time necessary to fulfil

[74] The German Unification Treaty referred to work on Sundays. For this see: M. Weiss, *The Transition of Labor Law and Industrial Relations: The Case of German Unification - A Preliminary Perspective*, in *Comparative Labor Law Journal*, 1991, vol. 13, no.1, p. 7.
[75] Federal Constitutional Court, Judgement of 1. December 2009 – Case 1 BvR 2857/07, 1 BvR 2858/07, *op. cit.*, p. 574.
[76] The wording of the Austrian provisions of the Austrian Rest Periods Act was apparently already used in a variety of formulations when the ArbZG was created. See: P. Häberle, *Der Sonntag als Verfassungsprinzip*, Duncker & Humblot, Berlin, 2006, p. 84.

> religious duties, provided these cannot be fulfilled outside working hours and the time off is compatible with operational requirements.

This provision is controversial in Austria because its wording is seen as discriminatory against individuals whose religious rest day does not fall on a Sunday[77]. § 8(1) ARG refers to the weekly rest period, which under § 3(1) ARG includes Sunday.
While some legal scholars argue for the analogous application of this provision to non-Sunday rest periods, this view has not yet prevailed[78]. Therefore, one can share the opinion that § 8 ARG's wording should not be adopted verbatim. However, its principle may serve as a model for German law.

7.2.3.2 Example of a New Section in the ArbZG

Alternatively, a new section—§ 9a ArbZG—could be introduced to explicitly state that religious beliefs must be given special consideration when organising working hours, and that workers are to be granted time off to fulfil religious duties.
In my opinion, such a provision would enhance legal certainty and clarity. Workers could easily identify their rights, without relying on obscure case law. While the decision on whether an instruction meets the standard of "reasonable discretion" would still be for the courts, such a provision would at least acknowledge the needs of workers seeking a weekday rest for religious reasons.

8. Discussion for the Proposal for a Solution

The three most important criticisms of a fixed weekly rest day in Germany have now been presented and discussed. In the following section, the ideas for the flexibilisation of German law *de lege lata* and *de lege ferenda* will be investigated. The examination begins with proposals that are not based on EU law, followed by options that relate solely to German law.

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[77] R. Schindler, *op. cit.*, p. 56. He therefore advocates for a revision of § 8 ARG.
[78] In favour of an analogous application: A. Potz, *Diener zweier Herren – Dienstverhinderung aus religiösen Gründen*, in J. Fütterer et al. (eds.), Arbeitsrecht – für wen und wofür?, Nomos, Baden-Baden, 2015, p. 211. Against such an application: F. Schrank, *Arbeitszeit Kommentar*, Linde, Wien, 2021, p. 796.

8.1 Derogations from the WTD for Remote or Home-Based Workers

The most far-reaching option for allowing remote work or working from home on Sundays is to exclude such workers from the scope of application of the Working Time Directive (WTD). This could be achieved either through interpretation or by legislating a new exception within the WTD.

8.1.1 By Interpretation

The idea of excluding remote or home-based workers from the scope of the WTD is gaining traction in Germany[79]. Although the majority opinion remains opposed to such an exclusion[80], the matter warrants discussion. The starting point for this idea must be Article 17(1)(a) WTD. According to this provision, Member States may derogate from Articles 3 to 6, 8, and 16, particularly in the case of managing executives or other persons with autonomous decision-making powers. It is argued that remote or home-based workers could fall under the category of "other persons with autonomous decision-taking powers". In Germany, these derogations are implemented in § 18 ArbZG. If a worker qualifies under this derogation, the entire ArbZG does not apply. However, this derogation requires that, due to the specific characteristics of the activity concerned, the duration of working time is not measured and/or predetermined, or can be determined by the worker themselves.

Some Member States appear to interpret Article 17(1)(a) WTD particularly broadly. These examples will be presented before being evaluated in the context of the German legal framework.

Derogations for home-based workers were previously included in Finnish legislation[81]. Today, such a derogation exists in the *Code du Travail* of Luxembourg. According to Article L. 211-3(4), the provisions on working time do not apply to workers who work from home. The article states: "Les dispositions du présent titre ne sont pas applicables: […] 4. aux salariés à domicile;"

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[79] See also: A. Barrein, *Das Homeoffice zwischen Rechtsanspruch und ungeklärten Rechtsproblemen*, in *Recht der Arbeit* (RdA), 2024, vol. 77, no. 1, p. 21; P. Wollert, *Entgrenzte Tätigkeit und ständige Erreichbarkeit im Mobile Office*, Nomos, Baden-Baden, 2022, pp. 197-203.

[80] For example: T. Klein, *Schriftliche Stellungnahme*, in Bundestag Ausschussdrucksache 19(11)752, p. 52; D. Ulber, T. Staps, *op. cit.*, pp. 84-85.

[81] The former section of the Finnish law on working time can be found in: CJEU, Judgement of 26. July 2017 – Case C-175/16 (Hälvä), marginal no. 6.

Moreover, derogations for home-based and teleworking[82] employees can also be found in Italy. These examples suggest that a broad interpretation of Article 17(1) WTD may not be entirely implausible.

Advocates of flexibilisation argue that the European legislator did not initially anticipate the rise of remote and home-based work, and therefore Article 17(1) WTD must be interpreted in a contemporary manner[83]. However, the legitimacy of such interpretations is questionable in light of the case law of the CJEU. The Court of Justice of the European Union requires a *very strict* interpretation of Article 17(1) WTD[84]. Specifically, the Court insists that the derogation's wording must apply throughout the entire working time[85] and that "the scope must be limited to what is strictly necessary"[86].

Given these requirements, it is not permissible to infer autonomy merely from the fact that work is carried out from home. Article 17(1) WTD does not support such a generalisation. The fact that work is performed independently of a fixed office location does not, in itself, indicate that working time is unmeasurable or cannot be predetermined or controlled by the worker. This is instead a matter of contractual agreement between employer and employee. Workers cannot be excluded from the scope of the WTD merely because they belong to a specific category or have been defined as such[87].

A general exclusion of remote or home-based workers from the scope of Article 17(1) WTD would therefore likely be contrary to EU law[88]. The proposal to exclude all remote or home-based workers from the WTD's scope cannot be supported due to its incompatibility with EU law. Consequently, no such derogation can be introduced in § 18 ArbZG.

8.1.2 By Creation

The creation of a new exception for remote or home-based work within Article 17 WTD is likewise not advisable. First and foremost, such an

[82] European Commission, SWD(2023) 40, *op. cit.*, p. 38.
[83] P. Wollert, *op. cit.*, p. 203.
[84] J. Pompa, T. Jaspers, *Occupational Health and Safety and Working Time*, in T. Jaspers et al. (eds.), European Labour Law, Intersentia, Cambridge, 2024, p. 642.
[85] CJEU, Judgement of 17. March 2021 – Case C-585/19 (Academia de Studii Economice din Bucureşti), marginal no. 62.
[86] CJEU, Judgement of 9. September 2003 – Case C-151/02 (Jaeger), marginal no. 89.
[87] V. Leccese, *Dir. 2003/88*, E. Ales et al. (eds.), International and European Labour Law, Nomos, Baden-Baden, 2018, marginal no. 116.
[88] See also: D. Ulber, T. Staps, *op. cit.*, pp. 84-85.

exception would be overly far-reaching and would run counter to the declared objective of the WTD, which is to safeguard the health and safety of workers.
Furthermore, a comparison between activities performed remotely or from home and the current derogations in points 1 to 4 of Article 17(1) WTD reveals that these activities are not sufficiently similar. Thus, systemic reasons also argue against the introduction of a new exception.
Finally, such an exception would not be compatible with the established case law of the CJEU.

8.1.3 The "Teleworker Paradox"

As shown, the demand for the flexibilisation of Sunday work is emerging against the backdrop of increasing remote and home-based work. It has been previously put forward the thesis that a variable rest day would result in greater, unrestricted accessibility of workers. Empirical evidence from Germany supports this[89]. Moreover, it is reflected in the European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect[90].
The very need for such a directive indicates that workers' rest periods – especially during the week – are not being respected. Simultaneously, while there is growing demand for the flexibilisation of Sunday work, the reasoning behind the draft directive highlights that those working from home or remotely are significantly more likely to work longer hours and experience shorter rest periods, which adversely affects their health[91].
According to the logic of those advocating greater flexibility for Sunday work, it is precisely those workers—already particularly vulnerable to health-related overwork—who are to be subjected to even more unregulated labour. This is contradictory and reveals that "flexible working" serves merely as a pretext for enforcing the most extensive possible relaxation of working time regulations, thereby increasing workers' availability to employers.
This may be why the European Sunday Alliance is calling on the European Commission to align the directive on the right to disconnect with Article 2 of the European Social Charter (ESC)[92]. This proposal can be considered to be justified; however, it would be more appropriately

[89] See the arguments and the cited study from Germany above (3.2.1.2).
[90] OJEC, No. C456 of 10. November 2021, p. 161.
[91] OJEC, No. C456 of 10. November 2021, p. 164.
[92] European Sunday Alliance, *op. cit.*

regulated within the broader framework of the WTD. The directive on the right to disconnect should explicitly reference the WTD in this respect.
To date, this proposal has attracted little attention, either in legal scholarship or political discourse. The right to disconnect could therefore be conceived as going hand-in-hand with an obligation to disconnect. Once again, it is Bell whose idea should be emphasised. He highlights the collective dimension of this right, noting that workers can assist others in exercising their right to disconnect by fulfilling an obligation not to be available themselves[93]. This becomes particularly straightforward on a Sunday rest day shared by all.

8.2 Brief Interruptions Versus the Right to Disconnect

A covert form of flexibilisation could arise if temporary and brief interruptions to Sunday rest were deemed permissible. The alleged insignificance of such interruptions is a frequently debated topic.
German law does not permit temporary or brief interruptions based on the wording "Beschäftigung" in § 9(1) ArbZG, which encompasses more than just formal work[94]. Consequently, the possibility of minor tasks during weekly rest periods is not debated in Germany[95]—the clear statutory language establishes clear boundaries.
At the EU level, a more flexible interpretation of the term "uninterrupted" in Article 5 WTD might be considered. However, this would likely soon be precluded by the directive on the right to disconnect. Brief interruptions, therefore, do not represent a legitimate avenue for flexibilisation.

8.3 Voluntary Work on Sunday

Some proposals advocate making Sunday work voluntary[96]. In such cases, however, another day must serve as the weekly rest day. Voluntary Sunday

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[93] M. Bell, *op. cit.*, p. 435.
[94] The term *"Beschäftigung"* covers any activity that is associated with the business. See further (5.2.1).
[95] R. Falder, *Immer erreichbar – Arbeitszeit- und Urlaubsrecht in Zeiten des technologischen Wandels*, in *Neue Zeitschrift für Arbeitsrecht* (NZA), 2010, vol. 27, no. 20, p. 1153; R. Krause, *Digitalisierung der Arbeitswelt – Herausforderungen und Regelungsbedarf*, in Ständige Disputation des Deutschen Juristentags (ed.), Verhandlungen des 71. Deutschen Juristentags, C.H. Beck, Munich, 2016, p. B48.
[96] See, for example: A. Kössel, *Deutsches Arbeitszeitrecht im Wandel?*, in *Der Betrieb* (DB), 2019, vol. 72, no. 35, p. 1960.

work is a foreign concept within the framework of German working time law. *De lege lata*, voluntariness is only relevant where Sunday work is already legally permitted. Voluntariness itself does not constitute an independent justification for exceptions.

One example can be found in the German Maternity Protection Act (*Mutterschutzgesetz*, hereinafter MuSchG). According to § 6(1) sentence 2 MuSchG, Sunday work is permissible only if "the woman expressly declares her willingness to do so." Here, Sunday work is made even more restrictive, as an existing exception is further conditioned upon voluntariness.

As discussed above, a problem arises from the employer's right to issue instructions under § 106 GewO. This provision allows the employer to determine when the substitute rest day will occur. In such cases, flexibility is again reduced, as workers may end up working on Sundays but not receiving a substitute rest day of their own choosing.

Some scholars have therefore proposed that workers should be allowed to choose their individual rest day[97]. However, three arguments speak against this approach.

First, due to the structural inferiority of employees, there are doubts as to whether such voluntariness can genuinely exist[98]. Secondly, empirical evidence suggests that variable rest days are unlikely to be as disruption-free as uniform rest days[99]. Finally, it must be examined whether voluntary work on Sundays is compatible with the German constitution.

8.3.1 Is an Individually Definable Rest Day Constitutional in Germany?

Doubts have been raised about the constitutional admissibility of such a regulation, as the German Constitution protects the work-free Sunday in Article 140 of the Basic Law (GG) in conjunction with Article 139 of the Weimar Constitution (WRV). Some proponents of liberalisation refer to a decision by the Federal Constitutional Court in support of their argument. The judgment in case 1 BvR 2857/07 concerned the opening of shops in the state of Berlin on all four Sundays in Advent[100].

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[97] C. Freyler, *op. cit.*, p. 212; S. Jacobs, *op. cit.*, p. 70.

[98] With further references: D. Ulber, T. Staps, *op. cit.*, pp. 74-75.

[99] See the arguments and the cited study from Germany above (3.2.1.2).

[100] An English summary is available at: https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2009/bvg09-134.html (accessed April 5, 2025).

One of the Court's conclusions was that, in principle, typical weekday bustle (so-called *werktägliche Geschäftigkeit*) must cease on Sundays and public holidays[101]. Those advocating flexibilisation argue that remote or home-based work is generally quiet and, therefore, does not involve such bustle[102]. While it is correct that the Court based its reasoning partly on the concept of weekday bustle, the judgment must not be reduced to that point alone. Its scope is broader.

The Court did not only emphasise rest from the daily routine but also highlighted the objective of guaranteeing people opportunities for recreation on Sundays. Society should be assured a minimum amount of shared free time, enabling social, cultural, political, and family activities. This synchronised temporal freedom also facilitates the exercise of fundamental rights such as the freedom of assembly[103]. Thus, the protection of the work-free Sunday must also extend to individuals who wish to work on that day[104].

The Federal Administrative Court supports this view. In 2020, it ruled that the legislator has legally defined the level of Sunday protection without taking into account the public perceptibility of Sunday work[105]. A reduction in the level of protection—through the granting of individual permits—cannot be justified by the non-public nature of certain work activities[106]. This position was expressly confirmed in relation to remote work. In 2023, the Berlin Administrative Court decided that the lack of public perceptibility associated with working from home does not alter the statutory protection of Sundays[107].

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[101] Federal Constitutional Court, Judgement of 9. June 2004 – Case 1 BvR 636/02, in *Neue Juristische Wochenschrift* (NJW), 2004, vol. 57, no. 33, p. 2370; Federal Constitutional Court, Judgement of 1. December 2009 – Case 1 BvR 2857/07, 1 BvR 2858/07, *op. cit.*, p. 574.

[102] See, for example: C. Arnold, T. Winzer, *§ 3 Flexibilisierung im individuellen Arbeitsrecht*, in C. Arnold, J. Günther (eds.), Arbeitsrecht 4.0, C.H. Beck, Munich, 2022, marginal no. 26; C. Picker, *op. cit.*, p. 8.

[103] Federal Constitutional Court, Judgement of 1. December 2009 – Case 1 BvR 2857/07, 1 BvR 2858/07, *op. cit.*, p. 573; likewise: S. Muckel, *Geschlossene Läden am Sonntag zeitgemäß?*, in *Zeitschrift für Rechtspolitik* (ZRP), 2017, vol. 50, no. 6, p. 190.

[104] D. Ulber, T. Staps, *op. cit.*, p. 77.

[105] Federal Administrative Court, Judgement of 6. May 2020 – Case 8 C 5/19, in *Neue Zeitschrift für Verwaltungsrecht* (NvWZ), 2020, vol. 39, no. 18, p. 1367.

[106] Federal Administrative Court, Judgement of 6. May 2020 – Case 8 C 5/19, *op. cit.*, p. 1367.

[107] Administrative Court of Berlin, Judgement of 27. April 2023 – Case VG 4 K 311/22, in *Gewerbearchiv* (GewA), 2023, vol. 69, no. 8, p. 344.

8.3.2 Possibility of Constitutional Amendment

Whether Article 139 WRV—which states that Sunday shall remain protected by law as a day of rest from work and for spiritual improvement – can be repealed via constitutional amendment remains an open legal question. Article 79(3) GG contains the so-called *eternity clause*, which might conflict with such an amendment. It states: "Amendments to this Basic Law affecting the [...] principles laid down in Articles 1 and 20 shall be inadmissible". However, neither Article 1 nor Article 20 GG requires absolute protection of Sundays[108]. The prevailing legal opinion holds that a constitutional amendment in this area would be possible, and that the eternity clause does not preclude it[109].

8.3.3 Interim Conclusion

An individually definable weekly rest day is not compatible with the German Constitution *de lege lata*. Under current law, work on Sundays is either permitted or prohibited[110] – there is no legal provision allowing for a flexible adjustment of Sunday work. To introduce such flexibility, a constitutional amendment would be required. While this is theoretically possible, the *eternity clause* does not prohibit such a change, there are compelling arguments against amending the constitution in this way.
In particular, the proposal to permit Sunday work for remote or home-based workers risks becoming a gateway for the gradual erosion of health and safety protections for workers[111]. As of today, Article 139 WRV remains largely uncontested and thus continues to serve as the constitutional foundation for the work-free Sunday in German federal law. Furthermore, a constitutional amendment does not appear to be politically desired at this time, as will be discussed below.

8.4 Political Prospects in Germany and the EU

While the flexibilisation of labour law is frequently debated in abstract terms in German politics, Sunday work is rarely addressed in concrete

[108] S. Korioth, *Art. 139 WRV*, in G. Dürig et al. (eds.), Grundgesetz Kommentar, C.H. Beck, Munich, 2024, marginal no. 6a.
[109] S. Korioth, *op. cit.*, marginal no. 6a; P. Unruh, *Religionsverfassungsrecht*, Nomos, Baden-Baden, 2024, § 16 marginal no. 546.
[110] V. Ossoinig, *Regulierung von Wissensarbeit*, Kassel University Press, Kassel, 2019, p. 108.
[111] Likewise: V. Ossoinig, *op. cit.*, p. 108.

terms. In its 2021 coalition agreement, the last federal government merely stated – vaguely – that it intended to support trade unions and employers in enabling flexible working time models[112].

Sunday work does, with one exception, not feature in the current coalition agreement between the SPD and CDU/CSU parliamentary groups following the federal elections in February 2025. Their only plan on this matter is to create an exception to the prohibition of Sunday work for the baker's craft[113]. But their primary labour law proposal is to introduce a weekly maximum working time to replace the current daily limit, while retaining existing rest period regulations[114]. Therefore, these proposals do not appear to affect the legal status of the work-free Sunday.

At the European level, Sunday work is also not a major issue. Neither the proposed directive of the European Parliament and Council on the right to disconnect nor other recent EU legal acts address Sunday work.

As far as the WTD is concerned, the situation is even more complex. A comprehensive revision of the directive in the near future is considered unlikely[115]. Although a political effort to justify why Sunday – rather than any other day – should serve as the weekly rest day for reasons of health and safety would be desirable, it also appears unrealistic at present.

9. Conclusions

Sunday work raises a range of legal issues that span multiple levels of law. This is not only a point of intersection between international, EU, and constitutional law, but also one in which the question of whether Sunday should remain the uniform weekly day of rest is still influenced by its religious origins. Added to this complexity is the fact that empirical evidence is necessary to adequately address the matter.

This paper has explored this field of tension within the context of the debate on the flexibilisation of Sunday work in Germany. It has demonstrated that the current regulation of the weekly rest period is too flexible to sufficiently protect workers' health and safety. Article 5 of the

[112] SPD, Bündnis 90/Die Grünen and FDP, Mehr Fortschritt wagen, Koalitionsvertrag 2021–2025, p. 54.

[113] CDU, CSU und SPD, Verantwortung für Deutschland, Koalitionsvertrag 21. Legislaturperiode, p. 18.

[114] CDU, CSU und SPD, *op.cit.*, p. 18.

[115] See, for example: S. De Groof, *Working Time in Modern Law*, in L. Mella Méndez, L. Serrani (eds.), Work-Life Balance and the Economic Crisis, Cambridge Scholars Publishing, 2015, p. 177.

Working Time Directive (WTD) does not ensure synchronisation and permits up to twelve consecutive working days. A more suitable regulation is found in Directive 94/33/EC, which provides that the minimum weekly rest period shall, in principle, include Sunday. As shown, this regulation also falls within the scope of the EU's competencies. International instruments, such as the European Social Charter (ESC) and various ILO conventions, likewise generally identify Sunday as the weekly rest day.

In Germany, the work-free Sunday is constitutionally enshrined. The legal debate centres on whether the prohibition of Sunday work should be made more flexible. The ban is often criticised as too rigid and outdated, particularly in the context of modern working arrangements such as remote or home-based work. However, this call for flexibilisation should not be followed. On the contrary, it is precisely these workers who require greater protection from the risks of unbounded work—what has been referred to as the "Teleworker Paradox." This protection can be achieved by preserving Sunday as the weekly rest day.

It is important to recognise that the concept of society needing synchronised periods of rest is not obsolete[116]. In fact, given the increasing dissolution of work-life boundaries, such synchronisation is more vital than ever.

Admittedly, a prohibition on Sunday work is not without drawbacks. For instance, individuals who wish to observe a different rest day for religious reasons may prefer to work on Sundays. The option of an individually defined rest day for religious reasons can already be accommodated under German jurisprudence and could also be formalised in the Working Time Act (ArbZG) through a new provision.

However, when weighing all the arguments presented in this paper, it becomes clear that a uniform, work-free Sunday is strongly preferable from the perspective of workers' protection. This is particularly significant when considering future developments, as it is well known that remote and home-based work will continue to expand across many sectors and may increasingly become a new social norm. Calls for broader exceptions risk accelerating a gradual erosion of fixed rest days through changes in social practice.

It therefore remains to be seen how legislation on Sunday work will evolve. Despite ongoing criticism, legal reform in Germany appears unlikely in the near future. At the EU level, it will be interesting to

[116] Opposing view: M. Lachmann, *op. cit.*, p. 301.

observe whether the work-free Sunday will eventually feature in discussions on the Right to Disconnect.

ADAPT International Network

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