# Analysis: EU Weekly Work-Free Sunday Legislative Proposal is Anomalous and Unconstitutional on the Grounds of Subsidiarity Doctrine

by

Brighton G. Kavaloh

A Postgraduate Law Researcher in European Legislative Studies

London – England

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Introduction

> "When it comes to the 'question of whether the weekly rest should normally be taken on a Sunday rather than on another day of the week,' the Commission seems to want to play the subsidiarity card. On the one hand it points to the complexity of the question, while on the other hand it admits that the effect on health and safety and work-life balance, as well as issues of a social, religious and educational nature, would need to be taken into account. However, the Commission argues that this does not necessarily make it an appropriate matter for legislation at EU level."[1]

This is part of an official statement released by the European Sunday Alliance at its launch in Brussels. The Commission in the communiqué seems to indicate and rightly so that on the basis of the principle of 'subsidiarity', Sunday weekly rest-day legislation at EU level would be inappropriate. I commend the Commission for the counsel given to the EU institutions and proponents of the Sunday legislation.

I whole-heartedly welcome the effort to raise the awareness and to enhance the protection of the worker's health and safety for all within the workplace and the essential aspect to strike a balance between work and family life. However, I still maintain that there is no correlation between these objectives and the need for a legally instituted rest day at EU level. At best, it is also argued that "in a multi-faith and in many cases no-faith, multicultural and multiracial society, Sunday does not have the same significance"[2] for all its European citizens.

The main purpose for writing this article is to seek to clarify the fact that based on the doctrine of subsidiarity, the incorporation and application of a work-free Sunday legislative measure at EU level is anomalous and unconstitutional. Subsidiarity in the European context "is a concept which has become part of the language of community law and of constitutional structure, but its origins lie elsewhere."[3] This article has a twofold aim. The first provides a brief background of the doctrine of subsidiarity, focuses on its origins, connection to the weekly work-free Sunday provision and its subsequent incorporation into EU legislation. Secondly, an attempt is made to analyse the legal reasoning behind the European Court of Justice's ruling that led to a Sunday weekly rest-day legislation annulled in 1996. Both sections attempt to prove the anomaly and unconstitutional aspects of a work-free Sunday legislative proposal if enacted. Finally, the conclusion suggests a way forward as presented by the EU Commission.

**The Doctrine of Subsidiarity and the Anomaly of a Work-Free Sunday Legislative Measure at EU level**

Background

[1] www.europeansudayalliance.eu/site/law/article/ 9/15/2011
[2] www.parliament.uk – The Lord's Hansard Text for July 2010 Sunday Trading Question, Column 96.
[3] Subsidiarity and proportionality in the light of the constitution for Europe: Committee of the Regions, European Communities 2006, p.19.

The origins of the subsidiarity concept stems back to Aristotle, the Greek Philosopher. He developed a socio-philosophical theory that the autonomy of the individual be respected and maximised.[4] Aristotle's implicit ideology was rendered explicit in the Roman Catholic socio- theological doctrine by St Thomas Aquinas. Aquinas incorporated Aristotle's idea within the Catholic Theology in order to legitimise it as God's intended design.[5] He too emphasized and taught the importance of individual liberties.

In modern times "the most visible source of subsidiarity lies in the canon laws of the Catholic Church. Pope Pius XI incorporated subsidiarity expressly in the Roman Catholic social philosophy in his Encyclical Letter, Quadragesimo Anno (1931)."[6] The legal experts and politicians attribute the introduction of the concept of subsidiarity in Europe to Pope Pius XI.[7] The Papal view of subsidiarity entailed:

> "It is indeed true, as history clearly proves that owing to a change in social conditions, much that was formerly done by small bodies can nowadays be accomplished only by large corporations. None the less, just as it is wrong to withdraw from the individual at large what private enterprise and industry can accomplish, so too it is an injustice , a grave evil, and a disturbance of right order for a larger and higher organisation to arrogate to itself functions which can be performed effectively by small and lower bodies. This is a fundamental principle of social philosophy unshaken and unchangeable, and it retains its full truth today. Of its very nature, the true aim of all social activity should be to help the individual members of the social body, but never to destroy or absorb them."[8]

The encyclical 'Quadragesimo Anno' addresses the reconstruction of the human social order given the socio-political and economic climate in Europe,[9] when recession led to great depression between 1929 and 1932. Furthermore, I argue that the controversy that emerged after the signing of the Lateran Treaty between the Vatican and Mussolini greatly contributed to issuing the encyclical 'Quadragesimo Anno'.[10] Taking both these situations into account, Lasok observes that "only Pius XI could authoritatively explain the doctrine of subsidiarity, it seems clear that, given the climate in which it was announced, it implies less rather than more power to the higher ranks of authority and no more centralism than is necessary for the wellbeing of society."[11] Therefore by parity of reasoning, in essence, following the social philosophy and application of subsidiarity by Aristotle, St

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[4] Andrew Beale and Roger Geary 'Subsidiarity Comes of Age?' New Law Journal, January 7, 1994, p.12.
[5] Ibid.
[6] Nicholas Emiliou, "Subsidiarity: An Effective Barrier Against the Enterprises of Ambition?" European Law Review, Vol. 17, 1992, p.384.
[7] D Lasok QC, 'Subsidiarity and the occupied field', New Law Journal, September 11, 1992, p.1228.
[8] http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno_en.html See also S J Oswald Von Nell – Breuning, Reorganization of Social Economy – The Social Encyclical Developed and Explained, London, p.423. For a theological analysis of subsidiarity doctrine, see New Catholic Encyclopaedia Vol. 13 (1967) p. 762.
[9] D Lasok QC, 'Subsidiarity and the occupied field', New Law Journal, September 11, 1992, p.1229.
[10] Albert Henry Newman, A Manual of Church History, (AD 1517 – 1932), Vol. II, Philadelphia, pp728-729. See Also John Peterson, 'Subsidiarity: A Definition to Suit Any Vision?' Parliamentary Affairs, A Journal of Comparative Politics, Vol. 47, No. 1, January 1994, P.117.
[11] D Lasok QC, 'Subsidiarity and the occupied field', New Law Journal, September 11, 1992, p.1228.

Thomas Aquinas and Pope Pius XI, one questions the justification of the proposal for the EU as a central power to legislate a work-free Sunday for all citizens in Europe. Deborah Cass makes the following observation: "Subsidiarity, in its early form, encapsulated both the idea that the State should *not* intervene unless it was necessary and the idea that the State *should* intervene when it was necessary. In tracing the development of the principle it will be seen that the current usages of it do not generally accord with the aspect of the early definitions. The term has become synonymous with mediating division within governmental spheres, rather than between government and non-government spheres, and, it is rarely if ever raised as justification for government intervention."[12] I now provide the explanation to this shift from the early definitions to the current distribution of power at EU level.

**A Paradigm Shift: From a Social Philosophical to a Politico-legal Concept of Subsidiarity**

The main proponents advocating a work-free Sunday legislation at EU level are among others, the Christian Democratic Party, also known from a transnational perspective as the European Peoples Party, a Centre-Right Group of MEP's, some with links to the Roman Catholic Church. It is observed "Catholicism and the Catholic Church was the base from which the Christian democratic parties were able to develop after the Second World War."[13] Kees Van Kersbergen and Bertjan Verbeek in an article "The Politics of Subsidiarity in the European Union" make the assertion.

> "Most analyses of subsidiarity tend to stop with the establishment of the fact that the notion is of Catholic origin and that the current use of the term in fashionable Eurospeak has very little to do with its ancestor. Nevertheless we presume that juxtaposition of parent and child may clarify some of the murkier aspects of the offspring."[14]

Christian Democrat MEP's today command the majority inside the European Parliament and view themselves as a 'non-confessional Party.'[15] Nonetheless this centre-right group have not only championed for European integration but also John Peterson makes the point that "they view themselves as national defenders of the Church [Catholic] and family, as is revealed in their support for EC restrictions on Sunday working hours."[16] The principle of subsidiarity was formally incorporated into the Community Law when the Maastricht Treaty was signed in 1993 establishing the European Union.[17] It is important to point out that Article 1 (ex Article 1 TEU), as amended by

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[12] Deborah Z. Cass, 'The Word That Saves Maastricht? The Principle of Subsidiarity and the Division of Powers Within the European Community' Common Market Law Review, Vol. 29, 1992, pp. 1111-1112.

[13] Michael Gehler and Wolfram Kaiser (ed.), Christian Democracy in Europe since 1945, Vol. 2, London and New York, 2004, p.204. Note also that the Christian Democrats were organised as a transnational European People's Party in 1976. See R. E. M. Irving, 'The Christian Democratic parties of Western Europe', the Royal Institute of International Affairs, (George Allen and Unwin, 1979).

[14] Kees Van Kersbergen and Bertjan Verbeek, 'The politics of subsidiarity in the European Union' journal of the common market studies, Vol. 32, No. 2, June 1994, p.222.

[15] Pascal Fontaine, voyage to the heart of Europe 1953-2009: a history of the Christian Democratic group and the group of the European People's party in the European Parliament, (Racine), p.477.

[16] John Peterson, 'Subsidiarity: A Definition to Suit Any Vision?' Parliamentary Affairs, A Journal of Comparative Politics, Vol. 47, No. 1, January 1994, P.118.

[17] Implementation and monitoring of the principles of subsidiarity and proportionality: issues and prospects for the committee of the regions, European Union (Berlin 1994 -2004), p.19.

the Lisbon Treaty states that "this Treaty makes a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are to be taken as openly as possible and as closely as possible to the citizen."[18] Therefore followed to its logical conclusion the clause seems to denote a kind of decentralisation whereby decisions and choices are initially made at the lowest possible level of society. This seems to be in keeping with the original meaning rendered by Aristotle, St Thomas Aquinas and Pope Pius XI as noted earlier. However, the anomaly comes through the incorporation of subsidiarity doctrine into the European Union Treaty Article 5(3) (ex Article 5 TEU) as amended by the Lisbon Treaty that stipulates:

> "Under the principle of subsidiarity in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at Central level or at regional and local level, but can rather, by reason of this scale all effects of the proposed action, be better achieved at Union level."[19]

Article 5(3) (ex Article 5 TEU) poses an anomaly when contrasted with Article 1 (ex Article 1 TEU). My view is that individuals, the family and small groups in society, have not been taken into consideration. The power sharing principle seems to be limited between the Member States and the European Union. It is vital to bear in mind that the treaty currently in force indeed stipulates that Union action is justified only when:

> - The question has trans-national aspects which cannot be satisfactorily regulated by national measures (necessity test I);
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> - National measures alone or lack of Community action would conflict with the requirements of the EC Treaty or would otherwise significantly damage Member States interests (necessity test II);
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> - Action at Community level would provide clear benefits compared to national measure (clear benefit test)[20]

On each of these tests, the EU does not meet the criteria required for legislation. Karlheinz Neunreither, the General Director of the European Parliament argued that "Subsidiarity means that a larger unit only assumes functions in so far as the smaller units of which it is composed are unable or less qualified to fulfil their role. Starting from the individual, civil associations, communes, regions to national states and beyond that each larger unit has only a subsidiary role."[21] And therefore by inference a work-free Sunday proposal if enacted on grounds of subsidiarity at EU level for all

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[18] Nigel Foster, EU treaties and legislation 2011 - 2012 (Oxford, Blackstone's statutes - 2011), p. 2.
[19] Ibid; p. 3. See also Ian Ward, a critical introduction to European law, (London, 2003), p. 45+46. for a critical analysis.
[20] Implementation and monitoring of the principles of subsidiarity and proportionality: issues and prospects for the committee of the regions: report of the general secretariat of the committee of the regions, drawn up for the first conference on subsidiarity, Berlin, 27 May 2004, European Union, p. 4.
[21] Karlheinz Neunreither, 'Euphoria about subsidiarity? The constitutional debate in the European Community? Political science and European unification, newsletter of IPSA research committee of European unification, London School of economics and political science No. 2, Spring 1991, p. 1.

citizens, will in principle be a departure from its original meaning and application and thus render it as anomalous.

**Sunday Weekly Rest-Day Proposed Legislation at EU level is Unconstitutional**

The first European Conference on the protection of work-free Sunday held in Brussels in 2010 brought into public domain the issue of legislation. Since then attempts to enact Sunday as an official rest day in the European Union shows no sign of abating. Thomas Mann, the chairman and spokesperson of the conference stated in a press release:

> "We therewith stand for a work-free Sunday for all European citizens. The protection of work-free Sunday is of great importance for the compatibility of work and family, as well as for civil Society altogether. Therefore I have demanded a bill to be passed to EU Commissioner Andor so that a fundamental work-free Sunday is established within the working time directive. I am convinced that as a result of today's initiation of the consultation procedure by the European Commission, numerous social partners will join us in our demands. Today's conference and the joint appeal is the cornerstone of the creation of the first European Alliance for the free Sunday"[22]

It is worth noting that albeit with such a demand for a work-free Sunday bill to be passed at EU level, Laslor Andor gave a measured response. He reminded the conference audience that many in Europe had argued "against a work-free Sunday being regulated by Brussels, deploying the EU principle of subsidiarity that requires that decisions should be taken at the closest government level to the citizen as appropriate."[23]

I will now proceed to argue on two counts. Based on the Case Law C-84/94 UK V Council of the European Union and its landmark ruling by the European Court of Justice as follows:

1. The legal basis justified the Directive, but the power to adopt Sunday as a legislative measure was vested in the Member State other than the EU as an institution for lack of competence.

2. That on legal basis relied on by the Council of the European communities, it was not justified to adopt a Sunday rest day within the EU working time directive for lack of competence.[24]

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[22] Thomas Mann, Germany MEP (EPP/CDU), protection of work free Sunday, joint press release bulletin, Wednesday, 24 March 2010.

[23] www.eu-observer.com/851/29763 9/12/2011
www.adventreligio-legal-perspectives.org (See YouTube Clip) Note also that Spidla, a predecessor of Commissioner Lazlor Andor held a similar view – see www.agensir.it/pls/sireuropa.

[24] My basis of legal reasoning (see) Keiran St. Bladley, ' the European Court and the legal basis of community legislation' European law review, Vol. 13, December 1988, p. 380.

**Case Law C-84/94 UK V Council of the European Union European Court of Justice - Judgment Revisited.**[25]

Facts of the Case

The working time Council directive 93/104/EC of 23 November 1993, incorporated Article 5, second paragraph that stipulated "The minimum rest period referred to in the first subparagraph shall in principle include Sunday".[26] In 1994, the UK government mounted a legal challenge. Its application called on the ECJ to annul the directive as a whole. But failing which it targeted the following provisions for annulment!

- Article 4 (breaks);
- Article 5, first sentence (weekly rest period);
- Article 5, second sentence (the minimum rest period referred to in the first paragraph shall in principle include Sunday)
- Article 6(2) (maximum 48-hour average working week, including overtime);
- Article 7 (four weeks annual paid leave)[27]

The UK government provided for its legal challenge against the Council of the European Union arguments: "alleging defective legal basis, breach of the principle of proportionality, misuse of powers and infringement of essential procedural requirements."[28] Furthermore Britain stated that "Article 118a should be interpreted in the light of the principle of subsidiarity, which does not allow adoption of a directive in such a wide and prescriptive term as the contested directive, given that the extent and nature of legislative regulation of working time vary widely between Member States."[29] Conversely, the Council of the European Union rebutted that the directive was not in breach of the principle of subsidiarity. In its view, preferred to argue that "the objective laid down by Article 118a is, according to that Article, a matter for the community and its members working together."[30]

**European Court of Justice's Legal Reasoning and judgment**

The ECJ from the outset in its legal reasoning clarified that it was not its function to ascertain the expediency of the measure. Its primary purpose of a review under Article173 was to determine solely the legality of the disputed measure.[31] It is in the light of such consideration that the Court sought to apply the standard that "In the context of the organization of the powers of the community, the choice of the legal basis for a measure may not depend simply on an institutions conviction as to the objective pursued but must be based on objective factors which are amenable

[25] Forward detailed facts: see case - 84/94 United Kingdom V Council of the European Union, industrial relations Law reports, Vol.26, [IRLR] January 1997. Also case - 84/94 United Kingdom of Great Britain and Northern Ireland V Council of the European Union. Courts of Justice of the European Community reports of case before the court of justice and the court of first instance [ECR].
[26] Official Journal of the European communities, Vol. 36, L307, 12 December 1993, p.20.
[27] Case - 84/94 United Kingdom V Council of the European Union [IRLR], 1997, p. 30.
[28] Ibid.
[29] Case - 84/94 UK V Council of the European Union [ECR], para. 46, 1-5808
[30] Case - 84/94 United Kingdom V Council of the European Union [IRLR], 1997, p. 38.
[31] Case - 84/94 United Kingdom V Council of the European Union, judgement of the court of 12 November 1996, www.eur-lex.europa.eu 09/10/2010

to judicial review."[32] I will now proceed to provide the ECJ's response to the application of the United Kingdom. From the beginning the Court reasoned that "In order to deal with the arguments, a distinction must be drawn between the second sentence of Article 5 of the Directive and its other provisions."[33] My view is that the Court took a stance to distinguish between the Directive and the second sentence of Article 5 because the latter fell outside the scope of the Directive.

On count one, EC Treaty Article 3b vested the power to adopt a weekly rest day measure with a Member State and not an EC institution because of the latter's lack of competence. The ECJ ruled that the second sentence of Article 5 that incorporated Sunday in the weekly rest period of the Working Time Directive was "ultimately left to the assessment of Member States, having regard in particular, to the diversity of cultural, ethnic, and religious factors in these states (second sentence of Article 5, read in conjunction with the tenth recital.) "[34] This was purely a legal matter. The Court directly made reference in a categoric manner to the tenth recital in the Directive itself. The ECJ's most obvious legal reasoning followed the path of the principle of subsidiarity. Article 3b expressly provided that "The Community shall act within the limits of the powers conferred upon it by the Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence the Community shall take action in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States."[35] Therefore by inference when the issue of subsidiarity was brought before the ECJ by the UK in relation to the entire Directive, the Court first had to ascertain if the Council Directive fell within the exclusive competence or non-exclusive competence also known as shared competence. In the final analysis the Court considering the interpretation and application of Article 3b ruled "In these circumstances, the applicant's alternative claim must be upheld and the second sentence of Article 5 which is severable from the other provisions of the Directive must be annulled."[36]

It is interesting also to identify that during the Court hearing the Council of the European Union seems to have conceded: "Finally it is ultimately for the Member States to decide whether and to what extent Sunday should be included in the weekly rest period, since it is clear, according to the Council, that the second paragraph of Article 5 is incidental to the objective of the Directive, namely protection of the health and safety of workers."[37]

Secondly Article 118a of the EC Treaty relied on by the Council of the European Union, did not provide the justification for the adoption of Sunday as an official day of rest within the Working Time Directive. The legal basis found in the preamble of the Council Directive 93/104/EC stated that "Article 118a of the treaty provides that the Council shall adopt, by means of directives minimum requirements for encouraging improvements, especially in the working environments to ensure a

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[32] Case – 45/86 commission of the European Communities V Council of the European Communities, summary of the judgement, 1987, para. 2, p.1494.
[33] Case - 84/94 United Kingdom V Council of the European Union [ECR], judgement of the court, 12 November 1996, para. 36, 1-1805.
[34] Ibid.
[35] Conso;idated Version of the Treaty Establishing the European Community, Nigel Foster, EC Legislation 2005 – 2006, 16th Edition, p. 3.
[36] Case - 84/94 United Kingdom V Council of the European Union [ECR], judgement of the court, 12 November 1996, para. 37, 1-5806.
[37] Case - 84/94 United Kingdom V Council of the European Union [IRLR], 1997, p. 37.

better level of protection of the safety and health of workers."[38] The ECJ in carrying out its legal reasoning paid particular regard also to the European Council's guidelines and the Inter-institutional Agreement of October 25, 1993 that stated "the preamble to an act must always contain a recital justifying the relevance of the act with regard to the principle of subsidiarity."[39] It is obvious the Court did not see the compatibility of the legal basis of Article 118a and the connection with Sunday legislation at EU level. My view is that tenth recital of the Council Directive was categoric in that it stated "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" and added that "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."[40] For that reason, the ECJ ruled "It must therefore be held that the Directive was properly adopted on the basis of Article 118a, save for the second sentence of Article 5, which must accordingly be annulled."[41] And furthermore it reiterated "It is sufficient that as follows from the paragraph 36 to 39 of this judgment, the measures on the organization of working time which form the subject-matter of the directive, save for that contained in the second sentence of Article 5, contribute directly to the improvement of health and safety protection for workers within the meaning of Article 118a, and cannot therefore be regarded as unsuited to the purpose of achieving the objective pursued."[42]

It is interesting the Court also noted that "the matter of Sunday resting is dealt with in an accessory provision and is left to the discretion of the Member States."[43] And because Sunday as weekly rest-day was seen in an aiding and supplementary role as opposed to being the main objective for the protection of health and safety, for this reason it is my submission that the Court considered it null and void. Lang makes a poignant argument when he states "the obligation to give reasons makes for open government. A legislative measure could be annulled if it appeared that the real reason why it was adopted was not the reason stated in the preamble (misuse of power), défournement de pouvoir)."[44]

My submission is that based on the Case Law C-84/94 UK V Council of the European Union and its landmark ruling by the European Court of Justice regarding Sunday legislation, a work-free Sunday even today at EU level remains unconstitutional on the grounds of subsidiarity doctrine.

**Conclusion**

**Subsidiarity and the Work-Free Sunday Proposal: The Way Forward**

This article set out to argue that the current relentless pursuit to position Sunday as an official weekly rest-day within the EU Working Time Directive remains anomalous and unconstitutional on

[38] Official Journal of the European Communities, Vol.36, L307, 12 December 1993, p.18.
[39] A. G. Toth, 'is subsidiarity justiciable?' European law review, Vol. 19, 1994, p.284.
[40] Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, the official Journal of the European communities, Vol. 36, L307, 12 December 1993, pp. 18+19.
[41] Case - 84/94 UK V Council of the European Union [ECR], judgement of the court, 12 November 1996, para. 49, 1-5809.
[42] Ibid; para. 59, 1-5811 and 1-5812
[43] [1997] IRLR p.39
[44] John Temple Lang, ' The Constitutional principles governing the community legislation' northern Ireland legal quarterly, Vol.40, No. 3, Autumn, 1989, p.231.

grounds of subsidiarity principle. Notwithstanding I still applaud the efforts to enhance the protection of worker's health and safety at the workplace and also the need for the reconciliation of work and family. The issue nonetheless is that there is no legal justification to connect these objectives and the need for a legislative measure at EU level to institute a work-free Sunday.

For this reason I recommend to the EU institutions and the European Sunday Alliance that as a way forward, the proposal by the commission be seriously taken into consideration. In certain aspects of the organization of the Working Time Directive, the commission proposed that

> "While acknowledging the need for certain basic rules with regard to working time at Community level, it should be emphasized that, given the differences arising from national practices, the subject of working conditions in general falls to varying degrees under the autonomy of both sides of industry who often act in the public authorities' stead and / or compliment their action. To take account of these differences and in accordance with the principle of subsidiarity the Commission takes the view that the negotiation between the two sides of industry should play its full part within the framework of the proposed measure, provided that it is still able to guarantee adherence to the principles set out in the Commission's proposal. In other words, it is important in this field to take into consideration the fact that such agreements concluded by management and labour can in principle make a contribution to the application of Community directives, without, however, releasing the Member States concerned from the responsibility for attaining the objectives sought via these instruments."[45]

My understanding of this proposal presented by the Commission is that for best practice on grounds of subsidiarity, certain matters must be left for negotiation between the employer and the employee. EC Treaty Article118a provides at EU level the legal basis for minimum requirements to ensure a better level of protection of the health and safety of workers. This standard practice was applied in other provisions in the Directive. For instance Article 4 pertaining to Breaks at the workplace. Article 4 stipulates that "Member States shall take the measures necessary to ensure that, where the working day is longer than six hours, every worker is entitled to a rest break, the details of which, including duration and the terms on which it is granted, shall be laid down in collective agreements or agreements between the two sides of industry or, failing that, by national legislation." A similar minimum requirement was applied to Article 5 first sentence, which allowed for a weekly rest period. When Article 5, second sentence was incorporated to include Sunday, it was noted by the ECJ as falling outside of the scope of the Directive and for that reason it was annulled.

I respectfully request for a stay of the proposed Sunday legislative measure for reflection and consultation especially with minority religious organizations whose member's weekly rest and worship may fall on alternative days.

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[45] Official Journal - Commission of European Communities, COM (90) 317 Final – SYN 295 Brussels, 20 September 1990. An Explanatory Memorandum Concerning the proposal for a Directive on Certain aspects of the organization of Working Time.

**List of Abbreviations**

COMECE – Commission of the Bishops Conferences of the European Community

CDU – Christian Democratic Union

ECJ – European Court of Justice

EPP – European Peoples Party

EU – European Union

ECR – European Court Reports

IRLR – Industrial Relations Law Reports

MEP – Members of European Parliament