

**Analysis: Article 10(2) of Council Directive 94/33/EC is Tenuous as a Legal Basis to
Justify EU Work-Free Sunday Legislation**

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“On Sundays, parents and children are able to spend time with each other. Schools are closed on this day. According to the EU Directive on the Protection of Young People at Work, Sunday is already the acknowledged weekly rest day for children and adolescents of the EU.”¹

This statement forms one of the primary reasons to call for a work-free Sunday at EU level. In recent times, Article 10(2) of the Council Directive 94/33/EC on the Protection of Young People at Work² is associated with Article 5(2) Council Directive 93/104/EC on Working Time.³

While I concur that the legal basis (EC Treaty 118a) is applied in both Articles, I argue that justification for suggesting a link as valid reason to institute Sunday as an official day of weekly rest for all citizens of Europe is weak. The basis of my analysis is that the Working Time Directive, 93/104/EC came into force in 1993. Subsequently, eight months later, in 1994, Council Directive 94/33/EC for the Protection of Young People at Work was enacted as a legislative measure. Notwithstanding, it was the same year the UK government commenced legal proceedings to challenge the EU Council Directive 93/104/EC⁴, which included Article 5, second sentence that stated “the minimum rest period shall in principle include Sunday”⁵ An identical clause is reflected in Article 10(2) of Council Directive 94/33/EC.⁶ However, in the final analysis the European Court of Justice 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.”⁷

I would like to believe that the ECJ was aware of the existence of the Directive pertaining to young people at work in 1996 when it annulled Article 5, second sentence, and yet made no connection between the 2 Directives. On the contrary, the Court proceeded to make Sunday legislation null and void. We do well to remember that the ECJ did not deal with the Council Directive 94/33/EC, but rather Council Directive 93/104/EC to which UK submitted its application at the time. I therefore argue, if the former Directive (94/33/EC) had been included, it too would have been annulled for the same legal reasons the latter Directive (93/104/EC) was ordered by the ECJ. Hence, we cannot use the Directive for the Protection of Young People at work to justify the validity of a work-free Sunday legislation at EU level.

¹ On the occasion of the First European Conference on the Protection of a Work-Free Sunday, European Parliament, Brussels on 24 March 2010. See also www.europeansundayalliance.eu

² Official Journal of European Communities, L216, Vol.37, 20 August 1994

³ Official Journal of European Communities, L307, Vol. 36, 12 December 1993

⁴ Case 84/94 United Kingdom v Council of the European Union 1997 [IRLR]

⁵ Official Journal of the European Communities, L307 Vol. 36, 13 December 1993

⁶ Official Journal of the European Communities, L216, Vol. 37, 20 August 1994

⁷ Case 84/94 United Kingdom v Council of the European Union [ECR] para. 49, 1-5809