Opening hours and working time in the commerce sector

National Case Study Report: Austria

Bernadette Allinger

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Forschungs- und Beratungsstelle Arbeitswelt
(Working Life Research Centre)
A-1020 WIEN, Aspernbrückengasse 4/5
Tel.: +431 21 24 700
Fax: +431 21 24 700-77
office@forba.at
http://www.forba.at
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1. OPENING HOURS IN THE COMMERCE SECTOR – LEGAL FRAMEWORK

The law regulating opening hours in the commerce sector generally differentiates between the retail sector and the wholesale sector, with the wholesale sector having more restricted opening hours for its points of sale (which are defined by the employees’ immediate contact to the customer and the provision of services on-site; thus, showrooms are exempt). This specifically refers to opening hours on Sundays and holidays in the wholesale sector for which there are generally no exemptions provided for unlike in the retail sector as shown below. The following account refers to shop opening hours in the retail sector only:

1.1. Shop Opening Hours Act 2003

Opening hours for retail stores are regulated in the Shop Opening Hours Act (Öffnungszeitengesetz), which was last amended in 2003 and 2008. Before 2003, retailers were entitled to open their shops for 66 hours per week between 6.00 and 19.30 on weekdays and between 6.00 and 17.00 on Saturdays. With the amendment in 2003 (which was implemented without the consultation of the social partners), the maximum weekly opening hours remained the same with 66 hours, however, the framework period was extended to opening hours between 5.00 and 21.00 on weekdays and to between 5.00 and 18.00 on Saturdays. The amendment also gave the provincial governors (of Austria’s nine federal provinces, or Länder) the right to extend the maximum shop opening hours from 66 to 72 hours a week if there is a specific regional need (i.e. in response to the demand of local consumer and tourism requirements). The extension is to be implemented via a governor’s decree and is to take into consideration whether the whole province or just a specific region is concerned and whether the need for extended opening hours is year-round or seasonal or only on specific days. Before issuing such a decree, consultation with the relevant statutory interest organisations of the employers’ and employees’ side (i.e. the Chamber of Labour AK (Arbeiterkammer) on behalf of the employees and the Federal Economic Chamber WKO (Wirtschaftskammer) on behalf of
the employers) and – if applicable – the concerned municipalities has to take place.

1.2. Shop Opening Hours Act 2008

In the latest amendment to the Shop Opening Hours Act which came into effect in 2008, the maximum shop opening hours were extended to 72 hours with opening hours from Monday to Friday between 6.00 and 21.00 and on Saturday between 6.00 and 18.00; bakeries are permitted to open at 5.30. By governor’s decree, the store opening hours can be brought forward to 5.00. In specifically important tourist areas the opening hours can be extended to after 21.00; the same applies on the occasion of village fairs or street festivals. In 2008, the amendment was introduced after consultation with the social partners. In exchange for their agreement to the extension of the weekly opening hours, the unions demanded and achieved the implementation of overtime pay for extra hours worked by part-time workers on top of their contractual hours.

1.3. Opening hours on Sundays and public holidays

Opening stores on Sundays and public holidays is in principle prohibited in Austria; nonetheless, there are important exemptions from this regulation: The governors of the federal provinces can overrule this general ban for retail stores if they see a particular demand in specific regions or in the province as a whole. Within the statutory maximum opening hours of 72 weeks, thus opening stores on Sundays and public holidays can be permitted by decree. Wholesale sector points of sale are to remain closed on Sundays and public holidays; for them, no special regulations apply. So far, the widespread extension of opening hours to Sundays and public holidays in the commerce sector in Austria has not been implemented.

1.4. Exemptions for specific types of shops

Specific regulations apply for a whole range of types of shops:

- Stores at train stations/airports/bus stations and shipping piers which sell groceries, souvenirs, travel necessities (i.e. books, stationary, flowers, toiletries, films etc.) and the range of products sold at tobacco shops are permitted to open
in accordance with traffic hours. The sale area of these products is not to exceed 80 square metres (the respective provincial governor, however, can revoke this surface restriction).

- Shops for confectionery and sweets, refreshments and other ready-to-eat food products and products which are in some way related to the event (i.e. in theatres, museums, cinemas, concert venues, congress buildings, circus, sports halls and sports grounds) are permitted to open during times necessary to service the customers.

- Duty free shops at airports and border stations of driver associations are permitted to open in accordance with traffic hours.

- Shops in the framework of exhibitions or fairs are permitted to open until 19.00 on Saturdays, antique fairs until 22.00.

Additionally, the governors can by decree permit weekly opening hours of over 72 hours (and after 18.00 on Saturdays) in the following types of stores: bakeries, flower shops, shops selling sweets and shops selling fruits and vegetables. The sale of goods via vending machines, in the framework of restaurants and the like, at petrol stations, in military barracks and on markets is also exempt from the federal law.

Due to the fact that the governors of the nine provinces can to a certain degree enact specific regulations, there is quite a degree of fragmentation with regards to the exemptions specified above in the different regions and tourism areas.

1.5. Opening Hours on 8, 24 and 31 December

Special regulations are provided for in the Shop Opening Hours Act for the 24th and 31st of December. On the 24th of December (if it is a working day, i.e. Monday to Saturday), stores are allowed to open from 6.00 to 14.00; stores selling sweets and flowers are allowed to open until 18.00; and Christmas trees may be sold until 20.00. On the 31st of December (if it is a working day), stores may open from 6.00 until 17.00; grocery stores may open until 18.00; and stores selling sweets, flowers and New Year’s articles may open until 20.00. Furthermore, a specific regulation for opening retail stores on the 8th of December (which is a public holiday, the Immaculate Inception Day) applies: if it is a
2. WORKING TIME IN THE COMMERCE SECTOR – DESCRIPTION OF THE LEGAL FRAMEWORK (INCL. WORK AT NIGHTS/WEEKENDS, RELATION BETWEEN WORKING TIME REGULATIONS AND SHOP OPENING HOURS)

The legal framework on working time in Austria is in general determined by the Working Time Act (Arbeitszeitgesetz, AZG) and the Act on Rest Periods (Arbeitsruhegesetz, ARG), both of which apply to the vast majority of employees in the whole economy (there are specific laws e.g. for young workers, bakers, home workers, hospital employees etc.). Specific regulations apply to workers in the commerce sector (see below). While the law provides a general framework on maximum hours worked which are not to be exceeded, the negotiation of working time is regulated by collective agreements within the legal framework.

In the economy at large, the Working Time Act in principle restricts the normal working day to a maximum of eight hours and the normal working week to a maximum of 40 hours. Weekly working hours may be extended to up to 50 hours including overtime. Over a reference period of 17 weeks, however, the average weekly working hours must not exceed 48 hours; in the commerce sector (where specific regulations apply), normal weekly working hours must not exceed 44 hours over a reference period of four weeks (with average weekly normal working hours of 40 hours or as provided for in the collective agreements, i.e. 38.5 hours), with the normal working day not exceeding nine hours. In collective agreements, the normal working day can be extended to up to ten hours (in the commerce sector this applies only when flextime arrangements or condensed working weeks are applied, see below).

Night work (which is defined as employment between 22.00 and 5.00) is regulated for the vast majority of employees in the Working Time Act. Night workers are by definition those employees who work regularly or during at least 48 nights a year at least three hours between 22.00 and 5.00. For night workers, generally the regular daily and weekly working hours and rest periods apply; however, extended rest periods are
provided for extended readiness to work and heavy night work. Night work hardly occurs in the commerce sector, as shown above, due to the restricted shop opening hours.

According to the Act on Rest Periods (Arbeitsruhegesetz, ARG), employees in the economy at large are entitled to a consecutive resting period of 36 hours which includes Sunday. The weekend rest period is to start on Saturday at 13.00 at the latest. Employees who are engaged in absolutely necessary concluding, cleaning or maintenance work may be employed until 15.00 on Saturdays. Exemptions from the granting of the weekend rest can be made via law, decree, notice or collective agreements (in the commerce sector, such exemptions in accordance with the shop opening hours are provided for in the collective agreements, see below). Employment during the weekend is furthermore permitted in certain sectors and for certain tasks including – among others – the hotel and catering industry, the leisure industry, the transport system, health care system, theater and museums or emergency services. Further exemptions to the weekend and holiday rest period targeted towards the prevention of economic disadvantages and the securing of employment can be regulated in collective agreements (e.g. several industries). Moreover, the provincial governors can issue decrees on suspending the weekend and holiday rest period if there is an extraordinary regional need for certain services.

3. COVERAGE OF THE FOLLOWING QUESTIONS BY COLLECTIVE AGREEMENTS?

- Compensation for working late hours and weekends
- Individual limitations on working at these times of the day/week
- Possibility to enter into local agreements that deviate from the legal framework (do local agreements exist?)
- Do regulations within these collective agreements differ from what is common in other major areas?

There are eleven different collective agreements to be found in the commerce sector, two of them of a rather general nature and the rest catering to specific subsectors. The
two general collective agreements are major importance and encompass large parts of the commerce sector: the collective agreement for white-collar employees in the commerce sector and the collective agreement for blue-collar employees in the commerce sector. Additional collective agreements apply to the following subsectors: pharmaceutical wholesale; tobacconists; video rental shops; mail order trade and warehouses; repair of motor vehicles and motor cycles (separate collective agreements for white- and blue-collar workers); pharmacies and hospital pharmacies (two different collective agreements); and retail sale of second-hand goods in stores. Generally speaking, all of the above mentioned collective agreements by and large provide for the same regulations with regards to working time. In the following section, regulations provided for in the two major collective agreements for blue-and white-collar workers in the commerce sector are being discussed, as they are by far the largest and most important ones.

In both agreements, the collectively agreed working hours lie at 38.5 hours a week, which is commonly the collectively agreed working time in other sectors, as well. The distribution of working time is to be determined via works agreement or in individual employment agreements. By collective agreement, the weekly working hours may be extended up to 44 hours over a reference period of 26 weeks, as long as an average 38.5-hour week is maintained. Via works agreement or individual agreements (if there is no works council in the respective company), the reference period may be extended to 52 weeks at the maximum. In order to provide for longer periods of free time, working time can also be distributed differently (e.g. a shorter Friday) if the normal working hours on individual days do not exceed nine hours. For hours worked in excess of these nine hours a day, overtime premiums are to be paid. Including overtime, the maximum daily working time must not exceed ten hours. In so-called flextime arrangements (Gleitzeit) which can be implemented via works agreement, the daily normal working hours may be increased to ten hours a day (for adult workers, only). The same applies if the weekly working time is condensed to four (or fewer) consecutive days. For part-time workers (i.e. employees working less than 38.5 hours), the daily normal working hours may be extended to ten hours only if the employee works at least eight hours every day he/she is working (applies to adult workers, only). Up to 30 minutes of so-called preparatory and conclusion work may additionally be worked per day (i.e. time worked
before the store opens and after it has closed). Work provided by full-time employees exceeding 38.5 hours is considered extra work (without overtime premiums) up to the legal working week of 40 hours; work in excess of 40 hours is considered overtime work and overtime premiums are to be paid (with the exception of flextime arrangements as described above). For part-time workers, overtime premiums are to be paid for working hours exceeding the agreed working time. **Night and weekend work** in the retail sector is limited by the legislative framework of store opening hours.

There are no company collective agreements to be found in the sector (they are very rare in Austria’s whole economy). With regards to collective agreements, there is no possibility to enter local agreements that deviate from the sectoral collective agreements. However, as mentioned above, the provincial governors may issue decrees which extend store opening hours in certain areas. The sectoral collective agreements take this possibility into account and thus there are specific regulations provided for. In works agreements (or individual agreements in companies with no works council), more favourable regulations than provided for in the collective agreements may be adopted (favourability principle), but not vice versa.

### 3.1 Special provisions for employment on weekdays after 18.30 and on Saturdays after 13.00

Employees in the retail sector are entitled to time credits for work performance which has been implied on them by the employer due to extended opening hours. However, employees who are working Saturdays only (agreed upon with their employer) are not entitled to credits. For employment on weekdays (Monday to Friday) after 18.30 and on Saturdays after 13.00 a credit is being given: this can either be compensated via time off in lieu, or – if provided for in works agreements or individual agreements – via payments; between 18.30 and 20.00, the time off in lieu lies at 70% and at 100% after 20.00 (the same percentage applies to supplement cash payments in lieu). The same supplement applies if work during those hours constitutes overtime. On Saturdays between 13.00 and 18.00, the time credit lies at 50%. If the time credit is being used for a whole day free of work, the compensation lies at 50%; if the time credit is being used for consecutive free time including the weekly rest period or if it includes a holiday rest period, then it is reduced to 30%. The employment of workers during those extended
opening hours (workdays after 18.30 and Saturdays after 13.00) is permitted only in as far as the circumstances of the employees allow for it (e.g. care duties, unreasonable opportunities to get home, participation in (further) education). When an employee is working on a Saturday after 13.00, then the following Saturday must be free of work, according to the collective agreements. However, via the application of a reference period of four weeks as provided for in works agreements (or individual agreements in companies with no works council), four consecutive Saturdays may be worked (with the other four Saturdays being off) within an eight-week period (i.e. two consecutive reference periods of four weeks).

There are specific regulations on employment in the retail sector on the Saturdays in December: For employees and apprentices whose normal working time includes more than one Saturday a month after 13.00, work on those December Saturdays after 13.00 is considered overtime work which is to be compensated with a 100% supplement.

In the wholesale sector, the normal working time generally ends at 13.00 on Saturdays. Exempt from this regulation are points of sale (i.e. direct customer contact, carrying out services on site), where employment on Saturday until 18.00 is permitted. Up to one extra hour of work may be used for absolutely necessary conclusion, cleaning or repair work.

3.2. Special provisions for employment on Sundays / holidays

Sunday work in the commerce sector is only allowed when specific exemptions are provided for. For employment on Sundays and holidays (holidays if the normal contract hours for that day of the week are exceeded), overtime premiums are to be paid. Young workers under 18 years of age are generally not to be employed on overtime (including Sundays). The overtime supplement for work on Sundays and holidays, as well as overtime between 20.00 and 6.00, lies at 100%.

3.3. Special provisions for employment on 8, 24 and 31 December

There are special provisions for employment on the 8th, 24th and 31st of December. As shown above, the 8th of December is a public holiday, but if it falls on a working day,
stores may open from 10.00 to 18.00. Employees need to be informed by the 10th of November whether their employer wants them to work on that day. Employees can refuse the request, which must not have an impact or negative consequences on their employment relationship. For up to four hours of work on 8 December, four hours of free time are to be given in lieu; for up to eight hours of work, eight hours of free time need to be given.

On the 24th and 31st of December, employment in the retail sector is regulated as provided for in the Shop Opening Act (unless otherwise issued by governor’s decree). Normal working hours end at 14.00 on the 24th of December and at 17.00 on the 31st of December; afterwards, only absolutely necessary tasks are permitted, which count as overtime. In the wholesale sector, normal working time ends at 13.00 and on 12.00 if it is a Saturday on both the 24th and 31st of December; afterwards, only absolutely necessary tasks are permitted, which count as overtime.

4. TRADE UNIONS’ POSITION ON OPENING HOURS / WORKING TIME IN THE COMMERCE SECTOR

The question of the extension of opening hours on weekdays (Monday to Friday) is in general not prominently debated by the social partners as they are still comparatively restrictive. Neither the unions, nor the employers’ side, are in favour of extending the opening hours for different reasons, however: while for the unions, it is a case of protecting the employees from longer working hours at marginal times, for the Federal Economic Chamber (WKO) it is a matter of protecting smaller businesses from competitive disadvantages when larger stores have more liberalised opening hours which are not feasible for smaller companies due to financial and personnel constraints.

The discussion on Saturday and Sunday employment in the retail sector, however, is hotly debated. The commerce branch of the WKO is in favour of liberalising employment regulations for Saturday work. The current regulation that sectoral employees may only work two Saturdays a month (for every Saturday worked, the next has to remain free of work, see above; in works agreements, employment of two Saturdays within four weeks may be agreed on, i.e. allowing employees to work 4
Saturdays in a row) is too restrictive for the employers’ side. However, this regulation was put in place when the shop opening hours were extended from 66 to 72 hours a week (see above) and was the condition for the unions’ agreement. The employers’ side argues that it is difficult to have enough qualified staff members available on Saturdays and states that it is often also in the employees’ interest to work Saturdays due to higher customer frequency and thus the chance of higher commission. The unions are opposed to a liberalisation of Saturday work and demand a general large reform of the collective agreements encompassing the regulations for Saturday work and the supplements to be paid.

A discussion on a general extension of retail opening hours to Sundays, started by employers (especially the prominent owner of a large shopping mall in Vienna), triggered a controversial public debate and is very high up on the agenda of the social partners. There are always single employers (mostly larger chains) or managers of shopping centres who violate the Shop Opening Hours Act and keep their stores open on Sundays. This is especially the case in Vienna, where some employers have demanded a decree for considering the inner city as a tourist destination, thus allowing the stores to open on Sundays. The mayor of the city has, however, rejected this request so far. As shown above, under existing law, only stores located in tourist regions are allowed to open on Sundays. The trade unions are against a liberalisation of opening hours to Sunday, arguing that this would neither create new jobs nor increase consumption, but just shift consumers’ buying habits. Also the Vienna branch of the WKO sees no need to extend the store opening hours to Sundays as some 90% of store owners are against them, according to a survey conducted among its members. The same applies to employees; in a survey conducted by the Union for Salaried Employees, Journalists and Graphical Workers (GPA-djp) in a large shopping mall, over 90% of the surveyed retail store employees were against working on Sundays. Both the union and the Vienna WKO commerce section agree that if tourists stay at least two days in the city, they have ample opportunity to shop. Especially specialist and small stores do not have the financial capabilities of opening on a Sunday; on Saturday afternoon, only every third of them opens, according to the WKO. The manager of a large shopping centre has recently filed a lawsuit at the Constitutional Court stating that it is unfair treatment that in other provinces, stores are allowed to open on the basis of governor’s
decrees, whereas in Vienna no such decree has been issued. In the lawsuit, it is argued that it should be the individual store owners who decide whether to open on Sundays and not the governors. There have been cases of illegal opening of stores in shopping centres which form part of train stations. According to specific regulations (see above), only a certain range of products may be sold (see above). However, single stores have in the past occasionally and on purpose violated that restriction, especially on days with a high shopping frequency (i.e. in the weeks before Christmas). They demand regulations that allow for opening on a few Sundays on which a high customer frequency is expected (e.g. Sundays before Christmas and Easter, Mother’s Day). However, as there is a vast opposition in the country against opening on Sundays, it is not very likely that a further liberalisation will be implemented any time soon.

5. WHICH EMPLOYMENT GROUPS WORKING LATE HOURS AND WEEKENDS?

Night and weekend work in the retail sector is limited by the legislative framework of shop opening hours (see above). Some 40% of employees in the retail sector often work on Saturdays and about 7% occasionally work on Sundays (cf. Huber/Michenthaler 2009). In numbers, occasional Sunday work thus concerns about 36,000 sectoral employees according to the working climate index (survey) by the Chamber of Labour (Arbeitsklimaindex 2011). The ‘typical’ Sunday worker thus is male (38% of Sunday workers are men while they represent only 25% of sectoral employees), has a migrant background, is in a lower management position and earns less than those who do not work on Sundays (EUR 1280 a month net income for occasional Sunday workers vs. EUR 1360 a month net income for employees not working on Sundays). The results suggest that it is easier to recruit male employees for Sunday work as they are less occupied with childcare duties. Furthermore, it seems that migrant workers can be put under pressure to work Sundays more easily, possibly being threatened with job loss if they refuse. Thus, it appears that those workers who are lowest in the hierarchy and have a lack of choice, disproportionately often work on Sundays. Also, the data suggest that the supplements for Sunday work are often not correctly paid. The same applies to
preparatory and concluding working time, i.e. work that is to be done before and after opening hours. According to working climate index data, this time is often unpaid and lies at around EUR 600 to EUR 1000 per employee and year.

Saturday work on the other hand is fairly widespread – only some 20% of sectoral employees never work on Saturdays. However, no more detailed data on what employment groups work on Saturdays and/or evenings are available.

**SOURCES:**


Several press releases by the social partners AK, GPA-djp, ÖGB, vida, WKO