

# Sunday Trading Ban – What The Legislator Has in Store For Retailers



**Anna Wyrzykowska**

*Advocate,  
counsel  
Head of the  
Real Estate  
Practice  
WKB  
Wierciński,  
Kwieciński,  
Baehr*



**Sylwia Czerwik-Drozdowicz**

*Legal counsel  
Real Estate  
Practice  
WKB  
Wierciński,  
Kwieciński,  
Baehr*

**A**t the beginning of September 2017, a controversial bill was submitted to the Polish Parliament that aimed to restrict retail and other sales activities by entities providing trading services on Sundays and on holidays. The final wording of the act remains unknown at the date of this publication, and may be subject to further changes during the legislative process. Already there is a serious doubt around whether the act should be submitted to the EU Commission within the public aid procedures. Also, there is controversy over whether the act – as an amendment to the codes and not just the ordinary bill – should be adopted in a special procedure for codes and not ordinary legislative procedure under the Polish Constitution. Nevertheless, it seems that the partial restriction of trading on Sundays will become effective in Poland from the beginning of next year.

Many issues are still open, including the number of Sundays to which the ban or the restriction will apply. In accordance with the bill published on the Parliament website, the trading ban will apply to the first, the third and the fifth (if applicable) Sunday of each calendar month. According to our rough estimate, in 2018 the Sunday trading ban will cover 28 Sundays. Therefore its consequences may be important since almost one entire month of trading is on the line.

The ban is to apply to most shops in Poland, especially to shopping centers, but also to such businesses as online stores and online platforms if sales are performed by employees. The bill provides for certain exemptions such as, for example, trading on the two Sundays preceding Christmas, trading at petrol stations, souvenir shops, and shops run exclusively by their owners.

Penalties for non-compliance with the Sunday trading ban are to range between PLN 1,000 and PLN 100,000. It remains to be seen what factors will determine the amount of the penalty. There are suggestions, however, that the amount of the penalty will be dependent on factors such as turnover or recurrence of the breach.

One of the arguments raised by supporters of restricting trading on Sundays is that in many European countries this rule has been successfully implemented and enjoys social acceptance. It must be noted, however, that bans and restrictions have various scopes, and therefore their respective impact on the economy vary from country to country.

In most EU countries people are basically free to do shopping without any limits. The most severe restric-



tions apply in Germany and Austria. In most of the German states, Sundays are trading-free, but there are a few Sundays on which shopping is allowed. Partial restrictions apply in Belgium, France, Greece, the Netherlands and Luxembourg. In France, the issue of Sunday trading is permanently negotiated between employers and trade unions. Particular attention should, however, be brought to the fact that a Sunday trading ban does not basically apply in the countries of Central and Eastern Europe. In Hungary, a Sunday trading ban was in force for only one year and was lifted in April 2017.

In countries where restrictions and bans have been introduced, regulations usually take two forms: a trading ban (e.g. Germany and Austria) or Labor Law regulations, which means prohibition on labor (e.g. France).

The bill that is being discussed in Poland is based on the concept of a trading ban. It has already divided society, different organizations and institutions associating traders and shopping center operators. The latter state that the introduction of restrictions in the form of prohibition on labor (i.e. a guarantee that employees have two Sundays a month free from work) should suffice, and in recent surveys, shopping center employees have supported this view. Such a solution would make it possible to maintain trade every Sunday. Whether or not the proposals will be accepted by the Parliamentary committee that is working on the bill, and later by the Polish Parliament, is yet to be seen. What may already be assumed is that such a substantial limitation on Sunday trading, as indicated by the current wording of the bill, might result in a significant decrease in the revenues not only of the shopping centers and their tenants, who are already raising the issue claiming the extraordinary change in circumstances and asking their landlords to decrease the amount of rent. ●