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'Firm' [Firma] in the Meaning of Polish Legal Language: The Business Name under which the Entrepreneur Operates in Legal and Economic Transactions, or an Entrepreneur [Przedsiębiorca]? Selected Comments on the (Un) Reasonableness of the Use of the Word 'Firm' [Firma] in Various Substantive Meanings

Abstract: This article presents selected observations relating to the reasonableness of using the word 'firm' [Polish: *firma*] in various substantive meanings in Polish legal language. First, attention is drawn to the basic meaning of the word 'firm' [*firma*] in Polish legal language as a business name under which an entrepreneur [*przedsiębiorca*] operates in legal transactions, which is synthetically (briefly) distinguished from the meaning in Polish legal language, especially of the word 'entrepreneur' [*przedsiębiorca*]. It is then pointed out that in Polish legal and non-legal language, especially in everyday language and in the specialist language of economics and finance, as well as in management and quality sciences (including the language of practice of these areas of knowledge), a different meaning of the word 'firm' [*firma*] is adopted: while in Polish legal language it is understood as the business name of an entrepreneur, in the non-legal language of the above-mentioned areas it is understood as meaning an entrepreneur (also in the context of the meaning given to it in selected foreign languages). This is the background for pointing to the use of the word 'firm' [*firma*] in Polish legal language in the early 21st century not to define the business names of entrepreneurs conducting a strictly defined economic activity, but in a different sense – to define these entrepreneurs by introducing the concepts of an investment firm [*firma inwestycyjna*], a foreign investment firm [*zagraniczna firma inwestycyjna*] and an audit firm [*firma audytorska*], assessing these legislative changes as a significant systemic inconsistency and formulating conclusions in this regard.

Keywords: audit firm [*firma audytorska*], entrepreneur [*przedsiębiorca*], firm [*firma*], investment firm [*firma inwestycyjna*], legal language, non-legal language

Introduction

This article presents selected observations relating to the reasonableness of the use of the word 'firm' [*firma*] in Polish legal language[1] by Polish lawmakers in various significantly different substantive meanings. The aim of the study is to determine the meanings which the Polish legislature uses for the word 'firm' [*firma*] in legal language and whether it is justified at the beginning of the 21st century to give this word a normative meaning different from its basic meaning. It was originally adopted in the 1930s and has been used in Polish legal language until the present day, although it differs from the meaning used in colloquial Polish,[2] as well as in specialist language of other social sciences, especially economics and financial sciences, and management and quality sciences (as well as the language of the application of these sciences). Therefore this article covers, first of all, the basic meaning of the word 'firm' [*firma*] in Polish legal language as the designation under which the entrepreneur [*przedsiębiorca*] operates in legal and economic transactions, its synthetic (brief) distinction from the meaning of other words in Polish legal language – such as 'entrepreneur' [*przedsiębiorca*], 'enterprise' [*przedsiębiorstwo*] and 'business' [*działalność gospodarcza*] – and then an indication of the adoption in Polish legal and non-legal language of the different meaning of 'firm' [*firma*], especially in everyday Polish and in specialist language in other social sciences. In Polish legal language it is used as an entrepreneur's business name, while in colloquial Polish and specialist language of social sciences it is used to indicate an entrepreneur; I will also take into account the meaning of the word 'firm' [*firma*] in selected foreign languages (i.e. in English, which is a certain 'model' for Polish non-legal language, and – in contrast – in German, which from this perspective is a specific 'model' for Polish legal language). This is the necessary background to draw attention to what, in my opinion, is the incorrect use by the Polish legislature in the first and second decades of the 21st century in Polish legal language of the word 'firm' [*firma*] (in conjunction with other words), somewhat contrary to its basic meaning, which was originally introduced in the early

1 For more detail on the differences between the legal language and language of lawyers, see B. Wróblewski, Język prawny i prawniczy, Cracow 1948, p. 54; G.L. Seidler, H. Groszyk, J. Malarczyk, A. Pieniążek, Wstęp do nauki o państwie i prawie, Lublin 1997, pp. 113–114; A. Korybski, A. Pieniążek, Wstęp do prawoznawstwa, Lublin 1997, pp. 52–55; S. Roszkowski, The Language of Law as Sublanguage, (in:) J. Tomaszczyk (ed.), Aspects of Legal Language and Legal Translation, Łódź 1999, pp. 7–16. On these issues in the context of legal language translation, the related requirements (rules) and difficulties, see A.D. Kubacki, Podstawowe trudności w przekładzie tekstów prawniczych (in:) Prawo i język prawa – współczesne dylematy (artykuły po konferencji), Lublin 2019, https://www.researchgate.net/publication/340174436_Podstawowe_trudnosci_w_ przekladzie_tekstow_prawniczych (5.09.2022), pp. 3–8 and the literature quoted therein.

2 As regards the differences between official (formal) language and colloquial (informal) language, see J.M. Hawkins, E. Mizera, G. Mizera, Popularny Oxford Słownik angielsko–polski polsko–angielski [Oxford School Dictionary], Warsaw–Oxford 2010, pp. xvi–xvii.

1930s and was then consolidated for decades in the provisions of Polish law not to denote a specific type of designation of entrepreneurs running strictly defined businesses, but to denote the entrepreneurs themselves, in terms such as 'investment firm' [*firma inwestycyjna*], 'foreign investment firm' [*zagraniczna firma inwestycyjna*] and 'audit firm' [*firma audytorska*]. I will also assess these legislative changes as a significant semantic inconsistency in Polish legal language, and therefore of Polish lawmakers, and, based on this analysis, will formulate proposals for the law as it should stand (*de lege ferenda*) and other relevant conclusions.

The article uses first of all the formal–dogmatic method (generally all methods of interpretation, in particular including linguistic, historical and systemic interpretation) and, to a limited extent, the legal and comparative method as an auxiliary tool.

1. The Meaning of the Word 'Firm' [Firma] in Polish Legal Language and Its Meaning Adopted in Non-Legal Language: Colloquial Language, Specialist Language of Economic and Financial Sciences, Management and Quality Sciences, as well as in Selected Foreign Languages

In the language of the Act of 23 April 1964 – Civil Code,[3] which in Poland constitutes the basic normative act in the field of private law, the word 'firm' [*firma*] means primarily the business name under which the entrepreneur [*przedsiębiorca*] operates in legal transactions (and in principle is a name under which the entrepreneur operates in legal–economic transactions[4], since the entrepreneur is, pursuant to Art. 43^1 § 1 of the CC and Art. 4 of the Act of 6 March 2018 Law on Entrepreneurs,[5] a legal entity running a business). According to Art. 43^2 § 1 of the CC, 'the entrepreneur trades under a firm' ['*przedsiębiorca działa pod firmą*']. This business name can be considered as the commercialized intangible personal good[6] of the entrepreneur as a legal entity (Art. 23–24 of the CC in conjunction with Art. 43 and Art. 43^2 § 1), to which

3 Consolidated text, Journal of Laws of 2020, item 1740, as amended; hereafter 'CC'.

4 Broadly on the firm (in mean business name), including various aspects of its construction and use in legal and economic transactions, see above all J. Szwaja, Firma w kodeksie cywilnym, 'Prawo Spółek' 2004, no. 1, p. 2 et. seq.; P. Bielski, Prawo firmowe w kodeksie spółek handlowych, cz. I, 'Prawo Spółek' 2004, no. 2, p. 2 et. seq.; P. Zaporowski, Spory wokół nowego prawa firmowego, 'Rejent' 2004, no. 5, p. 143 et. seq.; Ł. Zamojski, Kilka uwag o firmie przedsiębiorcy, 'Prawo Spółek' 2006, no. 7–8, p. 50 et. seq.

5 Consolidated text, Journal of Laws of 2021, item 162, as amended; hereafter 'LE'.

6 Similarly, J. Sitko, Firma w świetle przepisów Kodeksu cywilnego, 'Przegląd Prawa Handlowego' 2003, no. 5, p. 24 et seq. In her later study (Dualizm oznaczeń przedsiębiorcy i przedsiębiorstwa – obrzeża prawa własności przemysłowej, 'Przegląd Prawa Handlowego' 2008, no. 4, pp. 19–20), however, she leans more towards the position that a firm [*firma*] is a mixed, personal-property asset closer to industrial property than to the personal interests of the entrepreneur. See also in this regard P. Zaporowski, Firma jako dobro osobiste przedsiębiorcy, 'Rejent' 2005, no. 12, p. 113 et seq.

the entrepreneur is entitled due to the so-called 'right to the firm' [*prawo do firmy*] (Art. 43^{10} of the CC).[7]

On the other hand, an 'entrepreneur' [*przedsiębiorca*] is a legal entity which runs a business on their own behalf, in the legal language of the provisions of individual laws containing the definitions of entrepreneur, including primarily the regulations that are of a basic nature for private law, i.e. the Civil Code (Art. 43^1 § 1 of the CC) and the provisions of the Law on Entrepreneurs (Art. 4 of the LE)[8] that are fundamental from this perspective for public law, including public economic law, if not for the whole system of Polish law in general. In the legal language of some other laws, the term 'entrepreneur' is defined more broadly than in Art. 43^1 § 1 of the CC and Art. 4 of the LE, but its meaning always indicates that it refers to a particular legal entity – usually both a person and an organizational unit having legal personality or at least legal capacity, including in some cases by reference to one of the two basic definitions of entrepreneur contained in Art. 43^1 § 1 of the CC and Art. 4 of the LE.[9] It should be pointed out that, in Polish legal language, the term had 'conceptual predecessors', namely 'economic operator' [*podmiot gospodarczy*][10] and, much earlier, 'trader' [*kupiec*] and 'registered trader' [*kupiec rejestrowy*].[11]

A firm [*firma*], as defined in Polish legal language, is not part of the enterprise in the substantive sense, also referred to as the functional and substantive sense[12]

7 The provision of Art. 43^{10} of the CC points to the claims of an entrepreneur whose right to the firm [*prawo do firmy*] has been threatened by someone else's unlawful action or infringement.

8 See G. Kozieł, Pojęcie przedsiębiorcy (in:) T. Długosz, G. Kozieł (ed.), A. Malarewicz-Jakubów, S. Patyra, A. Piszcz, A. Żurawik, Prawo przedsiębiorców. Przepisy wprowadzające do Konstytucji Biznesu. Komentarz, Warsaw 2019, p. 41.

9 See, for example, Art. 2 of the Act of 16 April 1993 on combating unfair competition (consolidated text in Journal of Laws of 2020, item 1913, as amended; hereafter 'CUC'), according to which entrepreneurs, within the meaning of that law, are natural persons, legal persons and organizational units without legal personality who, while carrying out a gainful or professional activity, participate in an economic activity; or Art. 4(1) of the Act of 16 February 2007 on the protection of competition and consumers (consolidated text in Journal of Laws of 2021, item 275, as amended), in which the legislature considers the entrepreneur to be defined by the provisions of the Law on Entrepreneurs (i.e. Art. 4 of the LE), as well as being, among others, a natural person, a legal person and an organizational unit which does not have legal personality, equipped with legal capacity by the law, who organizes or provides services of general interest which are not an economic activity within the meaning of the provisions of the Law on Entrepreneurs, or is a natural person pursuing a profession on his/her own behalf and for him/herself or pursuing an activity as part of such a profession.

10 See Art. 2(2) of the non-applicable Act of 23 December 1988 on economic activities (Journal of Laws of 1988, No 41, item 324).

11 See Art. 2 § 1 and Art. 4 § 1 of the non-applicable Decree of the President of the Republic of Poland of 27 June 1934 – Commercial Code (Journal of Laws of 1934, No 57, item 502). For more detail, see W.J. Katner, Kupiec. Podmiot gospodarczy. Przedsiębiorca. Ewolucja pojęciowa, 'Gdańskie Studia Prawnicze' 1999, vol. 5, p. 171 et seq.

12 As in A. Kidyba, Prawo handlowe, Warsaw 2016, pp. 33–36.

(defined in legal language in Art. 55^1 of the CC as a group of intangible and tangible assets intended for running the business[13]) as its 'name of the enterprise' [*nazwa przedsiębiorstwa*] (Art. 55^1(1) of the CC), since it is a name under which the entrepreneur operates, and not a name of the undertaking as a set of such assets (Art. 55^1(1) of the CC in conjunction with the Art. 43^2 § 1 of the CC). This is notwithstanding the fact that in Polish legal language the word 'enterprise' [*przedsiębiorstwo*] is also used in a subjective sense and can therefore mean the same as entrepreneur [*przedsiębiorca*] – as is currently the case, for example, in Art. 1 of the Act of 25 September 1981 on state enterprises[14] – and can therefore mean 'the running of a business' [*prowadzenie działalności gospodarczej*]. This is currently the case of, for example, the provisions of Articles 358^1 § 4, 526, 765, or 794 § 1 of the CC and Articles 22 § 1, 86 § 1, 102 and 125 of the Act of 15 September 2000 Code of Commercial Partnerships and Companies.[15]

In Polish legal language, and also in the language of legal professionals, and basically following the German model[16], the word 'firm' [*firma*] has not and is not currently used to designate an entity conducting business activity, unlike in Polish non-legal language, including everyday Polish, the specialized non-legal language of some other social sciences, and in some foreign languages, e.g. English. In dictionaries of the Polish language, which constitute the basic source of knowledge on typical meanings of particular words in the official language and whose simplified, commonly (or selectively) used variant is colloquial language, the word 'firm' [*firma*] does not have a uniform meaning. However, the meanings of this word referring to the entity that runs business activity and the meanings referring to its activity ('commercial, service or industrial enterprise' ['*przedsiębiorstwo handlowe, usługowe lub przemysłowe*']; 'person having a good reputation' ['*osoba mająca dobrą opinię*']; 'reputable

13 Pursuant to Art. 55^1 of the CC, an enterprise [*przedsiębiorstwo*] (in the objective sense) is an organized set of intangible and tangible assets intended for conducting economic activity, which includes, in particular, a designation identifying the enterprise or its separate parts (the name of the enterprise), or ownership of real estate or movable property, including equipment, materials, goods and products, and other rights *in rem* to real estate or movable property and other intangible or tangible assets of the enterprise, so understood and listed in that provision as an example.

14 Consolidated text, Journal of Laws of 2021, item 1317, as amended.

15 Consolidated text, Journal of Laws of 2020, item 1526, as amended.

16 See § 1 and §17(1) of the Handelsgesetzbuch of 10 May 1897, http://www.gesetze-im-internet.de/hgb/index.html (5.09.2022), further: „HGB". In the legal literature on this topic see in particular: A. Kraft, P. Kreutz, Gesellschaftsrecht, Luchterhand 1997, p. 165; C.W. Canaris, Handelsrecht, München 2000, pp. 1et. seq., 30 et. seq.; B. Grunewald, Gesellschaftsrecht, Köln 2000, pp. 9 et. seq., 90 et. seq.; K. Schmidt, Gesellschaftsrecht, Hamburg 2002, pp. 15 et. seq.; K.J. Hopt, Einleitung vor § 1 HGB; Commentar zu § 1–7 HGB, Commentar zu § 105 HGB (in:) K.J. Hopt, H. Merkt, A. Baumbach, Handelsgesetzbuch, München 2006, pp. 11–15; 37 et. seq.; 483 et. seq.

enterprise' ['*renomowane przedsiębiorstwo*']) are listed first and generally dominate.[17] The above-mentioned meaning of the word 'firm' [*firma*], as adopted in these dictionaries, is linked to the meaning of the word 'undertaking' [*przedsiębiorstwo*] referred to therein, which relates to its subjective meaning indicated above, as adopted in Polish legal language and also in the language of legal professionals, primarily by legal researchers. For the word 'enterprise' [*przedsiębiorstwo*], these dictionaries adopt in particular a meaning such as 'an independent economic unit comprising one or more production sites' ['*samodzielna jednostka gospodarcza obejmująca jeden zakład produkcyjny lub większą ich liczbę*'][18] or similar: 'an independent business, industrial, commercial unit – whether state-owned or privately owned, established for the purpose of rendering goods or services for money' ['*samodzielna jednostka gospodarcza, przemysłowa, handlowa – państwowa lub prywatna, ustanowiona w celu odpłatnego* świadczenia *rzeczy lub usług*'].[19] It is therefore no wonder that also in Polish colloquial language, 'firm' [*firma*] is synonymous, in particular, with the words used in colloquial language to designate a business-running entity or pursuing a business activity, such as 'entrepreneur' [*przedsiębiorca*], 'enterprise' [*przedsiębiorstwo*], 'business' [*biznes*] or 'business activity' [*działalność gospodarcza*], and therefore that in modern Polish colloquial language, the word 'firm' [*firma*] is used primarily to designate an entrepreneur as an entity that pursues business activity, and 'running a firm' [*prowadzenie firmy*] means 'conducting business activity' [*prowadzenie działalności gospodarczej*].

A similar meaning of the word 'firm' [*firma*] is adopted in specialized non-legal languages of some social sciences other than legal sciences (in particular economic and financial sciences or management and quality sciences), as can be demonstrated by the titles and content of theoretical or practical publications in this field, such as 'accounting in small firms' ['*Rachunkowość małych firm*'],[20] 'finance of small

17 See Słownik języka polskiego PWN, https://sjp.pwn.pl/szukaj/firma.html and Słownik języka polskiego, ed. W. Doroszewski, https://sjp.pwn.pl/doroszewski/firma;5427872.html (10.03.2022). One of the meanings of the word 'firm' [*firma*] in these dictionaries is 'officially registered name of an enterprise' ['*zarejestrowana urzędowo nazwa przedsiębiorstwa*'], which does not necessarily define the entrepreneur as a legal entity but rather denotes an enterprise [*przedsiębiorstwo*] in the objective sense.

18 See Słownik… PWN, *op. cit*., https://sjp.pwn.pl/szukaj/przedsi%C4%99biorstwo.html (10.03.2022).

19 See Słownik…, ed. W. Doroszewski, *op. cit.,* https://sjp.pwn.pl/doroszewski/przedsiebiorstwo;5483342.html (10.03.2022).

20 See e.g. A. Zawadzki, Rachunkowość małych firm, vol. 1. Podręcznik, Warsaw 2017 and A. Zawadzki, Rachunkowość małych firm, vol. 2. Zbiór zadań, Warsaw 2017. The publisher's website contains the following information about these publications: 'the textbook has been prepared for students of finance and accounting, where lectures and exercises on the subject of small business accounting are delivered. The second group of recipients are entrepreneurs who

and medium-sized firms' ['*Finanse małych i* średnich *firm*'],[21] or 'managing a firm' ['*zarządzanie w firmie*'].[22]

A meaning of the word 'firm' [*firma*] that is similar to that in Polish non-legal language – i.e. colloquial language and the specialized jargon of economics, finance, management and quality sciences – is also adopted in English, which is on the one hand the most exemplary and universal language in the field of communication in various areas of human activity in the world. On the other hand, it is a foreign language that is culturally and functionally linked with a legal system dissimilar to the Polish one (which follows the positive law system typical of continental European countries, e.g. Germany, France or Italy), namely the common law system (or system of precedents) developed in the United Kingdom.[23]

Examples in this respect are provided by Polish–English and English–Polish dictionaries, including traditional (paper) dictionaries as well as online dictionaries,[24] in which the Polish word '*firma*' is translated into English as 'firm', 'business' or 'company',[25] while the Polish word '*przedsiębiorstwo*' is translated into English as 'enterprise', 'business', 'firm' or 'company';[26] the English word 'business' is translated into Polish as, for example, '*przedsiębiorstwo*', '*działalność gospodarcza*' or simply '*biznes*',[27] the English word 'enterprise' is translated into Polish as '*przedsiębiorczość*' and '*przedsiębiorstwo*',[28] while the English word 'firm' is translated into Polish as '*firma*'.[29] An example of an online dictionary (and one of the most popular), which has recently gained a growing reputation for 'learning' new words and phrases from translations

intend to set up or already have small businesses', https://ksiegarnia.difin.pl/rachunkowosc-malych-firm-tom-1-podrecznik (10.03.2022).

21 See e.g. E. Denek, M. Dylewski, Finanse małych i średnich firm. Innowacje, decyzje, procesy, https://www.gandalf.com.pl/b/finanse-malych-i-srednich-firm/#product-desc (accessed 10.03.2022), with respect to which the publisher presents the following description: 'The book presents a broad view of the finance of small and medium-sized enterprises […]. The authors present key financial problems […] that will make it easier to learn the desired knowledge and skills. The book is an interesting resource for entrepreneurs who want to professionally use the knowledge presented in the decision-making process.'

22 See e.g. E. Jachymczak, Zarządzanie w firmie, 3 stycznia 2019, https://mojafirma.infor.pl/manager/zarzadzanie-zespolem/2860024,Zarzadzanie-w-firmie.html (10.03.2022).

23 On the common law legal system as one of the main European 'cradles' of the monistic system of governance in corporations in the context of Polish regulation of a simple joint-stock company, see G. Kozieł, Prosta spółka akcyjna. Komentarz do art. 300^{1}–300^{134} KSH, Warsaw 2020, pp. 216–217, and the literature referred to therein.

24 See in particular J.M. Hawkins, E. Mizera, G. Mizera, Popularny…, *op. cit.*, pp. 57, 203.

25 *Ibidem*, p. 57.

26 *Ibidem*, p. 203.

27 *Ibidem*, p. 109.

28 *Ibidem*, p. 276.

29 *Ibidem*, p. 312.

made and modified by its users, like classical artificial intelligence,[30] is the 'translate.google.pl' dictionary,[31] which translates the Polish words '*firma*', '*przedsiębiorca*' and '*przedsiębiorstwo*' directly into English as 'business', 'entrepreneur' and 'undertaking' respectively,[32] while it translates the English word 'business' into Polish as '*biznes*'.[33] At the same time, this dictionary translates the Polish sentence '*Przedsiębiorca działa pod firmą*' directly into English as 'The entrepreneur operates under the name of the company',[34] while it translates the English sentence 'The entrepreneur operates under the name of the company' directly into Polish as '*Przedsiębiorca działa pod nazwą firmy*'.[35] Although the 'translate.google.pl' dictionary translates the English sentence 'The entrepreneur operates under the business name' into Polish as '*Przedsiębiorca działa pod firmą*',[36] it does not translate the English term 'business name' into Polish as '*firma*', but as '*nazwa firmy*'[37].

A different meaning, directly referring to that adopted in Polish legal language, is given to the word 'firm' [*Firma*] in German[38]. Germany is part of the same continental legal culture (of positive law) as Poland and the primary source of influence of elements of Germanic legal culture, resulting from the neighbourly geographical location of Poland in relation to Germany and leading to the interpenetration of meaning of many words; therefore German language used to be, in the early 1930s, and

30 Instead of multiple resources, see J. Zerilli, A. Weller, The Technology (in:) M. Hervey, M. Lavy (eds.), The Law of Artificial Intelligence, London 2021, pp. 2–001–2–012.

31 https://translate.google.pl (10.03.2022).

32 https://translate.google.pl/?sl=pl&tl=en&text=firma%2C%20%0Aprzedsi%C4%99biorca%2C%0Aprzedsiebiorstwo%2C% 20%20&op=translate (10.03.2022).

33 https://translate.google.pl/?sl=en&tl=pl&text=business%2C%0Aentrepreneur%2C%0Aundertaking%20%20&op=translate (10.03.2022).

34 https://translate.google.pl/?sl=pl&tl=en&text=Przedsi%C4%99biorca%20dzia%C5%82a%20pod%20firm%C4%85%0A&op=translate (10.03.2022).

35 https://translate.google.pl/?sl=en&tl=pl&text=The%20entrepreneur%20operates%20under%20the%20name%20of%20the%20company%0A&op=translate (10.03.2022).

36 https://translate.google.pl/?sl=en&tl=pl&text=The%20entrepreneur%20operates%20under%20the%20business%20 name%0A&op=translate (10.03.2022).

37 https://translate.google.pl/?sl=en&tl=pl&text=business%20name%0A&op=translate (10.03.2022). The English term "business name" (in the sense of the name under which the entrepreneur operates) is also used in legal English (the language of English legal acts) and is adopted (and used) in the legal literature. See primarily section 1(1) of the Business Names Act of 1985, https://www.legislation.gov.uk/ukpga/1985/7/ section/1/enacted (5.09.2022) and section 4(1) of the Partnership Act of 1890, https://www.legislation.gov.uk/ukpga/Vict/53–54/39/section/4 (5.09.2022); E. Berry, Partnership and LLP Law, UK, Chippenham 2010, pp. 15, 27; G. Morse, Partnership Law, USA, New York 2010, pp. 2.01 et. seq.

38 See §17(1) of the HGB. In the legal literature on this topic see in particular A. Kraft, P. Kreutz, Gesellschaftsrecht, *op. cit.*, p. 165; K.J. Hopt, Commentar zu § 105 HGB (in:) Handelsgesetzbuch, *op. cit.*, pp. 483–484.

still is, a specific 'model' for the Polish legislator and at the same time for Polish legal language.[39]

As in the case of English, examples are mainly provided by traditional (paper) Polish–German[40] and German–Polish[41] dictionaries, in which the Polish word '*firma*' is translated into German unequivocally as '*Firma*',[42] which points to a direct borrowing from German[43] into Polish legal language. The Polish word '*przedsiębiorca*' is in turn expressly translated into German as '*Unternehmer*',[44] not as '*Firma*'. Also, the Polish word '*kupiec*', modelled on its German equivalent, is in Polish legal language the oldest (dating as far back as the Commercial Code of 1934[45]) 'conceptual predecessor' of the legal category '*przedsiębiorca*', translated into German primarily as '*Kaufmann*'[46] and not as '*Firma*'; while the Polish word '*przedsiębiorstwo*' is translated into German unequivocally as *Unternehmen*',[47] not as '*Firma*'. In those dictionaries, the German word '*Firma*' is translated into Polish primarily as '*firma*', or alternatively

39 This may be seen for example in a very explicit statement in the preface to the commentary by M. Allerhand, Kodeks handlowy z komentarzem. Spółka jawna, spółka komandytowa, spółka z ograniczoną odpowiedzialnością, spółka akcyjna, 2nd ed., Bielsko-Biała 1994, p. 6, that 'the Polish Commercial Code is modelled on German law'.

40 See e.g. A. Bzdęga, J. Chodera, S. Kubica, Firma; Kupiec; Przedsiębiorca, Przedsiębiorstwo, (in:) J. Czochralski, A. Wójcik, T. Korsak, G. Sochaj-Krajewska (eds.), Podręczny słownik polsko-niemiecki, Warsaw 1990, pp. 158; 273; 532.

41 See e.g. J. Chodera, S. Kubica, Firma; Kaufmann; Unternehmen, Unternehmer, (in:) J. Czochralski, A. Wójcik, L. Bielas, J. Jóźwicki (eds.), Podręczny słownik niemiecko-polski, Warsaw 1985, pp. 264; 445; 847.

42 See e.g. A. Bzdęga, J. Chodera, S. Kubica, Firma, (in:) Podręczny słownik polsko-niemiecki, *op. cit.*, p. 158.

43 Which also concerns to German legal language. See in this regard § 17(1) of the HGB and also A. Kraft, P. Kreutz, Gesellschaftsrecht, *op. cit.*, p. 165; K.J. Hopt, Commentar zu § 105 HGB, (in:) Handelsgesetzbuch, *op. cit.*, pp. 483–484.

44 See e.g. A. Bzdęga, J. Chodera, S. Kubica, Przedsiębiorca, (in:) Podręczny słownik polsko-niemiecki, *op. cit.*, p. 532.

45 See T. Dziurzyński, Z. Fenichel, M. Honzatko, Kodeks handlowy. Komentarz, Łódź 1995, 'Wstęp', p. 16.

46 See A. Bzdęga, J. Chodera, S. Kubica, Kupiec (in:) Podręczny słownik polsko-niemiecki, *op. cit.*, p. 273. It was and is reflected in § 1(1) of the HGB, which envisaged and currently provides for the concept of a trader [*kaufmann*] in the German legal order (system) and at the same time in the German legal language. See in this regard also V. Röhricht, Commentar zu § 1–7 HGB, (in:) L. Ammon, T. Lenz, M. Brandi-Dohrn, V. Röhricht (ed.), H. von Gerkan, C. Wagner, W. Küstner, F. Graf von Westphalen (ed.), Handelsgesetzbuch. Kommentar zu Handelsstand, Handelsgesellschaften, Handelsgeschäften und besonderen Handelsverträgen (ohne Bilanz-, Transport- und Seerecht), Köln 1998, pp. 79 et. seq.; C.W. Canaris, Handelsrecht, *op. cit.*, pp. 30 et. seq.

47 See A. Bzdęga, J. Chodera, S. Kubica, Przedsiębiorstwo, (in:) Podręczny słownik polsko-niemiecki, *op. cit.*, p. 532. It was and is reflected in § 1(2) of the HGB, which envisaged and currently provides for the concept of an enterprise [*unternehmen*] in the German legal order (system) and at the same time in the German legal language. See in this regard also K.J. Hopt, Einleitung vor § 1 HGB, (in:) Handelsgesetzbuch, *op. cit.*, pp. 11–15.

as '*dom handlowy*'[48], '*Unternehmer*' is translated into Polish unequivocally as '*przedsiębiorca*',[49] '*Kaufmann*' is translated unequivocally as '*kupiec*'[50] and '*Unternehmen*' is translated as '*przedsiębiorstwo*'.[51] It follows that in German, as in the Polish legal language modelled on it, the words '*Firma*' [Polish: '*firma*'], '*Unternehmer*' [Polish: '*przedsiębiorca*'], '*Kaufmann*' [Polish: '*kupiec*'] and '*Unternehmen*' [Polish: '*przedsiębiorstwo*'] are separate words with different meanings, and that the word '*firma*' is not one of the meanings or designations of the other words which are (or were) associated with running a business ('*Unternehmer*' [*przedsiębiorca*], '*Kaufmann*' [*kupiec*] and '*Unternehmen*' [*przedsiębiorstwo*]). Therefore the word '*Firma*' is not used in German to designate an entrepreneur as a legal entity or the enterprise operated by it[52]. Analogous translational conclusions in the field of the German language are drawn from analyses carried out using online dictionaries, such as 'translate.google.pl' referred to above.[53]

48 See J. Chodera, S. Kubica, Firma, (in:) Podręczny słownik niemiecko-polski, *op. cit.*, p. 264.

49 See J. Chodera, S. Kubica, Unternehmer, (in:) Podręczny słownik niemiecko-polski, *op. cit.*, p. 847.

50 See J. Chodera, S. Kubica, Kaufmann, (in:) Podręczny słownik niemiecko-polski, *op. cit.*, p. 445.

51 See J. Chodera, S. Kubica, Unternehmen, (in:) Podręczny słownik niemiecko-polski, *op. cit.*, p. 847.

52 In the German legal language this was and still is reflected in the provisions of § 1 and § 17 of the HGB, which provided and provide for separate conceptual categories of the firm [*firma*], trader [*kaufmann*] and enterprise [*unternehmen*].

53 In the 'translate.google.pl' online dictionary, the Polish word '*firma*' (firm, business name) is translated into German as '*Unternehmen*', i.e. '*przedsiębiorstwo*' in Polish; see https://translate.google.pl/?sl=pl&tl=de&text=firma%0A&op=translate (10.03.2022). As regards the translation of the Polish words '*przedsiębiorca*' (entrepreneur), '*kupiec*' (trader) and '*przedsiębiorstwo*' (enterprise) by that dictionary into German as '*Unternehmer*', '*Kaufmann*' and '*Unternehmen*', see: https://translate.google.pl/?sl=pl&tl=de&text=przedsi%C4%99biorca%0A%0Akupiec%0A%0Aprzedsiebiorstwo.&op=translate (10.03.2022). In the dictionary 'translate.google.pl', the German words '*Firma*' (firm, business name) and '*Unternehmen*' (enterprise) are translated similarly into Polish, the first two meanings proposed by that dictionary for each of these words being the Polish words '*spółka*' (company) and '*firma*' (firm); see https://translate.google.pl/?sl=de&tl=pl&text=-firma%0A%0A%0Aunternehmen%20%0A&op=translate (10.03.2022). As regards the translation by 'translate.google.pl' of the German words '*Unternehmer*' (entrepreneur) and '*Kaufmann*' (trader) as, respectively, '*przedsiębiorca*' and '*kupiec*' in Polish, see https://translate.google.pl/?sl=de&tl=pl&text=unternehmer%0A%0Akaufmann%0A%0A&op=translate (10.03.2022).

2. Introduction to the Polish Legal Language of the Terms 'Investment Firm' [Firma Inwestycyjna], 'Foreign Investment Firm' [Zagraniczna Firma Inwestycyjna] and 'Audit Firm' [Firma Audytorska] as a Reflection of Blurring the Established Distinction Between the Meanings of the Word 'Firm' [Firma] by the Polish Legislature in Polish Legal and Non-Legal Language, Constituting a Manifestation of Significant Legislative Inconsistency with a Systemic Dimension

In view of the above, it is interesting why the Polish legislature has decided, since the middle of the first decade of the 21st century, to cause a significant inconsistency in using the word '*firma*' in Polish to designate an entity (or group of entities) running a business. Why was the legislative decision taken to abandon the distinction in Polish legal language between the term 'firm' [*firma*] (defined as a designation under which the entrepreneur operates) and the term 'entrepreneur' [*przedsiębiorca*] (used to designate a legal entity which runs a business), which reflected a well-established, almost classical, distinction in this area between Polish non-legal and legal language and which had been continuously applied since the beginning of the fourth decade of the 20th century (first in the Commercial Code of 1934 and then, since 2003, in the Civil Code of 1964)?

This reflection should lead to the search for an answer to the question as to what was the reason behind the Polish legislature making a kind of 'borrowing' from the Polish non-legal language into legal language of the meaning of the word 'firm' [*firma*] to designate an entrepreneur, or, more precisely, a particular type of entrepreneur (conducting strictly specified activities), and introducing into Polish legal language the terms 'investment firm' [*firma inwestycyjna*][54] and 'foreign investment firm' [*zagraniczna firma inwestycyjna*] on 24 October 2005,[55] and then, on 21 June 2017,

54 In Polish legal language, the term 'investment firm' [*firma inwestycyjna*] was introduced on 24 October 2005 by Art. 3(33) of the Act of 29 July 2005 on trading in financial instruments (Journal of Laws, No 183, item 1538; hereafter 'TFI'). According to the current wording of that provision given to it by the Act of 1 March 2018 amending the Act on trading in financial instruments and certain other acts (Journal of Laws 2018, item 685, included in the consolidated text in Journal of Laws of 2021, item 328, as amended), an investment firm means a brokerage house, a bank engaged in brokerage activities, a foreign investment firm engaged in brokerage activities in the territory of the Republic of Poland or a foreign legal person established in the territory of a country other than an (EU) Member State engaged in brokerage activities in the territory of the Republic of Poland. An investment firm has therefore not been a specific type of designation under which the entrepreneur operates in legal and commercial transactions, that is to say a particular type of firm in the general civil law sense provided for in the Civil Code (i.e. a business name), but a concept which denotes in Polish legal language entrepreneurs carrying out activities strictly defined in Art. 3(33) of the TFI, i.e. brokerage activities.

55 In Polish legal language, the term 'foreign investment firm' [*zagraniczna firma inwestycyjna*] was introduced, likewise the concept of investment firm, on 24 October 2005 by Art. 3(32) of the

the term 'audit firm' [*firma audytorska*],[56] when the Polish legislature could have used other terms for this purpose while maintaining the consistency of the existing terminology in this respect – for instance, in the first two cases, 'investment entity' or 'investment entrepreneur' and 'foreign investment entity' or 'foreign investment entrepreneur', and in the third, 'audit entity' or 'audit entrepreneur'. It also raises the question of what potential possible advantage resulting from this in the legal and legislative area, especially in the area of Polish legal language and in the systemic area (within the Polish legal system), may counterbalance or mitigate the resulting terminological inconsistencies, which are of systemic significance.[57]

TFI, according to which it is a legal person or an organizational unit without legal personality established in the territory of another (EU) Member State, and where the laws of that state do not require the establishment of a head office based in another Member State, or a natural person with a place of residence in the territory of another (EU) Member State carrying out brokerage activities in the territory of another Member State under the authorization of the competent supervisory authority, as well as a foreign credit institution within the meaning of Art. 3(31) of the TFI. Therefore, like an investment firm, a foreign investment firm has also not been a specific type of designation under which the entrepreneur operates in legal and economic transactions, that is to say, a particular type of firm in the general civil law sense provided for in the Civil Code (i.e. a business name), but a collective concept of Polish legal language, which means entrepreneurs carrying out activities strictly defined in Art. 3(33) of the TFI, i.e. primarily brokerage activity, in the territory of another EU Member State.

56 The term 'audit firm' [*firma audytorska*] was introduced in Polish legal language on 21 June 2017 by Art. 46 of the Act of 11 May 2017 on statutory auditors, audit firms and public supervision (Journal of Laws of 2017, item 1089; hereafter SAAFS), by replacing the term 'entity authorized to audit financial statements' used by the Act of 7 May 2009 on statutory auditors and their self-government, entities authorized to audit financial statements and public supervision (consolidated text in Journal of Laws of 2016, item 1000, as amended), and strictly by Art. 47 of that Act, previously in force in this area. Therefore, it did not and does not currently constitute a specific type of designation under which an entrepreneur operates in legal and economic transactions, i.e. a specific type of firm in the general civil law meaning provided for in the Civil Code (i.e. a business name). In accordance with the current wording of Art. 46 of the SAAFS, taken into account by the consolidated text of this act contained in Journal of Laws of 2020, item 1415, as amended, an audit firm is an entity in which financial statements are audited by statutory auditors, registered with the list referred to in Art. 57(1) of the SAAFS and conducting activity in one of the forms listed in Art. 46 of the SAAFS, for example 1) a business activity pursued by a statutory auditor in their own name and on their own account; 2) a civil partnership, a general partnership or a professional partnership in which the majority of the voting rights are held by statutory auditors or audit firms approved in at least one EU country, where for professional partnerships in which a management board has been appointed, the majority of the members of the management board are statutory auditors approved in at least one EU country, and where the management board consists of no more than two persons, one of them is a statutory auditor; 3) a limited partnership whose general partners are exclusively statutory auditors or audit firms approved in at least one EU country.

57 Equally critical about the introduction of the concept of 'audit firm' [*firma audytorska*] in the systemic context is D. Wajda, Komentarz (elektroniczny) do art. 46, (in:) K. Ślebzak, M. Ślebzak (eds.), Ustawa o biegłych rewidentach, firmach audytorskich oraz nadzorze publicznym. Komen-

A thoughtless 'copy-and-paste' of concepts functioning in EU legal language[58] into Polish legal language resulting from direct translation (into Polish), in order to implement EU law as soon as possible or to ensure the compliance of Polish law with EU law, is certainly not such a 'mitigating' advantage[59]. Also, it cannot be explained by the need for the Republic of Poland to meet the existing obligation to implement or ensure such compliance in this particular area, or the need to quickly adapt Polish law, including Polish legal language, to the dynamically developing business transactions in various areas in the world, including various segments of the capital market and financial instruments[60].

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tarz, Warsaw, WKP 2018, point 1. For the characteristics (properties) of the legal system (law), see e.g. G.L. Seidler, H. Groszyk, J. Malarczyk, A. Pieniążek, Wstęp…, *op. cit.*, pp. 161–162.

58 See, for example, Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (O.J. L 173, 12.6.2014, p. 349) containing in Art. 4(1)(1) (for the purposes of that Directive) a definition of the term 'investment firm' [*firma inwestycyjna*] and referring to that definition in Art. 2(1)(1) of the Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) 648/2012 (O.J. L 173, 12.6.2014, p. 84), as well as Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (O.J. L 157, 9.6.2006, p. 87), which in Art. 2(3) (for the purposes of that Directive) formulates a definition of the term 'audit firm' [*firma audytorska*].

59 In the process of translating legal texts (especially in the field of EU law), one should take into account the specific rules of translating such texts (including also the rules of translating legal texts used by sworn translators in a special type of translation, i.e. sworn translations). In this regard, the literature indicates that a successful translation of legal texts requires the translator to have linguistic, substantive and translation skills (competence). The acceptability of a translation (of a legal text) is therefore determined by at least three criteria: 1) must be adequate, that is, in terms of key meanings, coincide with the key meanings of the source unit, 2) must respect the linguistic conventions of the target language and 3) must have significant informative value. The better the translation does, the more perfect it is (see wider J. Gościński, Angielskie orzeczenia w sprawach karnych, Warszawa 2019, pp. 269–274; A.D. Kubacki, Podstawowe…, *op. cit.*, p. 4).

60 The application of the special translation rules indicated above in the preceding footnote (no. 59) in the translation of legal texts, including legal texts in the field of EU law, is all the more important as the catalog of difficulties that occur in the translation of legal texts is very wide. The rudimentary (elementary) difficulties in translating legal texts usually include, first and foremost: 1) problems with the translation of specialist terms and the specific phraseology of the language of law, 2) difficulties in deciphering and correctly translating abbreviations and acronyms in this field, 3) taking into account the pragmatic differences resulting from the structure of various legal documents and their impact on the correctness of the translation, 4) problems with meeting formal requirements in the case of preparing certified translations of legal texts (see especially J. Janusz, O specyfice przekładu tekstów prawnych i prawniczych na przykładzie tłumaczeń poświadczonych z języka włoskiego i na język włoski, (in:) 'Italica Wratislaviensia', no. 2, Toruń 2011, pp. 149–162; A.D. Kubacki, Tłumaczenie poświadczone. Status, kształcenie, warsztat i odpowiedzialność tłumacza przysięgłego, Warszawa 2012; M. Kuźniak, Egzamin na tłumacza przysięgłego w praktyce. Język angielski. Analiza językowa, Warszawa 2016; A.D. Kubacki, Prob-

The consistent conceptual differentiation adopted by the Polish legislature largely with reference to the German language (including German legal language) in Polish legal language, from the beginning of the 1930s and maintained until the middle of the first decade of the 21st century, between the linguistic category of 'firm' [*firma*] understood as the business name of an entity running a business (i.e. an enterprise in a functional sense) based on a set of intangible and tangible assets held by the entity and intended for this, i.e. an enterprise in the objective (or functional and objective) meaning, and the name of that enterprise and finally the specific entity – referred to first as 'trader' [*kupiec*], then as 'economic operator' [*podmiot gospodarczy*] and ultimately as 'entrepreneur' [*przedsiębiorca*] – is very logical, coherent and accurate. This is despite the use of the word 'firm' [*firma*] in colloquial Polish, as well as in Polish specialized languages in social sciences such as economics, finance, management and quality sciences, and perhaps partly also in relation to adoption of its different, much broader, meaning in other languages, including especially in English, encompassing almost everything which is related to running a business, in particular the entity running it, the assets used to run it and the designation of both the entity and the property. This distinction makes it possible, using Polish legal language, to clearly and precisely assign certain normative features to a firm (understood as a business name), such as non-transferability, the entrepreneur, such as subjectivity, or to the name of an enterprise, such as specialized legal protection against an act of unfair competition, defined as a misleading designation of an enterprise (Art. 5 of the CUC). Thus, there are no rational reasons to give it up, or even to 'break' it (in the sense of weakening) by introducing exceptions, the existence of which could, in a way, encourage the legislature to multiply them by introducing other 'firms' inconsistent with the original, fundamental meaning of the word.

It should be borne in mind that in every legal system, including the Polish one, and at the same time in Polish legal language, there are smaller or larger, more or less significant, noted and perceived terminological differences in terms of individual phrases, concepts and legal institutions, as well as the distinctiveness of colloquial language in contrast to legal language, and as well as differences between individual specialist languages (e.g. in the area of economics, finance, management and quality sciences, and legal sciences, the most formalized field of social sciences). Apart from the fact that they occur within each country and legal system (including other states and foreign legal orders), this results in differences between individual states, their legal systems and legal languages, which – despite the increasingly frequently articulated needs of global unification in various areas (which are to be served by various, more or less universal, instruments of integration) – must be respected. This respect is justified by arguments resulting from the consideration of their broadly under-

lemy tłumaczenia polskich i niemieckich wyroków w sprawach cywilnych i karnych, (in:) 'Lingua Legis', no. 17, Warszawa 2009, pp. 76–86.

stood roots, including cultural conditions and other types of reason, and the related advantages, including the above-mentioned ones. Due to respect for the distinction in Polish legal language between the concept of 'firm' ('business name') [*firma*] and the other linguistic terms mentioned above ('entrepreneur' [*przedsiębiorca*], 'enterprise' [*przedsiębiorstwo*] and 'name of the enterprise' [*nazwa przedsiębiorstwa*]), from which the specific, positively understood terminological originality of Polish legal language results, the Polish legislature should remain very consistent.

Conclusions

At present, the return of the Polish legislature to such an attitude – consistent with respect to the linguistic and semantic distinctions established since the 1930s in Polish legal language between the term 'firm' [*firma*] and the other linguistic categories mentioned (above all 'entrepreneur' [*przedsiębiorca*], 'enterprise' [*przedsiębiorstwo*] and 'name of the enterprise' [*nazwa przedsiębiorstwa*]) – should lead to the removal from Polish legal language of the use the word 'firm' [*firma*] in a sense other than those referred to in Art. 43^2 § 1 of the CC, and therefore, in particular, the terms 'investment firm' [*firma inwestycyjna*], 'foreign investment firm' [*zagraniczna firma inwestycyjna*] and 'audit firm' [*firma audytorska*] referred to above, by replacing them with the terms proposed above or by other terms not including the word 'firm' [*firma*]. As a proposal for the law as it should stand, an introduction of such modifications in Polish legal language should be considered.

Notwithstanding, it also seems that it is necessary to generally strive towards using the word 'firm' [*firma*] consistently in its basic meaning, as currently defined in the Civil Code (and previously in the Commercial Code), universally, and therefore not only in the Polish legal language of private and public law and of legal professionals, but also in non-legal language, including official and colloquial language, as well as in specialized language of any non-law field of human activity, both in the field of social sciences (e.g. economics, finance, management, quality, security, psychology or sociology) and beyond the scope of these sciences (e.g. in the humanities, engineering and technology, medical and health sciences, agriculture, natural sciences and others). It should be noted that since Polish legal language and jargon respects terms (including concepts) from the specialized language of non-legal fields of activity, there should also be 'somewhat mutually' respected terms (including concepts) of Polish legal language in those non-legal fields, such as, in particular, 'firm' [*firma*], 'entrepreneur' [*przedsiębiorca*], 'enterprise' [*przedsiębiorstwo*] or 'name of the enterprise' [*nazwa przedsiębiorstwa*].[61] Therefore, first of all, more consistency by the Pol-

61 Examples of legal language used in the TFI, the Act of 29 September 1994 on accounting (consolidated text in Journal of Laws of 2021, item 217, as amended) or the above-mentioned SAAFS show that non-legal specialist language from the fields of economics and finance (including, for

ish legislature is needed in this area, which is always extended to the entire Polish legal system, and, on the other hand, more mutual respect among Polish non-legal language users is required regarding the use of the word 'firm' [*firma*] in the proper legal sense as currently provided for in the Civil Code. This may help increase the specialization of the Polish language in general and thus increase its essential potential as an instrument of communication between people of different educational backgrounds, professions and fields of activity who pursue their interests (including business activities) in various fields, which may help reduce barriers and linguistic errors in communication in the Polish language.

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example, terminology concerning financial instruments (in the case of the first of these acts), issues from the area of financial reporting and accounting rules (in the case of the second), and the area of financial audit (in the case of the third)) is accepted in Polish legal language. On the other hand, e.g. in the Act of 6 March 2018 on the central register and information on economic activity and the information point for entrepreneurs (consolidated text in Journal of Laws of 2022, item 541, as amended; hereafter 'CRIEA') [*Centralna Ewidencja i Informacja o Działalności Gospodarczej*], Polish lawmakers, when defining the scope of an entry in the CRIEA in Polish legal language of public economic law, 'did not forget' to use the term 'firm' [*firma*] in its basic, civil-law meaning as currently set out in the CC.

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