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The New Polish Act on Family Foundations: A Comparative Study of Foundations in Poland and Other European Countries¹

Abstract: This article presents a new regulation on family wealth management recently adopted in Poland and compares it with the solutions adopted in relevant legislation in other states, particularly German-speaking countries, with a special focus on German law. This comparative analysis starts with a retrospective look at the development of regulations on foundations in Poland leading to the adoption of the Act on Family Foundations, and subsequently examines the regulations currently binding in Germany, Austria and Luxembourg, aiming at pinpointing the basic similarities as well as differences in the way foundations are approached by legislators in Poland and other European (mostly German-speaking) countries. It also points out the main difference that characterises Polish family foundations, which, rather than serving charitable purposes, are predominantly if not only intended to manage and preserve family wealth.

Keywords: economic activity, family foundations, Polish Act on Family Foundations, Polish charity foundations, Privatstiftungen, Stiftungen

Introduction

Foundations are usually established for the purpose of pursuing certain goals, such as performing charitable tasks for the common good, or in some cases providing family members with better prospects for the future. In January 2023, a

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new regulation on family foundations was adopted in Poland (Republic of Poland, 2023). Before it came into force in May 2023, the only ‘foundations’ that had been known under Polish law were entities dedicated exclusively to the common good, and especially charity (Republic of Poland, 1984, item 97), performed by private individuals, certain families, and often by the Catholic Church.² Not much capital is needed to establish a foundation in Poland. As they are entities of public interest and subject to regulations on charitable activities, foundations receive financial support from two different sources: private donations or payments from public bodies (often in the form of fines which courts have adjudicated to be made to charity foundations). These are expected to be subsequently distributed by those charities to various entities in legitimate need (such as orphans, victims of traffic accidents or persons with disabilities). A completely opposite situation prevails in neighbouring Germany, where since 2002, about two-thirds of the existing foundations have been established not only for charitable purposes carried out by churches or communities, but for aims pursued by individuals or, often, families, various organisations and sometimes private companies (Hopt & Reuter, 2001). The year 2022 witnessed a 2.5% increase in the number of foundations in comparison to 2021 (and 3.2% in 2021 compared to 2020), and with 693 different types of foundations established then, there were 25,254 foundations with legal status operating in Germany altogether. What is more, about 90% of all foundations have been created for tax-deductible purposes (Bundesverband Deutscher Stiftungen, n.d.).

In Poland, before the Act of 2023, foundations only operated under the Act on Foundations of 1984, which was generally applicable to legal entities governed by public law whose general purpose was mainly not for profit, and therefore particularly for charitable activities. Therefore in the first two decades of its enforcement, Polish foundations only served charitable purposes; however, since 2016, equipped with legal personality, foundations have also been able to carry out business and commercial activities within the scope of their main charitable purposes (Kidyba, 1999, p. 2). Operating as a foundation enables its creators to separate the risks generated by their business from their individual funds, because all losses, if any, must be covered by the foundation from its own assets. Moreover, under the former regulations, members of the management board could receive remuneration from the foundation’s funds,

2 The best-known examples of foundations are the Fundacja Izabeli i Adama Małyszów ‘Wystarczy chcieć’ and the Fundacja Wielka Orkiestra Świątecznej Pomocy (WOŚP). Polish law did not define the Church’s foundations differently, and they were commonly known as legal entities established by legally acknowledged churches such as the Roman Catholic Church (based on an Agreement between the Polish State and the Roman Catholic Church drawn pursuant to the Act of 17 May 1983; see Republic of Poland (1983)). Other acts, like Article 43 of the Act on the Relationship between the Polish State and the Polish Autokefalic Orthodox Church (Republic of Poland, 1991, item 287), apply to other churches, for example the Polish Orthodox Church. See Walencik (2013, p. 66).

a very tempting possibility which was prone to abuse (Dominowska, 2017, pp. 19–20). Before the 2023 Act, foundations in Poland had been commonly considered to be established for charitable purposes rather than as vehicles for conducting other activities, particularly business, as well (Kappes, 2023, As they were supervised by public bodies, the scope of their activities other than charity was indeed marginal, although not completely non-existent.³

However, the increasing participation of private equity in Polish society, especially of businesses constantly looking for tax optimisation solutions or wealthy individuals seeking the best ways of solving inheritance matters and shaping their family's assets over the next decades and generations, has led to a desire to create a new, specific 'legal vehicle'. A concept like this already existed in the laws of some older EU countries and was known as a foundation solely oriented to private, personal purposes (a *Privatstiftung*) and not to charitable activities. After two years of initial considerations, the Act on Family Foundations came into effect in May 2023 and offered a 'designated vehicle' capable of running and continuing accumulated family wealth for the coming decades, perhaps even centuries.

1. Family foundations in Poland and the idea of a trust: Are these compatible?

The new regulation for family foundations in Poland has been drawn from governing foundations of western European law and is based on already existing concepts and the idea of a foundation grounded in its founders' tangible assets. Foundations are established when their creators wish to actively pursue certain purposes with the use of a part of their fortune and determine those purposes clearly, at the same time creating a certain asset base to achieve those aims. In Germany, family foundations exist under the name *Familienstiftungen*, but they are not treated any differently than other foundations and are not subject to any special provisions.⁴

Under Polish law, the assets of a foundation cannot be spent as such and must be preserved as the capital of the foundation. The average surplus generated by these assets may be invested profitably or used for the actual purpose of the foundation. The main difference between foundations based on the Polish Act of 1984 and family foundations governed by the Act of 2023 is that they are different legal entities (Szpura, 2013, p. 25). Both have legal personality, but they serve different purposes. Usually, foundations were established for public charitable purposes and not for

3 In the WOŚP foundation previously mentioned, the Małysz family, members of the founder's family, were employed and paid reasonable compensation from the foundation's funds.

4 Schiffer & Pruns (2012, p. 327) indicate that just because of foundations' ultimate aim of supporting family members, and not serving the common good, German courts have expressed certain doubts about whether they should be referred to as foundations.

the purpose of providing for a family; therefore transfers of funds could only be an activity additional to the normal operations of the foundation, which often operated on financial means acquired from public donations. Under the 2023 Act, a family foundation is intended to serve a family, providing it with financial support. This, however, does not exclude it serving as a public charity, particularly if a foundation acquires funds from a private person, i.e. the founder.

Prior to the enactment of the Act on Family Foundations in May 2023 (Republic of Poland, 2023), successful Polish entrepreneurs seeking tax optimisation, as well as private individuals with substantial means, would sometimes transfer significant financial resources abroad, to countries like Austria, Liechtenstein or Luxembourg, where the establishment of family foundations was possible.⁵ However, creating and running a foundation in a foreign country turned out to be quite expensive because of high operational costs. The wish to ensure the security of the private wealth of Polish families and to develop a plan for its management in the future triggered discussions about developing options that would also offer potential founders in Poland wealth-management instruments, similar to those available under trust law.

Trusts, although found in the inheritance law of other legal systems, are not known in Polish law (they are not available under German law either; Wienbracke, 2012, pp. 21–22) and therefore as yet have not been considered a viable solution.⁶ Yet as a very convenient way of disposing of wealth, they are sometimes resorted to in Poland, although only in *mortis causa* actions (Zachariasiewicz, 2009, p. 244; also see Hayton & Kortmann, 1999), as is reflected in some recent wills.⁷ All these considerations gave rise to the development of the family foundation, a new legal form capable of continuing the deceased person's business at no risk to his or her family.⁸

2. Establishment of a family foundation

Under Article 21(1) of the Act on Family Foundations (FFA), a family foundation may be created in two ways, *inter vivos* or *mortis causa*. In the first case, a family

5 For example, Austria and Liechtenstein have accomplished complex reforms of private foundation law (*Stiftungsrecht*): Austria in 2019 (Parliament of Austria, 2019), and Liechtenstein on 1 April 2009 (Parliament of Liechtenstein, 2008), when it issued a new regulation which was the effect of a complex reform of its foundation law, according to the *Stiftungsrecht* started in 2001.

6 Trusts are so widely applied in common law 'because trusts are so flexible they are the single most useful estate planning device' (Anderson, 1996) p. 18.

7 Poland and Germany are not parties to the Hague Convention on the Law Applicable to Trusts and Their Recognition of 1 July 1985, nor have they ratified this convention; therefore trusts do not seem to be an applicable solution.

8 Only 8.1% of the successors of family enterprises declare that they are carrying on businesses created by their parents, according to a survey by the Polish Institute of Family Business (Instytut Biznesu Rodzinnego, 2017).

foundation is created by an act of establishment executed by a founder (or multiple founders), while in the second, it may be created as a part of the founder's last will and, pursuant to Article 12(2) FFA, by one founder only. In both cases, as provided for in Article 22 FFA, the creation of a foundation should be done in the form of a deed drawn up by a notary. The deed starts the existence of a 'foundation in organisation', and until its final registration by a registry court, its business name should always include the words 'in organisation'. Such a 'family foundation in organisation' may act on its own, enjoying legal capacity, and may, among other things, acquire rights, obligations or even immovable property (estates), although until it is registered, it will not have legal personality (Górny, 2021, p. 512; Mariański, 2023, p. 151ff). However, all the financial assets brought into the foundation become its property and continue to exist outside the founder's area of competencies. According to Article 24 FFA, as soon as the 'foundation in organisation' is registered and begins to enjoy legal personality, the reference 'in organisation' is no longer required. Article 25 provides further that if the act establishing a family foundation is invalid, if the court of registration rejects the application for its registration, or if no such application has been submitted to the court within six months of the date of the adoption of the act, then the 'foundation in organisation' shall be dissolved. However, all acts and obligations performed on behalf of this dissolved 'foundation in organisation' are considered valid. Pursuant to Article 17 FFA, the initial capital of a foundation must be PLN 100,000⁹ and the act establishing the foundation must indicate, among other things, its name and registered office, a precise description of its purpose, a list of beneficiaries with their powers and the rules governing them, the duration of the foundation, the value of its share capital, the rules according to which the foundation will be managed and represented, the supervising authority responsible for the supervision of the management board within the duration of the 'foundation in organisation', at least one beneficiary authorised for a beneficiary meeting, rules governing subsequent changes to the statutory act, and rules on the foundation's property after dissolution of the foundation, in particular those indicating the beneficiary or beneficiaries to whom the remaining property should go. Pursuant to Article 20 FFA, assets that have already been contributed to the family foundation in its name are to be clearly separated from the founder's assets and remain the property of the foundation, regardless of future claims against the founder or founders. Therefore those assets cannot be returned to the founder during the valid duration of the foundation. Pursuant to Article 27, all assets already contributed to the foundation's share capital shall be duly registered in the foundation's assets catalogue, which shall be updated by the management board in the event of changes. Hence these assets could not be returned back to the founder's property during the foundation's existence.

9 The exchange rate for Polish złoty to euros is between PLN 4.40–4.60 to EUR 1, which makes the base founding stock capital of PLN 100,000 equivalent to about EUR 22,222.

2.1. The major characteristics and main purposes of a family foundation

Pursuant to Article 2 FFA, foundations are oriented towards acquiring assets on their behalf, managing these assets (funds) as property and providing for the beneficiaries in accordance with the founder's will, which must be clearly stated in the act of establishment. According to Article 11, the creator of a family foundation can only be a natural person (Marianński, 2023, p. 148). Foundations based on private sources are to be described as private foundations, alongside other foundations which are not exclusively oriented to provide for certain family members but to act in the name of another common good, such as the support of children or students, local cultural activities, etc.¹⁰

However, family foundations, which enjoy full legal personality from the moment of their registration, are not allowed to engage in full economic and commercial activity. According to Article 5 FFA, some commercial activities, in particular in agriculture and forestry, real estate such as renting and leasing, capital activities, borrowing or private equity investments and stock exchange activities, are allowed only as a subsidiary. In view of the enumerative catalogue contained in Article 5, it seems that the scope of possible activities is quite wide, which indicates that the main purpose of a foundation may not only be contributing to the satisfaction of family needs. The other interesting aspect of the functioning of family foundations is remuneration for services, which (pursuant to Article 6) must be paid into a bank account only on behalf of the beneficiaries.

Pursuant to Article 8 FFA, a foundation is only subsidiarily liable (*in solidum*) for the founder's prior obligations, the only special exception to this rule being the foundation's liability for maintenance claims against the founder, which may arise or be claimed even after the foundation has been established. In addition, it is possible to sue the foundation for maintenance claims against a founder, regardless of any legal proceedings already in progress against them. However, the liability of the foundation for the maintenance claim is limited to the value of its assets. On the other hand, as provided for in Article 16, the founder is not liable for the foundation's obligations that arise within its duration. Should a financial loss in the current year occur, it must be covered from all the financial gains of the next year, while the payments due to beneficiaries must, if necessary, be partially suspended or reduced. Pursuant to Article 37, pending maintenance claims against the founder must be paid before any other payment can be made to any of the beneficiaries.

10 According to German regulations (BGB, *Stiftungsrecht*), a family foundation oriented to providing for a founder's family member is to be called a *Familienstiftung*.

As provided for in Article 30(1) FFA, a beneficiary is a person on whose behalf the family foundation acts. They may be a natural person or an NGO, according to the definition in Polish law.¹¹ Article 30(2) provides that a founder may also be a beneficiary. Under Article 34, all beneficiaries must be registered, entered into the list of beneficiaries and must identify themselves in advance with personal identification documents. In order to receive certain deposits from the foundation, some additional provisions may also be made. Pursuant to Article 39, beneficiaries' rights to such benefits and obligations cannot be sold, transferred or disposed of in any way. This is a reflection of the personal boundary between the foundation and its beneficiaries, which is made in the same way as is regulated in the Code of Commercial Companies and Partnerships, where not only the financial aspect is important, but also the whole personal relationship created within the entity. However, in the case of a beneficiary's complete disposal of his or her rights, he or she renounces their status and must have their name removed from the list of beneficiaries.

Articles 40–41 of the FFA provide that the beneficiaries may contact the management board of the family foundation or even communicate remarks and suggestions regarding the foundation's activities. The beneficiary may also request information from the management board on the activities. The management board may refuse access to certain information relating to the foundation if its disclosure could harm the interests of the foundation or infringe the protection of personal data. In such a case, a beneficiary can apply to a registry court as a supervisory authority and ask for permission to obtain access to such information. While a beneficiary is allowed to have access to information concerning the activities of the foundation or even to communicate remarks or suggestions concerning its activities, the management board is not under an obligation to follow the proposed recommendations.

2.2. The most important aspects of the management of a family foundation

Under Polish law, family foundations may have three organs, of which only two are obligatory: the management board, the beneficiaries' meeting and the voluntary supervisory board. The latter becomes obligatory if the number of beneficiaries exceeds 25, as provided for in Article 64 FFA. In order for someone to become a member of the foundation's governing bodies, a written endorsement must be obtained (Mariański, 2023, pp. 170 and 174ff). According to Article 48, the meetings of the family foundation's governing bodies are held at a statutory place, but they may also be held online. In such a case, a real-time connection and the possibility of active communication between the members should be provided (Article 48(2)), and the chair who has previously convened meetings should fix its date and place and invite the other members to the meeting as has been duly scheduled (Article 49). In

11 Such NGOs are mentioned in Article 3(2) of the Act of 24 April 2003 on public benefit activity and voluntary work (Republic of Poland, 2003).

addition, any member of the management board may submit a request to the chair for a board meeting, in which case the chair is obliged to convene it. According to Article 50, decisions on the agenda of the meeting are to be taken during the meeting after a vote, in which case the vote is generally open and the majority is decisive.

2.3. The main governing bodies of family foundations

Article 54 FFA provides that the management board represents and manages the foundation and is appointed to fulfil the statutory tasks of it. If not previously agreed, managers are not paid for their work, although their financial expenses should be covered. The management board may be one person only, but it may also consist of more members, in which case the foundation is represented pursuant to Article 59, and two directors must act jointly. Pursuant to Article 61, the term of office of a board member expires after three years, with the possibility of a prolonged term in accordance with the law or of such a member continuing in office for the next term. The mandate of a management board member also ends with their resignation, dismissal or death; pursuant to Article 75, all members of the board are jointly and severally liable for their acts and omissions, and their actions are assessed based on the rule of diligent management. According to Article 79, the foundation's finances must be audited every four years by a professional accountant, and if the foundation engages in economic activity, its books must be audited every year. Pursuant to Article 81, the foundation's financial statements must be submitted to the beneficiaries' meeting or the supervisory board.

As provided for in Articles 64 and 66–68, the founder may appoint the supervisory board, which may consist of one person or several. The term of office of the members of this body is five years and can be renewed. New members can be appointed at the beneficiaries' meeting after the death of a founder. Pursuant to Article 65, this meeting may demand access to all documents and information concerning the activities of the management board. Article 69 provides that a member of the management board may not be appointed as a member of the supervisory board. If the number of beneficiaries exceeds 25, a supervisory board is mandatory.

As provided for in Article 70 of the FFA, the beneficiaries' meeting must be formed in accordance with the existing legal regulations and, interestingly, not every beneficiary can be a member of the meeting. Each beneficiary who is a member of this body must carry out the functions of a member properly and diligently. The beneficiaries' meeting is an obligatory body in a foundation and is important because it incorporates, in a way, the identity of the foundation, serving its beneficiaries. In the event of a member of the management board resigning, this resignation must also be received and approved by the beneficiaries' meeting. As provided for in Article 71(1), all conditions necessary for a general meeting (the beneficiaries' meeting) to be called should be stated in the act of establishment. Normally, it is the management board that should call the beneficiaries' meeting, but if it does not do so, any beneficiary is

entitled to call a meeting, as provided for in Article 71(3), for example when a founder is the only manager and has died, and no other manager has been appointed. Then, pursuant to Article 71(6), if a manager does not convene a beneficiaries' meeting within seven days of the date of the request, the beneficiaries should request a registry court convene such a meeting.

Pursuant to Article 72 FFA, the beneficiaries' meeting accepts the financial report every year, and following the vote of acceptance, it decides on the balance sheet, profits and other aspects of the functioning of the family foundation as provided for in the act of establishment. The beneficiaries' meeting is valid regardless of the number of beneficiaries present (Article 73), but at least one beneficiary must be in attendance. However, conclusions or motions may only be taken if not fewer than half of the members of the beneficiaries' meeting have actively voted.

3. The main differences between Poland's and Germany's legal regulations: A basic overview

A family foundation in Poland is a legal entity organised under private law, economically based on private financial transfers and endowed with legal personality. However, its existence and activities are supervised by the public authorities, although to a much lesser extent than charitable foundations, which have to be inspected every year due to the public financial resources they receive. A Polish family foundation is based on private financial sources, so it is subject to much less control. In both cases, however, it is a Polish registry court that checks the foundation's financial reports. A family foundation in Poland, if it does not carry out any economic activity, should only have its financial statements checked every four years, whereas a German foundation (*Stiftung*) must be checked every year regardless of its activity. Polish family foundations enjoy legal personality, which means that they can perform a wide range of acts in their own name. In particular, they may carry out economic activities, as long as these are not their main purpose but only additional (Kidyba, 1999, p. 2). Austrian foundations, known as *Stammvermögen*, on the other hand, are established to manage the family's core assets, and an Austrian foundation is prohibited by law from carrying out any economic or commercial activity on its own (Scheuber, *Die „Familien-Versorgungsstiftung“* p.938).¹²

German foundations (*Stiftungen*), on the other hand, are a homogeneous type because there is no special legal subdivision that indicates different specialised foundations. However, German jurisprudence names a variety of such specialised foundations within this single description (Mansel, 2023, p. 39). Among others, there is the family foundation, or *Familienstiftung* (Lehleiter, 1996 p. 52;). This type

12 'Keine gewerbsmäßige Tätigkeit betreiben'.

is mostly founded by economic and commercial entrepreneurs (Schiffer J. & Pruns M. 2012). In German jurisprudence there is still a debate as to what should be considered a family: it could be a nuclear family, which is quite obvious for the majority of jurisprudence, but some consider a family to be a large group of different individuals who are not really very close to the person of the founder. Thus the point of view of the law of succession could be very important, as different persons could acquire property without paying tax (Schiffer, 2010, p. 69). Over the decades, German tax law has seemed to deal with this issue quite gently, based on the assumption of the good will of many German foundations which obediently follow the tax rules. Over the years, the only problem was that a rather large number of family foundations (*Privatstiftungen*) had to be audited.¹³ Unfortunately, in the few years after 2000, it seemed quite obvious that a large number of these German foundations, especially those located in the Duchy of Liechtenstein, had been used for tax avoidance and optimisation, which finally led to a major revision of the law of the Duchy of Liechtenstein in 2012 and 2014 (Parliament of Liechtenstein, 2008; 2012). All the changes were made in response to complaints from the German authorities about tax evasion by foundations based in Liechtenstein, and GRECO (the *Groupe d'États contre la Corruption*), as a working group, also requested more state control against money laundering in the country.¹⁴ These new regulations are in part based on the Austrian regulations on foundations (Marxer & Partner Rechtsanwälte, 2021, p. 7).

Under Polish law, there are two separate kinds of foundation: a public charity foundation (regulated in the Act of 1984, as indicated previously) and a foundation established and operating under the new Polish Act on Family Foundations of 2023. The Polish regulation was shaped in a similar way to the German one (*Stiftungsrecht*). However, while the German regulation on foundations simply constitutes a part of the German Civil Code (BGB) and contains no more than 39 paragraphs regulating its subject (§§ 80–89 BGB; there are additional paragraphs marked with letters), the Polish regulation (FFA) consist of 145 articles, which in consequence makes it more complex and detailed. Regarding *Stiftungsrecht*, the commentaries of German jurisprudence fill the gap easily.¹⁵ German foundations are not only regulated by the BGB, but also by local laws according to the federal state in which the statutory location of the foundation and the place from which it is managed is situated. The new BGB of 2023 contains many provisions that change the previous regulations about German foundations; *Stiftungsrecht* is one of them, under which there is a description of the 'foundation location' (*Sitz*), which has been changed from the

13 In the report of the Bund-Länder-Arbeitsgruppe Stiftungsrecht (2000), *Stiftung & Sponsoring*, 2, p. 56ff; this was criticised in Schiffer & Pruns (2012, p. 327).

14 GRECO is a special cooperation started in 1996 by the European Council; see Smulders (2018).

15 Best known among German jurisprudence's commentaries are the latest versions of Heidel et al. (2023) and Mansel (2023, p. 39ff).

statutory location to the 'management location' (*Verwaltungssitz*) (in § 83a BGB). Bearing in mind that the applicable German tax authorities are relevant to the location of a given foundation, there is a possibility of an adjustment for a lack of specific localisation in certain German provinces (*Bundesländer*) in order to apply the appropriate taxation (Huttemann & Rawert, 2021, p. 12). What is more, German foundations must not be managed from abroad, which seems to be quite different from the Polish regulation, where, pursuant to Article 26(2)(2) FFA, the location of a foundation must be indicated in the legislative act without any additional provisional remarks, whether it is in Poland or elsewhere. However, taking into account that Polish law follows the doctrine of a location and a registered office, the location of the Polish family foundation must be in Poland. In addition, according to Articles 47–48 FFA, the management board may meet not only in the location of the foundation, but in any other place as agreed by all board members, and meetings may also be conducted online.

There is no mention in Polish regulations of any additional membership of other legal entities, but according to Article 11 FFA, only a natural person can be a founder of a family foundation. On the other hand, there is no prohibition against including a whole company in the foundation's share capital, as Article 19(1) FFA provides only that the amount of Polish currency (PLN 100,000) or its equivalent in various assets must be contributed in the form of an organised and functioning enterprise. In Germany, however, various specialised foundations exist which are established for the purpose of ensuring that an undertaking is a going concern and continues its operations (*Beteiligungsträgerstiftungen*, such as the Breuniger Stiftung and the Aldi, Lidl and Würth Stiftungen); some enterprises, though, could be based only on financial assets without any enterprise or other material assets like real estates (*Kapitalfondsträgerstiftungen*, such as the Vorwerk Elektrowerke Stiftung & Co KG).¹⁶

Conclusions

a) General

As mentioned at the beginning of this article, quite a new legal form of entity seems to have developed in Poland, based on the provisions governing foundations in force in the legal systems of other European countries. However, its main purpose is not oriented to charitable tasks only, but rather on preserving and managing family wealth. This is the main difference in comparison with some other European foundations (mostly in German-speaking countries), which are not so obviously dedicated to private interests but are intended to carry out charitable actions in the public interest. As can be seen from the considerations presented here, the activities of foundations in Poland, as well as those in other European countries, may include

16 German jurisprudence indicates Schiffer & Pruns (2012, p. 328).

those of charities and NGOs. There are differences, however, regarding how family foundations operate within different legal orders. In Germany, there is only one form of foundation (*Stiftung*), regulated in §§ 80–89 BGB, whereas in Poland, there are two forms regulated separately, one (a foundation) mainly intended for public charity and one (a family foundation) rather intended for carrying out economic activity that serves the private interests of the founder and his or her family, and only exceptionally providing benefits to directly indicated beneficiaries (Sokolowski, 2024). It must be noted that the same tasks are performed by the German and Austrian specialised foundations described as a *Privatstiftungen*. Hence in German-speaking countries, there is only one type of foundation, but its precise description may be related to its specific operational profile. In light of the analysis carried out, it is justified to state that the above-mentioned legislations differ from one another. In Germany, foundations are mainly, although not entirely, subject to the provisions of the BGB; under Austrian and Luxembourgish laws, there are many different detailed legislative acts governing various types of foundation, but there is no specific law regulating family foundations.

b) Specific limitations within the Polish law on foundations: Restricted economic activity

A family foundation in Poland operates under different legal regulations than those applicable to a typical (charitable) foundation due to its slightly different legal form, although charitable purposes are not excluded from the scope of its operations. Due to the general purpose of a foundation, which is charity, pursuant to Article 1 of the Act on Foundations of 1984, economic activity by such a foundation is not part of its purpose.¹⁷ However, such an activity, if intended, could be indicated in its founding act and performed on the side or alongside its main charitable tasks (Judgment of the Polish Supreme Court, 2021). Pursuant to the exact wording of Article 5 of the newly issued Act on Family Foundations of 2023, an economic activity may be conducted by a specialised type of foundation, but it is not certain to what extent it could be performed, bearing in mind that this activity may be ‘only additional’. The basic catalogue of activities listed in Article 5 provides for only a specific number of types of economic activity for family foundations; they mostly include certain financial investment activities (among them loans), farming and forestry, albeit on a very limited scale (Leszczyk D. 2023).¹⁸ General economic activity is allowed only to a very limited extent, and running a business could be problematic without transforming a foundation into a form of a limited liability company whose shares could be included

17 Cioch (2007) discusses Article 1 and its mainly wide oriented characteristic of foundation activities.

18 Article 6 of the Polish Forestry Act of 2024 provides that a forestry activity is directed to the organisation, protection and management of forests, keeping up and growing forest resources, protecting wildlife and harvesting wood and other products. Leszczyk D. p. 18.

in the foundation's assets. In such a general overview, the main idea of a family foundation seems to be providing for a family economically (Dumkiewicz, 2023, art. 1(2)), which is not in the same line as the intended activity of a typical foundation set up for charitable purposes or acting as an NGO. It seems reasonable to extend the economic activity allowable under Article 5 to economic activities typical for small entrepreneurs, who after their retirement (or death) may pass on their enterprises directly in favour of and in the name of the family foundation.

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