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THE ASSIGNMENT OF RECEIVABLES AND THE CHANGE OF PARTIES TO A CONTRACT IN THE POLISH LAW IN THE PROJECT OF THE NEW CIVIL CODE

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Abstract. This article presents the draft of the new Polish Civil Code with the focus on the transfer of receivables and the change of parties to a contract, a doctrine which has been unknown to the Polish law so far. The relevant considerations are preceded by an introduction to the origins of the work of the Codification Committee and the presentation of the sources of comparative studies. Next, there is a short discussion of the current regulations of assignment followed by detailed proposals of solutions provided in the new Civil Code with regard to the assignment of receivables and the change of parties to a contract, e.g. the effects of the contractual clause prohibiting the assignment of receivables, the rules for the transfer of future receivables and its definition, assignment in bulk and multiple transfer.

Keywords: change of a subject in a contractual relationship, assignment of receivables, change of parties to a contract, the Polish contract law, Codification Committee

INTRODUCTION

In November 2008, the President of the Civil Law Codification Committee at the Justice Minister of the Republic of Poland, Professor Zbigniew Radwański, authorised by the Presidium of the Codification Committee, appointed the Civil Law Codification Committee team composed of Professor Zbigniew Radwański, Jan Mojak , and Jacek Widło, with an aim to prepare a draft of the new Civil Code focusing on the change of subjects in contractual relationships.

The revisions approved by the Codification Committee in 2009 included the drafts of amended or entirely new provisions of the Civil Code, numbered

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from 1 to 26, and focused on such doctrines of the law of obligations as the transfer of receivables, cessio legis, debt takeover and the contractual change of parties to an obligation.

Following the study of the draft provisions of Book II of the new Polish Civil Code as of 2015, the Codification Committee of that term departed, to some extent, from the solutions adopted by the Codification Committee in 2009.

This study attempts to evaluate the current stage of work on the review of the civil law provisions, focusing on the contractual change of parties to an obligation.

Practical experience, trade needs and the analysis of model solutions (Draft Common Frame of Reference (DCRF), UNIDROIT of 2004 and 2010) as well as foreign codes indicate that it is necessary to update provisions on the transfer of receivables and introduce a new doctrine – the change of parties in a contractual obligation – to the Polish law.

The proposals of individual solutions and new provisions were based on a broad spectrum of national and foreign reference literature, comparative analyses of foreign systems and model studies focusing on the transfer of receivables and the change of the debtor, in particular the ones referred to above, such as the Draft Common Frame of Reference (DCRF),[1] the Principles of European Contract Law (PECL) [Lando and Beale 2000],[2] the UNIDROIT Principles of International Commercial Contracts of 2004 and 2010,[3] the United Nations Convention on the Assignment of Receivables in International Trade (New York, 2001) and the UN Convention on International Factoring.

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[1] Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCRF) Full Edition, prepared by the Study Group on European Civil Code and the Research Group on EC Private Law (Acquis Group), edited by Christian Von Bar and Eric Clive, vol. 1 (Sellier 2009). Following the European Parliament resolution of 03 September 2008 on the common frame of reference for European contract law, O.J. C 295 E/31, the Draft Common Frame of Reference is a guiding recommendation (a collection of non-binding guidelines) for the internal legislator in designing civil law, which should be taken into account when designing provisions. More information of the unification of private law, in particular contract law, can be found in: Lando 2003, 123–33; Weatherill 2004b, 633–60; Brouwer and Hage 2006, 7; Weatherhill 2004a, 23–32; Von Bar 2005, 17–26; Staudenmayer 2005, 95–104; Röttinger 2006, 807–27.

[2] The Polish text of the Principles (Part I and II) in the Translation of M.A. Zachariasiewicz and J. Bełdowski, in: "Kwartalnik Prawa Prywatnego" 3 (2004), p. 815ff. The text of Part III of the Principles in the translation of J. Bełdowski and A. Kozioł, in: "Kwartalnik Prawa Prywatnego" 3 (2006), p. 860ff.

[3] The updated UNIDROIT Principles of 2010, Rome 2010 and UNIDROIT Principles of 2016, do not change the rules for the transfer of receivables or the change of parties in a contractual relationship in principle: http://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2010, http://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016 [accessed: 01.02.2022].

1. THE CHANGE OF PARTIES TO A CONTRACT AND THE TRANSFER OF RECEIVABLES IN MODEL REGULATIONS

The change of parties to a contract has not been the subject of analysis in Polish legal literature and jurisdiction so far, except for the fact that the problem has been noted.[4]

The change of parties to a contract would mean that one legal act could change the status of the party to a contract, both as a creditor and debtor. In different legal systems, such as the Polish system so far, this effect could be achieved by a separate act of the transfer of receivables and a separate act of the change of the debtor so that it becomes the same subject. As a result of such an act (a set of activities), the person taking over by way of singular succession inter vivos would assume the general legal situation of the party in the legal relationship while the contents of the obligation would remain the same. The premises and validity as well as effectiveness of this act would have to be verified and assessed separately for each of these activities. Currently, such a change would require two agreements between the seller and the buyer of receivables and between the person taking over the debt and the so-far debtor with the consent of the creditor (or, respectively, the debtor). Both activities could be combined into one. Obviously, such agreements are needed in the relationship of rent, lease, the supply of energy, gas, heat and water, etc. By way of exception, the law provides for the subject to assume the rights of the party to a contract (e.g. the owner of a farm assumes the relationship of contracting and replaces the producer (Article 625, sentence 1 of the Civil Code[5]), but this relationship is a consequence of the law, not a legal act of parties.

This would, in fact, be a set of legal activities, including at least two. The evaluation of their effectiveness should be separate for each of them. The international doctrine, first in Germany, noticed the possibility of formulating a singular concept of the change of parties to a contract under one act (*uno actu*) [Nörr and Scheyhing 1983, 8; Möschel 2012, 1667ff].[6] The legal relationship of obligation creased to be seen as the one where subjects could not be changed a long time ago, which is why the possibility of creating one legal figure, the change of parties to a contract, was noticed. Quite often in the

[4] Except for the publication of P. Drapała [Drapała 2016, 261], which discusses this legal situation. The existence of the problem was mentioned in individual statements which pointed to the fact that Polish law does not provide for the principle of the complex change of parties to an obligation [Czachórski 1999, 329; Radwański 2008, 363; Kurowski 2010]. For legislation, see the judgment of the Supreme Court of 13 January 2004, ref. no. V CKN 97/03, OSNC 2005, No. 2, item 34, the resolution of the Supreme Court of 17 May 2012, ref. no. I CSK 315/11.

[5] Act of 24 April 1964, the Civil Code, Journal of Laws of 2020, item 1740 as amended [hereinafter: CC].

[6] Information on the Austrian law can be found in: Mader 1997, 528–29.

law, a subject – the buyer assumes the general legal situation of the seller (the sale of inheritance, the sale of an enterprise, the purchase of a property which is related to the entry into the relationship of lease). In order for this act to be effective, the other party in the relationship must consent to it [Drapała 2016, 267]. This consent may be conditional, it does not need to be given simultaneously (for the same act). The law should regulate the act of giving and the admissibility of the consent "for the future" as well as the effects of the absence of such a consent. The premises, validity, effectiveness and causal nature of the contractual change of parties to a contract would be analysed as a whole, not for the individual stages of these acts, which is the case at present.

The change of parties to a contract, the assignment of a contract or the acquisition of a contract are known both in Germanic (Germany, Austria and Switzerland) and Roman legal systems [ibid., 265].[7]

In most legislations it is not regulated by legal norms. The regulation of the change of parties to a contract can be found in the Italian Civil Code (Articles 1406–1410), the Portuguese Civil Code (Articles 424–427), the Dutch Civil Code (Article 6. 159) and the Hungarian Civil Code (Article 6:208–6:211) [ibid., 266].[8]

The change of parties to a contract and the assignment of receivables was also regulated in model regulations.

Book III, Chapter 5, of DCRF regulates the assignment of receivables and the change of parties to a contract. Also, the assignment of receivables and the change of parties is regulated in a separate section of another document – Chapter 9 of the UNIDROIT Principles.

Both regulations treat the transfer of receivables as a contractual legal act transferring receivables from the seller to the buyer without the need to obtain the debtor's consent (Article 9.1.1 and 9.1.7. of UNIDROIT, III 5: 102. (3) of DCRF).

The trade in financial instruments for which a register entry is required is excluded from the scope of the regulations of Book III, Chapter 5 of DCRF (III 5: 101. (2) of DCRF). The provisions concerning security rights regulated in Book IX have priority over the aforementioned provisions on assignment.

The UNIDROIT Principles also exclude the rights transferred in the course of transferring a business from the scope of assignment (Article 9.1.2. of Unidroit).

DCRF emphasises the possibility of assigning future receivables (rights) and assignment in bulk. The evaluation of the sufficient identification of the future right (future receivables) and the disposing effect is moved to the moment when the receivables arise (III. – 5: 106 of DCRF, Article 9.1.5 of Unidroit on

[7] And the reference literature cited there.

[8] See the Hungarian regulation cited therein, in footnote 15, p. 265. Its discussion will be excluded as it may be found in the above-mentioned publication.

the transfer of future receivables, Article 9.1.6 of Unidroit on assignment in bulk). The admissibility of the assignment of a part of receivables (monetary in principle) was also regulated and the conditions for the assignment of non-monetary receivables were defined (including assignability in part III. – 5: 107 of DCRF, Article 9.1.4 of UNiDROIT).

As for the effects of the contractual prohibition to sell receivables (pactum de non cedendo), it was expressly stated as a rule that this reservation does not influence the exclusion of the transferability of the receivables it applies to (II. – 5: 108 of DCRF), but in the Unidroit Principles it concerns monetary receivables only and non-monetary principles if the buyer acted in good faith (the assignee did not know and could not have known about *pactum de non cedendo* – Article 9.1.9 of Unidroit). The regulations and special effects of the contractual prohibition of the assignment of receivables, in particular the mechanism of protecting the debtor who completes performance despite the fact that assignment was a breach of the contractual prohibition were also indicated.

DCRF and the Unidroit Principles also specify in detail and according to norms (under the law) the scope of the assignor's liability towards the assignee in assignment and for what circumstances the assignor is liable with regard to the receivables transferred (in particular, the fact that the receivables exist, the assignor is entitled to them, they were not subject to assignment or a securing act for the benefit of a third party – III. – 5: 112 of DCRF, Article 9.1.15 of Unidroit).

DCRF defines in detail the effects of the transfer of receivables (including future receivables), multiple assignment (multiple assignment of the same receivables giving legal effects, in principle, to the first act of assignment (III. – 5: 114). It proclaims the principle of the transfer of accessory rights (III. – 5: 115 of DCRF) and the rights securing the performance of the rights assigned (Article 9.1.14 [b] of Unidroit) together with the receivables assigned.

Model laws also indicate that the system of the debtor's defences includes the principle that assignment may not deteriorate the status of the obliged party, which means that the debtor, in principle, may invoke against the assignee all the defences that the debtor might have invoked against the assignor, in particular the right of the set-off of mutual receivables against the assignor, which may be exercised in the relationship with the buyer of receivables (III. –5: 116 of DCRF, Article 9.1.13 of Unidroit). The debtor, acting in good faith, is protected and the debtor's performance to the seller (assignor) is effective so long as the debtor has not received a notice of assignment (reliable information III. – 5: 119 of DCRF). The debtor has a right to obtain the confirmation of the transfer made from the so-far creditor (assignor – III. – 5: 119 of DCRF, Article 9.1.12 of Unidroit). In the case of multiple transfers of the same receivables, the debtor is released if the payment is made to the assignee whose

assignment was first notified to the debtor (III. – 5: 121 [1] of DCRF, Article 9.1.11 of Unidroit).

A novel solution is the possibility of monetary performance in any place in the EU and, at the same time, charging the increased costs incurred by the debtor to the assignor, which is a new concept in the Polish law (III. – 5: 117 of DCRF).

Both model laws provide for the possibility of changing a party to a contractual obligation which makes it possible to transfer the rights of the party to the contract upon a third party with the consent of the other party that has been the party to this contract so far (III. – 5: 301 [1] of DCRF, Article 9.3.1, Article 9.3.3 of Unidroit).[9] The consent of the other party may be given in advance (III. – 5: 302 [1] and [2] of DCRF, Article 9.3.4 of Unidroit).

2. THE TRANSFER OF RECEIVABLES AS REGULATED BY THE POLISH LAW TODAY

Until now, the Polish law has not regulated the possibility of changing a party to a contractual obligation by a single legal act. To achieve the desired legal effect in a reciprocal agreement, it was necessary to transfer rights (the assignment of receivables – Article 509ff CC) by a separate act and change the debtor by another act (the successive change of a debtor – Article 519ff CC[10]).

The provisions on the transfer of receivables can be found in a separate section of regulations. Currently, the Polish law provisions do not regulate the transfer of future receivables or the change of a party to an obligation at all, although the judicature and the doctrine permit the trade in future receivables postulating its normative regulation. Such regulation has been implemented in other legal systems and model laws.

Under the Polish law, the transfer of receivables (assignment) is a contract concluded by the existing creditor (assignor) with a third person (assignee) under which the assignee acquires a claim from the assignor. In fact, the transfer does not require the debtor's participation or consent (Article 509(1) CC).[11] The creditor may transfer any claim upon a third person, unless it is against the law, the nature of the obligation or a contractual stipulation (*pactum de non*

[9] More detailed references to model regulations will be made when the change of parties to a contract is recommended in the draft of the Polish Civil Code.

[10] For the English translation of Articles 509–525 CC, see https://supertrans2014.files.wordpress.com/2014/06/the-civil-code.pdf [accessed: 01.02.2022]. The regulations are also cited in the footnotes.

[11] Article 509(1): A creditor can, without the debtor's consent, transfer a claim to a third party (assignment) unless the same is contrary to the law, a contractual stipulation or the nature of the obligation. Article 509(2): The assignment of a claim transfers to the assignee all the rights related to the claim, especially a claim foroutstanding interest.

cedendo). Contractual stipulations may exclude the effectiveness of a transfer (restrict the transferability of a claim).

The subject of a transfer is a claim, also the one resulting from mutual obligations. The scope of the assignment of receivables may be broad and, in fact, lead to the situation in which "the assignee acquires the legal status of a seller[12] as a result of a specific obligation."

As regards other kinds of rights which can be transferred under the regulations on the assignment of receivables, it has been stated that in order to transfer rights on non-material goods, the provisions on the transfer of receivables should be applied.[13] The following arguments support this view. An assignment seems to be a model procedure for the transfer of any rights *in rem*, not just one category – relative rights of receivables. In the legal systems that permit disposing acts (Germany), positive legislation provides for the transfer of receivables (assignment) as a model doctrine implementing the transfer of rights in rem upon third persons by way of legal acts. Pursuant to para. 413 of the German Civil Code (and the doctrine), the provisions on assignment[14] should be applied in order to transfer rights on non-material goods. There is a similar reference in the Lithuanian law (Article 7.110 of the Lithuanian Civil Code).

Providing a historical interpretation of the Polish regulations it must be mentioned that the above issue was regulated directly in the Code of Obligations. Pursuant to Article 176 of the Code of Obligations "the provisions on the transfer of receivables are applied, respectively, in order to transfer any kind of rights to third persons unless there are any specific regulations that apply in this respect" [Widło 2002a, 178].

A claim may be transferred by a contract with a dual effect (obligation and disposition, e.g. a contract of sale) or a distinctive dispositive contract. No special form is needed to make the transfer valid – if a claim is confirmed by a writ, the contract of transfer should also be in a written form reserved *ad probationem*.

In its Article 510(1) CC accepts, as a rule, the French system of obligation contracts with a dual effect (obligation and disposition) [Mojak 1990, 13]. The effect of disposition may be excluded by a specific provision or the will of the parties. In such a situation, a contract of obligation will not have a dispositive

[12] This definition of an assignment is a continuation of the pre-war legislative thought and a direct reference to Article 170(1) of the Code of Obligations which provided that "the buyer acquires the rights of the creditor at the moment of concluding the contract of the transfer of receivables" [Mojak 1990, 154].

[13] See, in particular, Łętowska 1980, 902.

[14] Pursuant to para. 413 BGB, an assignment may be applied to the transfer of rights in rem other than receivables unless specific regulations provide otherwise. Following this regulation, assignment provisions may be applied to the transfer of rights on non-material goods, corporate provisions or some transferrable family rights [Medicus 2015, 322–23ff].

effect, which may be achieved by an additional distinctive contract of disposition [Zawada 1990, 29, 33]. An assignment, which has already been mentioned, is a causative legal act in the Polish law [ibid., 54, 55].

The statutory consequence of an assignment involves the transfer of a claim from the seller to the buyer. Together with the claim, the assignee obtains all the rights related to it, in particular claims for outstanding interest. The debtor's legal situation may deteriorate as a result of an assignment – the debtor may raise against the assignee any defences it had against the assignor at the moment of becoming aware of the transfer (Article 513(1) CC).[15] As a rule, an assignment is effective at the moment of concluding the contract of the transfer of a claim, which is made *solo consensus*.[16] No consent or notification of the debtor is needed for the transfer to be effective [Mojak 1990, 156].

Pursuant to Article 516 CC "The assignor of a claim is liable towards the assignee for being entitled to the claim. The assignor is liable for the debtor's solvency at the time of assignment only to the extent that he accepts such liability."

3. JUSTIFICATION OF THE NEED OF CHANGE

The Polish law has not regulated a number of issues related to receivables so far. It does not regulate the change of a party to a contract, either. A decision has been made to re-write the Civil Code so that it may include the existing achievements of science and judicature. The shortcoming of the current legal situation is the absence of regulations on the assignment of future receivables whose disposition is different from the assignment of existing receivables with respect to the way of identification, the moment of disposition or the impact of the assignor's bankruptcy upon the assignment effectiveness. The issue of a global assignment has not been solved either, despite the fact that it is permitted in practice. Finally, both the comparative analysis and the needs of economic trade indicate that it is necessary to strengthen the status of the buyer of the claim increasing its protection, just like the status of third persons at the cost of the assignor's position.

In its work, the Codification Committee adopted an assumption that although the regulations on the transfer of receivables in force so far represented

[15] Article 513(1): A debtor is entitled to all defenses against the assignee of the claims which it had against the assignor at the time it learned of the assignment. Article 513(2): A debtor can set off any claim it may have against the assignor against the assigned claim even though it became due and payable only after the debtor received notice of the assignment. This does not, however, apply where the claim against the assignor became due and payable after the claim which is the subject of the assignment.

[16] This is not changed by the fact that performing the service into the hands of the assignee is effective until the moment when the debtor is notified of the transfer.

a high juridical level, they needed to be updated to satisfy the needs of contemporary trade. This applies, in particular, to the following areas: 1) special regulation of the disposal of future receivables; 2) codification and clarification of the admissibility of assignment in bulk; 3) regulation of the legal consequences of abandoning the written form of the contract of transfer for evidence purposes; 4) new provisions on the contractual prohibition or restriction of assignment (*pactum de non cedendo*); 5) extension of the system of guarantees and assurances for the assignor (Article 516 CC, which is still in force); and 6) ineffectiveness of the changes of receivables for the assignee if made without the assignee's consent, after the transfer. Additionally, the new doctrine that requires regulation in the Polish law is the change of parties to a contractual obligation, in particular with regard to professional trade.

4. THE AMENDMENTS REGARDING THE ASSIGNMENT OF RECEIVABLES AND THE CHANGE OF PARTIES TO A CONTRACT PROPOSED BY THE CODIFICATION COMMITTEE

This part of the article is devoted to the changes and legislative proposals included in the draft of the new Polish Civil Code and their evaluation.

4.1. The problem of the fragmentation (decodification) of regulations on the transfer of receivables in the current draft of Book II of the Civil Code

The provisions on the transfer of receivables might be included in one section of the draft of the new Civil Code, e.g. a separate section of Chapter 4 of Book II of the draft Civil Code. This is the solution applied so far in foreign legislations or model regulations (DCRF or UNIDROIT).

It should be noted that the structure of Book II – "Obligations" – of the draft of the Polish Civil Code in its current form – does not provide for a compact section including the provisions on the transfer of receivables. The current draft of Book II of the Polish Civil Code does not regulate important issues concerning the transfer of receivables, such as those related to the needs of trade or those whose regulation is a consequence of the comparative analysis of other systems or model laws. Some provisions initially designed were entirely removed (e.g. the effects of *pactum de non cedendo*, the transfer of future receivables, assignment in bulk), some were included in the provisions on the execution of obligations, e.g. Article 144,[17] Article 149–153,[18] Article 154 of the draft of Book II "Obligations."

[17] [The transfer of a part of receivables] If a part of receivables is transferred, the seller is liable before the debtor for the costs incurred due to performance.

[18] Article 149. [Performance to the seller of receivables] As long as the seller or the buyer has

There are two major arguments in favour of including the provisions on the transfer of receivables in one title of the draft of Chapter 4 of Book II of the Draft Civil Code.

Firstly, including these provisions in various parts of the draft of Book II of the Civil Code, extremely difficult in terms of analysis and application, results in a certain decodification of the rules following from them and impedes their perception, not just for ordinary users of the Code, but even for professional lawyers. They should also be seen from the perspective of a separate system of the transfer of rights, which includes the transfer of receivables,[19] and the circumstances that assignment leads to the change of the subject in an obligation and sometimes even to the configuration of many subjects on one side of the obligation (in the transfer of receivables resulting from mutual obligations). In the current version of the draft of Book II of the Civil Code, Chapter IV is entitled "The change of the debtor and parties in an obligation," but the change of the creditor was ignored. It is not known why the change of the creditor in an obligation was not taken into account. Is it possible that this classical principle of the law of obligations is not equivalent to others and hence does not deserve to be treated similarly to the change of the debtor or parties to an obligation?

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not informed the debtor about the transfer in a written form, the performance to the seller is effective with regard to the buyer, unless the debtor knew about the transfer at the moment of performance. This provision applies, respectively, to other legal acts performed between the debtor and the seller. Article 150. [Performance to the buyer] If the debtor, who was notified of the transfer in a written document provided by the seller, performed to the buyer of receivables, the seller may invoke, with regard to the debtor, the invalidity of the transfer only when the debtor was not aware of it at the moment of performance. This provision applies, respectively, to the legal acts between the debtor and the buyer of receivables which satisfy the creditor. Article 151. [Multiple transfer] Para. 1. If the seller concluded several contracts of transfer for the same receivables, performance to the seller indicated in the earliest notice of the transfer received releases the debtor form the obligation, unless the debtor was not aware of the earlier transfer at the moment of performance. The provision of Article 154(2) (the debtor was unaware of the creditor) applies accordingly. Para. 2. The rights of the buyer following from the receivables have precedence over the rights of creditors – sellers of receivables if the contract of transfer was concluded before the transferred receivables, existing or future, were assumed. This also applies to the situation when the bankruptcy of the seller of receivables, including the liquidation of assets, was announced, unless specific regulations provide otherwise. Article 152. [Defences of the debtor against the seller] Para. 1. The debtor is entitled to all the defences against the buyer of receivables that the debtor had against the seller at the moment of transfer. Para. 2. The debtor may set off the receivables that the debtor is entitled to with regard to the seller against the receivables transferred, unless they were acquired after the notice of transfer or their due date falls later than the due date for the receivables that are the subject of transfer.

[19] Which, so far, has been the model, just like the mechanism of transferring rights for the transfer of other rights than receivables, see Liebeskind 1938, 1908ff, also see Article 176 of the Code of Obligations.

Secondly, the designed provisions about the change of parties refer to the provisions on the transfer of receivables.[20] Thus, following editorial rules and the rules of correct legislation, one editorial unit should include provisions about the transfer so that the scope of reference within referring provisions is known regardless of the comments on the transfer of receivables and the change of parties to a contract that can be found below. To put it simply, a reader of the draft Civil Code, when reading the contents of the document or analyzing its structure, will not find a group of provisions concerning the transfer of receivables. He or she must analyse the entire legal act and search for them, provision by provision.

4.2. The problem of *pactum de non cedendo*

We propose that the Polish law adopt the effectiveness of the transfer of receivables made against the contractual prohibition of the sale of receivables.[21] This applies both to monetary and non-monetary receivables.

The way of resolving the effects of the contractual stipulation prohibiting such a disposal of receivables when the disposal made with a breach of the prohibition is considered effective should be considered proper, with the reservation of some exceptions. This issue should be regulated in the Civil Code in the way proposed in the draft provision formulated by the Codification Committee, which has the following wording "The transfer of receivables made against the contractual prohibition is effective. This does not apply to the case when the buyer knew or should have known about the prohibition of the transfer of receivables, except for those when the debtor gave its consent to the transfer. The seller of receivables is liable before the debtor for the damage resulting from the breach of the contractual prohibition of transfer."

The above proposal is a compromise with regard to resolving the problem of the breach of the contractual prohibition to sell receivables by the assignor (*pactum de non cedendo*). The Supreme Court judicial decisions[22] as well as the comparative analysis indicate towards the trend of limiting the effectiveness of *pactum de non cedendo* already in the context of the current regulatory environment. It seems that the dominant trend is to treat the transfer of receivables which breaches the prohibition of the disposal of receivables as

[20] Following Article 31 of the draft [Consent to the change of parties], the change of parties in a legal relationship following from a contract is effective if the other party consents to it. The regulations on the transfer and take-over of the debt are applied accordingly.

[21] The effects of pactum de non cedendo following the views held so far are discussed in: Mojak 2004, 41; Łętowska 1980, 903 and, extensively, in: Krzykowski 2012 and the reference literature cited therein.

[22] See, e.g. judgment of the Supreme Court of 5 April 2006, ref. no. I CSK 189/05, OSP 2007, No. 5, item 63; resolution of the Supreme Court of 6 July 2005, ref. no. III CZP 40/05, OSNC 2006, No. 5, item 84.

effective, although there are less or more far-reaching exceptions from this rule. When the final proposal was being prepared, some model solutions were considered. Out of them, the clearest juridical solution seems to be included in Article 9.1.9 of the UNIDROIT Principles of International Commercial Contracts of 2004 and 2010. The proposal aims to achieve the same results as the regulation of *pactum de non cedendo* included in Article III. 5. 108 of DCRF, which, in a very extensive and casuistic way, regulates the breach of the contractual prohibition of the transfer of receivables.

Hence, in the conclusion, we propose that the effectiveness of the transfer of receivables made against the contractual prohibition of transfer be adopted. At the same time, we adopt as a rule that there arises an obligation of compensation for the assignor to the debtor for the breach of the contractual clause on the prohibition of the disposal of receivables. An exception from the rule of the effectiveness of the transfer made against the contractual prohibition will occur when the buyer knows or should know about the prohibition of the transfer of receivables. Such an act performed *in fraudem legis* to the detriment of the debtor will be ineffective with regard to the debtor. The sanction of the ineffectiveness of the transfer with regard to the debtor will not be applied, however, if the debtor gives its consent to the transfer, even after it occurs. This new solution would be a qualitative change that would require to be emphasised by regulation.

4.3. The transfer of future receivables

The transfer of future receivables was determined in the initial version of Article 11 of the draft Civil Code concerning the change of the subject in an obligation. Following this proposal, which is recommended here, the regulation would take the following wording:

"Article 11(1). The subject of the transfer may be the receivables that do not exist at the moment of concluding the contract of transfer but will arise as a result of the legal relationship that exists or may arise in the future (the transfer of future receivables)."

"Article 11(2). The transfer of future receivables upon the buyer occurs at the moment it arises if it is sufficiently identified; it has an effect from the moment of concluding the contract of transfer, unless the parties agreed otherwise."

We propose the general prerequisites and rules for the transfer of future receivables be defined. According to the project, the differences related to the assignment of future receivables will be emphasised by regulation in individual provisions (e.g. Article 8(1), Article 11 of the draft) while the provisions of the transfer of existing receivables at the moment of concluding the contract of transfer should apply to the remaining scope of the transfer of future receivables.

The most fundamental problem is an attempt to define future receivables. There is no uniform definition of the concept of future receivables. The division and classification of the categories of future receivables has not been agreed upon, either. Most often, future receivables are determined by indicating a list of receivables included in this group [Zawada 2005, 343ff; Idem 1992, 1, 17]. Sometimes, attempts are made to define the concept of future receivables. And, for example, J. Kuropatwiński defines future receivables as "the situation of the subject of the civil law preceding the moment when receivables arise for this subject, but this situation includes both the hope for the arising of receivables supported by experience only and the cases when some regulatory prerequisites for the arising of receivables have already been satisfied, but because of the absence of the remaining prerequisites, the receivables have not arisen yet" [Kuropatwiński 2007, 53].[23] In the light of the above definition, the concept of future receivables involves both the possibility of disposing of future receivables under the already existing legal relationship and disposing of "the hope for the arising of receivables," also referred to as the future receivables "in the strict sense – also under a non-existent legal relationship at the moment of concluding the contract of transfer."[24]

Hence, we propose that a legal definition of future receivables be introduced in Article 11(1) of the draft Civil Code. Future receivables are those that do not exist at the moment when the contract of transfer is concluded and are based on the legal relationship that exists or may arise in the future.

The above definition seems to be the most accurate. There is no equivalent of it in model regulations. The approach in which future receivables may be the subject of a transfer without an attempt to define them does not specify or determine a priori the scope of the transfer of future receivables. The proposed approach outlines the "contours" of the concept of future receivables and the scope of transfer of this category of receivables. At the same time, the wording of the regulation does not finally determine the approach to future receivables, which should be done by jurisprudence and the doctrine. The contours outlined only determine that these are the receivables that do not exist at the moment of concluding the contract of transfer. In this way, other issues shall be resolved by the doctrine, jurisprudence and the practice of trade.

[23] On the origins and solutions in individual legal systems, 134 and the following pages.

[24] More information on the concept of future receivables can be found in: Mojak 2001, 18; Kuropatwiński 1998, 9, 19. A. Szpunar does not include conditional receivables and receivables with a due date in the portfolio of future receivables [Szpunar 1998, 137], also see Pazdan 2002, 122–23.

In German[25] and Swiss jurisprudence (decisions from 1915[26] and 1931[27]), the transfer of future receivables was admitted regardless of the fact whether there was a relationship of obligation at the moment of the transfer, which became its source. The Austrian jurisprudence adopted the admissibility of the assignment of future receivables in 1968[28] irrespective of the fact whether the contract of transfer identified the debtor and the legal basis of the receivables sold if at least it indicated the criteria that enabled the identification of receivables and their recognition at the moment of arising (materialisation of the disposing effect) [Kuropatwiński 2007, 141; Zawada 1990, 35ff].

So far, the Italian and French law favoured the approach of assigning the prospects of receivables or future receivables for which there was a legal trace of existence but rather excluded the possibility of assigning the hope for the arising of receivables. But the Italian legislator in the provision of Article 3 of Act 52/91 directly determined the admissibility of the transfer of future receivables from the contracts that had not been concluded yet at the moment of transfer [Kuropatwiński 2007, 142].

The position of the Polish doctrine and jurisprudence boils down to the general rule that the assignment of future receivables is admissible [Grabowski 2000, 565]. What needs to be resolved is the following: whether the provisions on the transfer shall be applied directly or by way of analogy to the transfer of future receivables, the effect of the transfer of future receivables, the admissibility of the transfer of the sheer hope for receivables, i.e. the receivables for which there is no legal relationship yet that could give rise to them.

A part of the Polish doctrine (K. Zawada) and the most recent jurisprudence of the Supreme Court[29] indicate that, already on the basis of *legis latae*, the transfer of future receivables in their strict sense (the hope for the receivables to arise – also those that will arise from a legal relationship to be established in the future) is admissible. What needs to be done is the fulfilment of some conditions related to the identification of the receivables assigned at the moment of its establishment, following the principle that the subject of disposal should be a specific right, individually identified [Zawada 2014, 1333ff]. Assuming that future receivables are transferred upon the buyer only at the moment when they arise (disposing effect), the subject of the transfer

[25] Rulings of the Reich Court (RZG), 1932, 2174, Juristische Wochenschrift (JW.), RZG 1968, 238, Neue Juristische Wochenschrift 1968, 2078.

[26] BGE (Swiss Federal Trybunal) 25, vol. II, 322.

[27] BGE ((Swiss Federal Trybunal) 41, vol. II, 134.

[28] Decisions of 31 July 1969 [Honsell and Heidinger 1998, 498].

[29] See the resolutions of the Supreme Court: of 19 September 1997, ref. no. III CZP 45/97, OSNC 1998, No. 2, item 22, of 30 January 2003, ref. no. V CKN 345/01, OSNC 2004, No. 4, item 65, of 25 June 2014, ref. no. IV CSK 614/13, of 26 June 2015, ref. no. I CSK 642/14, of 25 June 2014, ref. no. IV CSK 614/13, of 17 March 2016, ref. no. V CSK 379/15, of 15 February 2018, ref. no. I CSK 472/17, of 17 March 2017, ref. no. III CSK 129/16.

may include such future receivables for which the contract of transfer, which was concluded, contains the data that enables the identification of the relevant receivables, when they arise, as the ones included in the contract of transfer concluded earlier [Mojak 1990, 16; Grabowski 2000, 565].[30] The rule is that the data which enables the sufficient identification of future receivables includes: the title to the arising receivables and the persons of the debtor and the creditor (the legal relationship which serves as the basis for the receivables assigned). For future receivables in the strict sense (the hope for receivables to arise), it would be sufficient to refer to such data as the type of contract which is to become the basis for the future receivables, their subject and the group of people to which the debtor should belong, but this data should be analysed separately for each case [Zawada 2014, 1031ff].

Article 11:102 of the Principles of the European Contract Law determined these issues in a similar way indicating directly the admissibility of the transfer of future receivables under the existing contract or the contract that will be concluded in the future. Article 9.1.5. of UNIDROIT (the Principles of International Commercial Contracts of 2004 and 2010) provides that it can be presumed that future receivables were transferred at the moment of the contract conclusion provided that they may be identified at the moment of arising as the receivables which make the subject of the transfer (see almost identical Article 8(1), Clause b, of the United Nations Convention on the Assignment of Receivables in International Trade and Article 5, Clause a, of the UNIDROIT Convention on International Factoring).

The above mentioned model regulations and conventions define the concept of future receivables in a similar way to the draft Civil Code.

In should be assumed that the provisions on the transfer of receivables apply directly to the transfer of future receivables, unless the provisions include separate regulations on the disposal of future receivables.

The proposed Article 11(1) offers a suggestion of how to define future receivables. But Article 11(2) includes the proposals of defining the disposing effect of the assignment of future receivables. In the case of future receivables, the disposing effect would occur at the moment the receivables would arise, but with retroactive force (*ex tunc*) from the moment when the assignment contract was concluded. This would make it possible to avoid legal problems related to, among others, announcing the bankruptcy of the assignor after the date of the assignment contract conclusion and before the arising of the receivables assigned or the seizure of the assignor's assets under enforcement proceedings. The moment of entering into the assignment contract would determine in the condition of receivables and the entity entitled to them. The legal acts performed later would have no impact on it. As a result of this regulation,

[30] The Supreme Court in its resolution of 19 September 1997, ref. no. III CZP 45/97, OSN IC 1998, No. 2, item 22. See Zawada 2014, 1028ff; Widło 2002b, 67ff.

the resolution of the issue of "one legal second" (*eine juristische Sekunde*), i.e. in whose assets the assigned future receivables arise – the assignor's assets or "promptly" in the assignee's assets – would lose relevance. This rule is also strengthened by the regulation of Article 14(2) of the draft prepared by the team.[31] Solving the problem of the effectiveness of future receivables is an equivalent of Article III. 5. 106 of DCRF and 11: 202 of PECL.

4.4. Assignment in bulk

Article 12 of the initial draft of the Civil Code of 2009 included the proposal of regulating assignment in bulk and, in line with the designed regulation, we recommend the following: "A collection of receivables may be the subject of transfer without the need to identify them individually. The transfer of individual debts from this collection upon the buyer occurs at the moment when they arise, if they may be identified as the subject of transfer."

In general, it is allowed to apply assignment in bulk in trade, which is defined as the transfer of several existing or future debts by way of one contract (one legal act). Its application in some segments of trade plays an important role as without the admissibility of assignment in bulk as well as the assignment in bulk of collections of future receivables, factoring would be impossible.[32] The proposed regulation determines the admissibility of assignment in bulk. It defines the minimum legal prerequisites that must be met in order for assignment in bulk to be effective. This regulation transposes Article III. 5. 106 of DCRF and Article 9.1.6. of UNIDROIT (The Principles of International Commercial Contracts of 2004 and 2010) onto the Polish law. Thus, it is proposed to proclaim the admissibility of the assignment of groups (collections) of receivables. The possibility of their identification is moved to the moment when a specific debt from this collection arises, when the disposing effect, i.e. the transfer of this debt upon the buyer, occurs. This also applies to future receivables. It is sufficient that the debt is identifiable at the moment of disposing. There is no need to perform any additional legal acts that would specify – *a posteriori* (after the conclusion of the assignment contract) – future receivables or the receivables that exist as the subject of the transfer. It is also assumed that the transfer of individual receivables included in the assignment in bulk, may be extended in time. The evaluation whether a specific debt was included in the transfer is done individually for each debt alone, and

[31] Article 14(2). The rights of a buyer following from receivables shall take precedence over the rights of creditors – the sellers of receivables if the contract of transfer was made before the transferred receivables, existing or future ones, were assumed. This shall also apply to the situation when the bankruptcy of the seller of receivables, including the liquidation of assets, was announced, unless specific regulations provide otherwise.

[32] See extensive deliberations on the subject by Katner 2011, 421ff and an extensive list of reference literature, both Polish and foreign, cited therein.

a valid moment of evaluation is the moment when the debt arises. The requirement of "identifiability" of a specific debt as a subject of assignment in bulk means that there should be no doubts whether the debt was the subject of the transfer (at the moment when the disposing effect occurred). Precise rules for the identification of receivables will be shaped by legislation and the doctrine (e.g. the need to indicate the debtor or groups of debtors; the admissibility of the assignment of all current and future receivables with regard to a specific entity or groups of entities with the indication of estimated amounts.

4.5. The transfer of a part of receivables

It is proposed that the transfer of a part of receivables be regulated in Article 13 of the initial draft of the Civil Code of 2009 and acquire the following wording of Article 13(1) and (2): Divisible receivables may be transferred in part. In such a case, the seller of the receivables is responsible before the debtor for the additional costs that might arise in connection with it. Partial transfer may not lead to the deterioration of the debtor's situation. If the receivables referred to in para. 1 are secured, the parties may divide the security or award the buyer the claim for the division of the security identifying the rules for division, unless specific regulations provide otherwise. In the absence of a different contract, securities remain with the part of the receivables that the seller is entitled to."

The assignment of a part of receivables would be, in principle, admissible if the receivables are divisible and the divisibility of the receivables would determine the divisibility of the performance. Secondly, the transfer of a part of receivables may not lead to the deterioration of the debtor's situation. This is the fundamental, unwritten rule of the transfer of receivables (*Zessionsrecht*) applied so far. If the transfer of receivables entailes additional costs, the assignor is responsible for them before the debtor. A true novelty would be the precise regulation of the problem of the existing securities of receivables. The Polish legal system has not regulated the case of the transfer of a part of receivables so far.

4.6. The change of parties to a contract

Undoubtedly, the draft Civil Code should regulate the principle of the change of parties to an obligation (contract). The current draft (as of the end of 2015) includes such a proposal in two provisions, i.e. Articles 30 and 31[33]

[33] Following the draft of Article 30 [The change of parties to a contract]: A party to a legal relationship following from a contract may transfer its rights and obligations upon a third party with the effect that this person becomes a party in this relationship in its place. Article 31 [The consent to the change of parties]: The change of parties in a legal relationship following from a contract is effective when the other party consents to it. The regulations on the transfer and take-over of a debt are applied accordingly.

proposed by the Codification Committee of 2009. We postulate, in particular, slightly more extensive regulation.

This principle needs to be introduced. It is only right that the admissibility of the change of parties to a contract depends on the consent of the other party.

The proposed regulations concern a new doctrine, so far unknown to the Polish law – the change of parties to a contract, also referred to as "the assignment of a contract" (*uno actu*) [Bełdowski and Kozioł 2006, 854; Wieczorek 2005, 11]. Our recommendation and proposal introduces rules and is the equivalent of Article III 5:301 and Article III 5:302 of DCRF[34] and Article 12: 201 of PECL. It also defines legal effects in a similar way to the provisions of Article 9.3.1. to Article 9.3.7 of the UNIDROIT Principles of International Commercial Contracts of 2010, which are identical to the UNIDROIT Principles of 2004 in this respect. It should be assumed that this kind of a synthetic approach is sufficient to regulate the transfer of receivables and the change of the debtor with one legal act, which leads to the change of a party, usually in mutual contracts.

In accordance with the proposed rule, currently following from Article 30 of the draft, a party to a contract may transfer upon a third person the rights and obligations following from the contract with the effect that this person becomes a party in this relationship in its place. The consent of the other party is required to change the party to a contract. This rule can also be found in the current draft of Book II of the draft of the new Civil Code. The change of parties becomes effective when the other party to the contract gives its consent to it. The analysis of the model solutions, such as DCRF or the UNIDROIT Principles, indicates that, at least in professional relations (DCRF is not limited to professional relations), the consent to the change of parties to a contract may be given in advance, which is important for the other party and makes a qualitative change in its position in the obligation – with regard to the future, planned subject changes (replacing a party to a contract with another subject[35]).

The variant of the consent given in advance (*pro futuro*) should also be regulated, just like the conditional consent of the other party to a contract, which is related to the arising of a special accession to a debt. This kind of solutions regarding the new principle would require normative regulation.

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[34] III. – 5:301: Scope. This Section applies only to transfers by agreement. III. – 5:302: Transfer of contractual position: (1) A party to a contractual relationship may agree with a third person, with the consent of the other party to the contractual relationship, that that person is to be substituted as a party to the relationship. (2) The consent of the other party may be given in advance. In such a case the transfer takes effect only when that party is given notice of it. (3) To the extent that the substitution of the third person involves a transfer of rights, the provisions of Section 1 of this Chapter on the assignment of rights apply; to the extent that obligations are transferred, the provisions of Section.

[35] Which, in turn, would be an important novelty in contractual law and in the construction of the legal relationship of liability – admissible in model solutions.

The proposed wording of Article 25(3) of the draft of 2009 includes the following rule: "If the other party to a contract gives its consent to the change of parties to a contract provided that the party to the contract so far will be co-responsible for the execution of the contract, it is liable jointly with the one assuming the rights and obligations of the party to the contract, unless the parties decide otherwise."

Following the UNIDROIT Principles of International Commercial Contracts of 2004 and 2010, we propose that a party to a contract may be changed with the consent of the other party and, at the same time, retain its role of a joint co-debtor it has had so far. This possibility may be excluded by the provision of the contract concerning the change of parties to the contract which allows the assignment of the contract, but only with the releasing effect. In this situation, consent to the change of parties to the contract may be only unconditional and leads to – if it is given – the releasing change of the party to the contract. The proposed regulation – which is consistent with the DCRF and PECL model and the UNIDROIT Principles of International Commercial Contracts of 2004 and 2010 – refers to the provisions on the transfer of receivables and the change of the debtor[36] in the specific regulations of individual effects.

The change of parties to a contract and the consent of the other party to the withdrawal of the so-far party from the legal relationship would require a written (electronic) form. Such an important interference with the structure of the subject of the obligation requires a formal legal act, especially that it also entails the change of the debtor.

The main effect of the change of parties to the contract is a new subject assuming the rights and obligations of the party, which releases the party to the contract so far (releasing change of parties to a contract, not collective accession to a debt, which would be an exception for thus formulated rule). In order to achieve this effect, the other party to the contract must give its consent in writing. The change of parties to the contract becomes effective if the other party gives its consent to the withdrawal of the party to the contract so far from the legal relationship. In the conclusion, we propose that the consent to the change of parties be possible also in advance, but only if it is given by the party which is an entrepreneur (professional relations).

If the other party to a contract, which is also an entrepreneur, gave its consent in advance, the change of parties would be effective upon the notification of a third party or the person's confirmation of the change of parties.[37]

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[36] Which is why, as explained above, the regulations of the transfer of receivables should be included in one, separate section of the draft of the Polish Civil Code.

[37] This article includes the conclusions and recommendations presented on 22 September 2016 at the 6th National Meeting of Civil Lawyers "Contract Law," Międzyzdroje, University of Szczecin, Law and Administration Faculty, 21–23 September 2016, extended by the presenta-

REFERENCES

Bełdowski, Jarosław, and Agata Kozioł. 2006. "Europejskie Prawo Umów, Wprowadzenie." *Kwartalnik Prawa Prywatnego* 15, no. 3:847–59.

Brouwer, Bob, and Jaap Hage. 2006. "Basic Concepts of European Private Law." *Maastricht Faculty of Law Working Paper* 7:4–33.

Czachórski, Witold. 1999. *Zobowiązania. Zarys wykładu.* Warszawa: LexisNexis.

Drapała, Przemysław. 2016. *Przejęcie długu, przejęcie praw i obowiązków z umowy (zmiana stron umowy).* Warszawa: C.H. Beck.

Grabowski, Paweł. 2000. "Przelew wierzytelności przyszłych." *Monitor Prawniczy* 9:561–72.

Honsell, Heinrich, and Albert Heidinger. 1998. *Praxiskommmentar zum ABGB.* Vol. 2. Wien: [No information about Publisher].

Katner, Przemysław. 2011. *Przeniesienie wierzytelności w umowie factoring.* Warszawa: Wolters Kluwer.

Krzykowski, Artur. 2012. *Umowne zakazy przelewu wierzytelności (pacta de non cedendo) w obrocie krajowym i międzynarodowym.* Warszawa: C.H. Beck.

Kuropatwiński, Jarosław. 1998. "Cesja wierzytelności przyszłych." *Przegląd Prawa Handlowego* 9:9–23.

Kuropatwiński, Jarosław. 2007. *Umowne rozporządzenie wierzytelnością przyszłą.* Toruń–Bydgoszcz: Dom Organizatora.

Kurowski, Witold. 2010. "Przekształcenia podmiotowe stosunku zobowiązaniowego. Uwagi na tle Zasad Europejskiego Prawa Umów (PECL) z uwzględnieniem projektu Common Frame of Reference (DCRF)." In *Zaciąganie i wykonywanie zobowiązań. Materiały III Ogólnopolskiego Zjazdu Cywilistów*, edited by Edward Gniewek, Katarzyna Górska, and Piotr Machnikowski, 201–13. Warszawa: C.H. Beck.

Lando, Ole, and Hugh Beale, ed. 2000. *Principles of European Contract Law*. Parts I and II *Combined and Revised.* The Hague–London–Boston: Kluwer Law International.

Lando, Ole. 2003. "Moving from Harmonisation to Unification. Principles of European Contract Law and Unidroit Principles." *Uniform Law Review* 8, no. 1–2:123–33.

Łętowska, Ewa. 1980. In *System Prawa Cywilnego.* Vol. 3. Part 1: *Prawo zobowiązań – część ogólna*, 902. Wrocław: Ossolineum.

Liebeskind, Adolf. 1938. In *Encyklopedia Podręczna Prawa Prywatnego*, issue XXXI, IV, 1908. Warszawa: Nakładem Instytutu Wydawniczego "Bibljoteka Polska."

Mader, Peter. 1997. In *Praxiskommentarzum ABGB samt Nebengesetzen*, vol. 7, 528–29. Wien: [No information about Publisher].

Medicus, Dieter. 2015. *Schuldrecht I, Allgemeiner Teil. 21. Auflage.* München: C.H. Beck.

Mojak, Jan. 1990. Przelew wierzytelności w polskim prawie cywilnym. Lublin: Wydawnictwo UMCS.

Mojak, Jan. 2001. *Obrót wierzytelnościami.* Warszawa: LexisNexis.

Mojak, Jan. 2004. *Obrót wierzytelnościami.* 2nd edition. Warszawa: LexisNexis.

Möschel, Wernhard. 2012. In *Münchener Kommentarzum Bürgerlichen Gesetzbuch*, vol. 2, 1667. München: C.H. Beck.

Nörr, Wolfgnang, and Knut R. Scheyhing. 1983. *Sukcessionen. Zession. Vertragsübernahme. Schuldübernahme. Schuldbeitritt.* Tübingen: Mohr.

tion of Polish regulations, an extensive comparison and in-depth argumentation in favour of the solutions proposed in the draft Civil Code.

Pazdan, Maksymilian. 2002. "Przelew wierzytelności na zabezpieczenie." *Kwartalnik Prawa Prywatnego* 1:115–40.

Radwański, Zbigniew. 2008. *Zobowiązania. Część ogólna.* Warszawa: C.H. Beck.

Röttinger, Moritz. 2006. "Towards a European Code Napoleon/ABGB/BGB? Recent EC Activities for a European Contract Law." *European Law Journal* 12, no. 6:807–27.

Staudenmayer, Dirk. 2005. "The Way Forward in European Contract Law." *European Review of Private Law* 2:95–104.

Szpunar, Adam. 1998. "Glosa do uchwały Sądu Najwyższego z 19 września 1997 r., III CZP 45/97." *Orzecznictwo Sądów Polskich* No. 7–8, item 137.

Von Bar, Christian. 2005. "Working Together on a Common Frame of Reference." *Juridica international* X:17–26.

Weatherill, Stephen. 2004a. "European Contract Law: Taking the Heat Out of Questions of Competence." *European Business Law Review* 15:23–32.

Weatherill, Stephen. 2004b. "Why Object to the Harmonisation of private law by the EC?" *European Review of Private Law* 5:633–60.

Widło, Jacek. 2002a. *Rozporządzanie przedsiębiorstwem.* Kraków: Zakamycze.

Widło, Jacek. 2002b. "Umowa przelewu wierzytelności. Zagadnienia wybrane." *Nowy Przegląd Notarialny* 1:58–73.

Wieczorek, Emilia. 2005. *Zasady europejskiego prawa umów.* Gdańsk: ODDK – Ośrodek Doradztwa i Doskonalenia Kadr.

Zawada, Kazimierz. 1990. *Umowa przelewu wierzytelności.* Kraków: Wydawnictwo Uniwersytetu Jagielońskiego.

Zawada, Kazimierz. 1992. "Umowy przenoszące wierzytelności." *Rejent* 1:17.

Zawada, Kazimierz. 2005. "O przelewie wierzytelności przyszłych." In *Księga pamiątkowa ku czci Sędziego S. Rudnickiego,* 338–51. Warszawa: LexisNexis.

Zawada, Kazimierz. 2014. "Przelew wierzytelności." In *System Prawa Prywatnego*. Vol. 6: *Prawo zobowiązań*, edited by Adam Olejniczak, 1025–1072. Warszawa: C.H. Beck.