„Krytyka Prawa", tom 11, nr 4/2019, s. 21–32, ISSN 2080-1084, e-ISSN 2450-7938, © 2019 Author.

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Excess or Deficiency of Regulations of the Commercial Activities Law in the Civil Code?

Abstract

The author of the paper understands the term of "excess of legal regulations" as the situation of imposition of regulations governing a specific institution of the commercial activities law under the Civil Code, which are fully or partially obsolete from the point of view of the needs of contemporary business trading. The term of "deficiency of legal regulations", in turn, is to denote a complete lack of a regulation of a specific institution of the commercial activities law as may be desired in the domain of contemporary business trading, or the existence of such a regulation but in a form that is limited, incapable of addressing the needs and challenges of the said domain. When it comes to the legal regulations of the commercial activities law, the author argues that it is hard to regard the current legal situation in Poland as successfully fulfilling the requirements of a coherent legal system and of the legislative technique principles that are applied therein. In the text, the author provides a detailed explanation of why commercial activities governed by the Civil Code suffer from a substantial deficiency of legal regulations in the scope in question.

Keywords: commercial contracts law, deficiency of legal regulations, commercial activities law

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English-language translation of that article was financed under Agreement No. 645/P-DUN/2018 with funds from the Ministry of Science and Higher Education allocated to the popularization of science.

 DOI: 10.7206/kp.2080-1084.339

Introduction

The paper entitled "Excess or Deficiency of Regulations of the Commercial Activities Law in the Civil Code?"[2] aims to provide answers to the following questions:

- was the intention to meet the unquestionably legitimate demand of considering the needs of the business trading of the time by modernising the existing, implementing new, and – possibly – abandoning some of the relevant legal regulations, whose practical significance and application is currently marginal, the main motive for adopting many legislative changes governing the Civil Code in relation to the legal regulations determining business trading – including especially with regard to the legal regulations of the specific part of the commercial contracts law[3] – after the 1989–90 transformation?;
- can we say that the current condition of the specific part of the commercial contracts law in the Civil Code is adequate? Or perhaps there is an excess or a deficiency of the legal regulations adopted in this domain?;
- are there any drafted amendments to the said domain of legal regulations? If so, what do they intend to change?

The subject matter of this paper involves a search for the answers to above questions in relation to the legal regulations governing the commercial activities law[4] in the Civil Code with the exclusion of the matters covered in the abovementioned paper, focusing on the legal regulations of the specific part of the commercial contracts law.[5]

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2 P. Bielski, *Nadmiar czy niedobór regulacji prawnych części szczególnej prawa umów handlowych w kodeksie cywilnym?*, „Krytyka Prawa" 2019, 11(2), p. 140–154.

3 In this paper, the term of 'commercial contract' is to denote a contract shaped by statutory or common structural features as a contract concluded by an entrepreneur in connection with the business activity they pursue.

4 In this paper, the term of "commercial activities" is to denote acts in law undertaken by an entrepreneur in connection with the business activity they pursue.

5 In this paper, the term of "excess of legal regulations" is to denote the situation of existence of regulations governing a specific institution of the commercial activities law under the Civil Code, which are fully or partially obsolete from the point of view of the needs of contemporary business trading. The term of "deficiency of legal regulations", in turn, is to denote in this paper a complete lack of a regulation of a specific institution of the commercial activities law as may be desired in

Legal regulations of the commercial activities law in the Commercial Code and their fate after 1964

The Commercial Code[6] consisted of two books, the second of which, entitled "Commercial Activities" (in Polish: *Czynności handlowe*), included, among others: part I – general provisions on commercial activities (Art. 498–502 of the Commercial Code), part II – real right (including right of property – Art. 503–506 of the Commercial Code; right of lien – Art. 507–517 of the Commercial Code, and right of retention – Art. 518–524 of the Commercial Code), and part III – general provisions on obligations (Art. 525–532 of the Commercial Code). The internal consistency of the regulations of the commercial activities law in the Commercial Code was to be ensured by key definitions of a merchant and of commercial activities, and by acknowledging common law as the source of commercial law. A merchant was a person who ran a commercial enterprise in their own name (Art. 2 § 1 of the Commercial Code), and an agricultural holding was not considered to be a commercial enterprise (Art. 2 § 2 of the Commercial Code). An essential complement to the definition of a merchant was a decision that the provisions of the Commercial Code concerning merchants were applicable to those who ran commercial enterprises even when public law forbade them to manage such enterprises or made the authorisation to run such a commercial enterprise dependent on the fulfilment of certain conditions (Art. 11 of the Commercial Code). Commercial activities, in turn, were a merchant's acts in law that were connected with that person's running of their enterprise (Art. 498 § 1 of the Commercial Code), while an essential complement of that definition was establishing a presumption that every act in law of a merchant was a commercial activity (Art. 498 § 2 of the Commercial Code). Considering common law as the source of commercial law resulted from Art. 1 of the Commercial Code, pursuant to which the provisions of the Civil Code applied to commercial relations in case of a lack of provisions of the Commercial Code and specific acts or a common customary law in force in the country. The definitions of a merchant and commercial activities were used to regulate the particular institutions of the law commercial activities law. The acknowledgement of common law as the source of commercial law emphasised the significance of commercial practice when evaluating the proper fulfilment of obligations arising from commercial activities.

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the domain of contemporary business trading, or the existence of such a regulation but in a form that is limited, incapable of addressing the needs and challenges of the said domain.

[6] Regulation of the President of the Republic of Poland of 27 June 1934 – the Commercial Code (Journal of Laws of the Republic of Poland No. 57, item 502).

 DOI: 10.7206/kp.2080-1084.339

On 1 January 1965, with the entry of the Civil Code into force, some major changes were made to the regulations governing the commercial activities law, functioning until then under the Commercial Code.[7] The provisions governing the right of property and the right of lien were lifted in their entirety,[8] the provisions regulating the general of the commercial activities law were lifted almost entirely, and the provisions governing the right of retention (and liquidated damages) were kept in force only in the area of international trading relations.[9] In those rare cases where specific legal regulations of the commercial activities law were transplanted to the Civil Code (Art. 543 of the Civil Code as the equivalent of Art. 525 of the Commercial Code) or to the Code of Civil Procedure (Art. 247 of the Code of Civil Procedure as the equivalent of Art. 502 of the Commercial Code), they became universal and extended in their subjective scope of application.

The internal consistency of the legal regulations of the commercial activities law adopted under the Commercial Code was ensured by the key definitions of a merchant and of commercial activities. The fact that the provisions defining these terms were lifted in 1965 should be considered the most serious flaw of the legal situation after the Civil Code entered into force. Furthermore, the lack of their equivalents in the Civil Code may by no means be considered a natural consequence of abandoning the dualistic model[10] of regulation of private law in favour of the monistic model[11] of regulation of that branch of law in Polish law in 1964. In the monistic model, the Civil Code acts after all as the main source of law also for

7 It was argued in the statement of reasons for the draft of the Civil Code that maintaining commercial law as a separate regulatory being would be groundless in the Polish reality. See: Komisja Kodyfikacyjna przy Ministrze Sprawiedliwości, *Projekt kodeksu cywilnego*, Warszawa 1961, p. 192.

8 See: Art. VI § 1 of the Act of 23 April 1964 – Provisions introducing the Civil Code (Journal of Laws No. 16, item 94). The legal regulations addressing a similar matter but with a broader subjective scope of application contained in the Civil Code (regarding the right of property – Art. 169–170 of the Civil Code, and regarding the right of lien – Art. 306–335 of the Civil Code) were not modelled after Art. 503–506 of the Commercial Code (right of property) and Art. 507–517 of the Commercial Code (right of lien) but on Art. 48–49 (right of property) and Art. 250–278 (right of lien) in force earlier under the decree of 11 October 1946 – Property Law (Journal of Laws No. 57, item 319).

9 See: Art. VI § 2 of the provisions introducing the Civil Code.

10 The essence of the dualistic model of regulation of private law is about a formal separation of commercial relations law (commercial law) from civil relations law (civil law) by means of establishing a separate hierarchy of sources of commercial law, justified by specific needs of the course of trade.

11 The essence of the monistic model of regulation of private law is about recognising that if commercial relations law (commercial law) and civil relations law (civil law) are based on identical assumptions (particularly considering the method of regulation, including the principle of party autonomy for parties to a legal relationship, and the principle of equality of parties to a legal relationship), there is no justification for their formal separation by establishing a separate hierarchy of sources of commercial law, justified by specific needs of the course of trade (and the specific needs of the course of trade are not such a justification in particular).

commercial relations, so it should (and does) also regulate the commercial activities law in which the definitions of a merchant and of commercial activities play an essential part. A similarly critical light can be shed also on: the lack of equivalents of Art. 501, Art. 526–530, and Art. 532 § 2 of the Commercial Code in the Civil Code, and the limitation of the scope of application of the surviving Art. 518–524 and Art. 531 of the Commercial Code only to foreign trade relations. A negative effect of rejecting common law as the source of private law (including also commercial law)[12] was the Civil Code lacking the equivalents of Art. 500 and Art. 532 § 1 of the Commercial Code, which was not justified by the adoption of a monistic model of regulating private law either.

The changes of the socio-economic system taking place in the years 1989–1990 led to the initiation of legislative efforts extended over time, aimed at adjusting the Civil Code to the needs of contemporary economic relations. When it comes to the institutions of the commercial activities law, the legal regulations of which were transferred from the Commercial Code to the Civil Code, the needs at issue were taken into consideration only to a minimum extent by introducing (restoring) only several regulations, which corresponded (more or less) to the provisions lifted in 1965; these were: Art. 43(1) of the Civil Code[13] corresponding to Art. 2 § 1 of the Commercial Code, Art. 74 § 3 (currently Art. 74 § 4) of the Civil Code[14] corresponding to Art. 528 § 1 of the Commercial Code, Art. 355 § 2 of the Civil Code[15] corresponding to Art. 501 of the Commercial Code, and Art. 386 (currently art. 68(2)) of the Civil Code[16] corresponding to Art. 526 of the Commercial Code; other regulations of the commercial activities law were kept in the form given to them in 1964, which

12 See: Komisja Kodyfikacyjna Prawa Cywilnego, *Księga pierwsza Kodeksu cywilnego*, Warszawa 2008, p. 16, where it was argued that provisions regarding common law did not appear in the emerging system of socialist civil law, especially in the Civil Code of 1964. The main rationale behind this was the lack of conditions for the formation of common law and no need for such a solution because a new socialist state should not respect norms originating from the tradition of a bourgeois system. Underlying this political reasoning was the general theoretical positivist concept adopted by the socialist system. This concept linked the idea of law immanently with the state's law-shaping activity.

13 See: Art. 1 item 4 of the Act of 14 February 2003 on the Amendment of the Civil Code Act and Certain Other Acts (Journal of Laws No. 49, item 408).

14 See: Art. 1 item 19 of the Act of 14 February 2003 on the Amendment of the Civil Code Act and Certain Other Acts (Journal of Laws No. 49, item 408) and Art. 1 item 3 of the Act of 10 July 2015 on the Amendment of the Civil Code Act, of the Code of Civil Procedure Act, and of Certain Other Acts (Journal of Laws of 2015, item 1311).

15 See: Art. 1 item 49 of the Act of 28 July 1990 on the Amendment of the Civil Code Act (Journal of Laws No. 55, item 321).

16 See: Art. 1 item 57 of the Act of 28 July 1990 on the Amendment of the Civil Code Act (Journal of Laws No. 55, item 321 and Art. 1 items 11 and 31 of the Act of 14 February 2003 on the Amendment of the Civil Code Act and Certain Other Acts (Journal of Laws No. 49, item 408).

 DOI: 10.7206/kp.2080-1084.339

may in no way be regarded optimal. It is also important to consider the adopted course of the legislative changes regarding the regulation of the commercial activities law under the Civil Code: in most cases it actually involved an almost total replication of the relevant regulations from the Commercial Code. Unfortunately, when making the said legislative changes, the legislator did not reflect enough on the shape of the regulations of the commercial activities law in force, which resulted in only selective changes and a growing internal inconsistency of the regulations in question. For example, the 2003 introduction (restoration) of the definition of an entrepreneur did not involve a simultaneous introduction (restoration) of an equivalent of Art. 498 of the Commercial Code, defining commercial activities and asserting a presumption connected therewith that every legal transaction of an entrepreneur is a commercial activity; the 2003 introduction (restoration) of Art. 68(2) of the Civil Code, in turn, was not accompanied by a simultaneous introduction (restoration) of an equivalent of Art. 527 of the Commercial Code connected therewith; the 2003 amendment made to Art. VI § 2 of the provisions introducing the Civil Code was not used to lift the restrictions on the application of the surviving Art. 518–524 and Art. 531 of the Commercial Code to foreign trade relations only. There was also no attempt to introduce (restore) common law as the source of private law (including commercial law), which would pave the way for introducing (restoring) equivalents of Art. 500 and Art. 532 § 1 of the Commercial Code, which pertained to commercial practices.

While it is impossible to objectively say whether the regulations of the law of obligations in commercial relations may still have any significance for the participants of business trading (even though the shape of these regulations under the Civil Code suggests it might be so), the situation seems to be different in the case of regulations of the general institutions of the commercial activities law, especially when it comes to the right of retention (and liquidated damages) in commercial relations, which were kept in force after 1965 after all, but outside the Civil Code and limited in terms of their application only to foreign trade relations.

New legal regulations of commercial activities in the Civil Code and their fate after 1990

The Civil Code of 1964 included legal regulations of the following new institutions if the commercial activities law: regarding the general institutions of the commercial activities law: title I of the first book provided the legal basis to regulate the trading relations between state-owned economic entities in a way deviating from the provisions of the Civil Code (Art. 2 of the Civil Code), and title VI included provisions

on the prescription of claims with respect to the said entities (Art. 117 § 2 sentence 1, Art. 118 sentence 1, Art. 123 § 2 and Art. 125 § 2 of the Civil Code). As for the law of obligations in commercial relations: title III of the third book pointed to the legal basis for determining the general terms and conditions or models of agreements concluded between state-owned economic entities or between such entities and other entities (Art. 384 of the Civil Code), the conditions of binding another party by regulations issued by the party entitled thereto under relevant provisions (Art. 385 of the Civil Code), and an obligation imposed on state-owned economic entities to collaborate with one another (Art. 386 of the Civil Code); title IV included an obligation imposed on state-owned economic entities to conclude agreements (Art. 397–404 of the Civil Code); and title VII contained a set of provisions on the fulfilment of obligations, concerning also the said entities (Art. 456 and Art. 461 § 3 as well as Art. 489 and Art. 490 § 3 of the Civil Code). The internal cohesion of the legal regulations governing the commercial activities law in the Civil Code was to be ensured by the adoption of a key definition of a state-owned economic entity. The term was not a typical definition discussing the design and structural features of a specific category of participants of economic relations, but rather only a summary that included a number of varied organisational entities (Art. 33 § 1 of the Civil Code in its original wording[17]). The term of a state-owned company was used when regulating individual institutions of the commercial activities law, utilising a legislative technique that involved indicating the subject of a given legal regulation by using the phrase "state-owned economic entity". In the end, however, the legislator appeared not to be fully consistent because different legislative techniques were used in several cases.[18]

The Civil Code of 1964 included new regulations of the commercial activities law, the majority of which applied only to the relations between state-owned economic entities (Art. 2, Art. 117 § 2 sentence 1, Art. 118 sentence 1, Art. 123 § 2, Art. 125 § 2, Art. 386, Art. 397–404, Art. 456, and Art. 489 of the Civil Code). In other types of relations a state-owned entity had to be one of the parties to any such relation (Art. 384, Art. 461 § 3, and Art. 490 § 3 of the Civil Code), which obviously restricted the scope of their application. The changes of the socio-economic system taking place in the years 1989–1990 led to the initiation of legislative efforts extended over time, aimed at adjusting the Civil Code to the needs of contemporary economic

17 Pursuant to Art. 33 § 1 of the Civil Code in its original wording, the following state-owned economic entities were legal entities: the State Treasury, state enterprises and their unions as well as state banks, other state organisational units – granted legal personality under special provisions, co-operatives and their unions, farm circles and their unions and other social organisations of the working people – granted legal personality special provisions.

18 Art. 461 § 3 and Art. 490 § 3 of the Civil Code speak of a "state-owned organisational unit".

 DOI: 10.7206/kp.2080-1084.339

relations. As regards the institutions of the commercial activities law, the legal regulations of which were first included in the Civil Code, the needs in question were fulfilled in two ways:

- by means of repealing (Art. 2, Art. 123 § 2, Art. 125 § 2, Art. 397–404, Art. 461 § 3, Art. 489, and Art. 490 § 3 of the Civil Code)[19] or fundamentally changing (Art. 117 § 2 sentence 1, Art. 118 sentence 1, Art. 384, Art. 385, Art. 386, Art. 456 of the Civil Code)[20] the provisions of the Civil Code which pertained to the commercial activities law and were unsuitable for the new political situation already in 1990, and
- by adopting new legal regulations in the domain in question (Art. 66(1), Art. 66(2), Art. 68(1), Art. 77(1), Art. 357(1) § 2, Art. 358(1) § 4, Art. 383(1), Art. 384(1), Art. 385(1)–385(4) of the Civil Code).

The new regulations of the commercial activities law introduced after 1990 focused on three areas: These areas included:

- determination of the legal effects of the occurrence of unforeseeable circumstances and a significant change in the purchasing power occurring both after an obligation has arisen (Art. 357(1) and Art. 358(1) of the Civil Code);[21] in the case of these provisions, it was made impossible to apply them to an entity running an enterprise if a benefit was connected with the running of the enterprise (Art. 357(1) § 2 and Art. 358(1) § 4 of the Civil Code); in 1996, the exclusion was lifted in the part concerning the occurrence of unforeseeable circumstances;[22]
- selected issues concerning the application of standard agreements, especially in relationships with consumers (Art. 383(1),[23] Art. 384(1),[24] and Art. 385(1)–385(4) of the Civil Code);[25] the provisions made it unacceptable for an entrepreneur

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19 See: Art. 1 item 2, 20 letter b, 22, 58, 64, 67, and 68 of the Act of 28 July 1990 on the Amendment of the Civil Code Act (Journal of Laws No. 55, item 321).

20 See: Art. 1 item 17 letter a, 18, 54, 55, 57, and 63 of the Act of 28 July 1990 on the Amendment of the Civil Code Act (Journal of Laws No. 55, item 321).

21 See: Art. 1 item 50 and 52 of the Act of 28 July 1990 on the Amendment of the Civil Code Act (Journal of Laws of the Republic of Poland No. 55, item 321).

22 See: Art. 1 item 14 letter b of the Act of 23 August 1996 on the Amendment of the Civil Code Act (Journal of Laws of the Republic of Poland No. 114, item 542).

23 See: Art. 44 item 2 of the Act of 30 May 2014 on the Consumer Rights (Journal of Laws of 2014, item 827).

24 See: Art. 18 item 2 of the Act of 2 March 2000 on the Protection of Certain Consumer Rights and the Liability for Damage Caused by a Dangerous Product (Journal of Laws No. 22, item 271).

25 See: Art. 1 item 56 of the Act of 28 July 1990 on the Amendment of the Civil Code Act (Journal of Laws No. 55, item 321) as well as Art. 18 items 4 and 5 of the Act of 2 March 2000 on the Protection

to require a consumer to pay for an option to make use of a particular form of payment if the amount of payment exceeded the costs incurred by the entrepreneur to make the form of payment in question available (Art. 383(1) of the Civil Code); the features and legal effects of including prohibited terms and conditions in an agreement with a consumer (Art. 385(1) of the Civil Code) and the principles of assessment of compliance of an agreement with the principles of good mores (Art. 385(2) of the Civil Code) were specified; a list of prohibited contractual terms and conditions (Art. 385(3) of the Civil Code) was provided, and the legal effects of concluding an agreement between entrepreneurs making use of different standard agreements, which are incompatible with each other, were determined (Art. 385(4) of the Civil Code);

- selected issues concerning concluding agreements in commercial relations (Art. 66(1), Art. 66(2), Art. 68(1), and Art. 77(1) of the Civil Code);[26] the provisions specified the information obligations of an entrepreneur submitting a proposal by electronic means and inviting the other party to negotiations, to submit a proposal or to conclude an agreement otherwise (Art. 66(1) of the Civil Code) as well as the terms and conditions of withdrawing a proposal before concluding an agreement, which pertained to the relations between entrepreneurs (Art. 66(2) of the Civil Code); they also specified the legal effects of responding to a proposal subject to changes (Art. 68(1) of the Civil Code) and of making an agreement subject to changes in a written confirmation of conclusion of the agreement without a written or document form (Art. 77(1) of the Civil Code).

In the course of the work on the implementation of particular acts of Community law, the Codification Commission on Civil Law acknowledged that it was necessary to seek to incorporate consumer agreements law to the maximum extent into the Civil Code, and within the scope in which such an action would not be possible, one should aim at non-code implementation, and then consider moving a specific domain to the Civil Code.[27]

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of Certain Consumer Rights and the Liability for Damage Caused by a Dangerous Product (Journal of Laws No. 22, item 271).

26 See: Art. 1 item 11 of the Act of 14 February 2003 on the Amendment of the Civil Code Act and Certain Other Acts (Journal of Laws No. 49, item 408).

27 See: Z. Radwański (ed.), *Zielona księga. Optymalna wizja kodeksu cywilnego w Rzeczypospolitej Polskiej*, Warszawa 2006, p. 92 ff.

 DOI: 10.7206/kp.2080-1084.339

Conclusions

In the monistic model of regulation of private law, the Civil Code acts as the main source of law also for commercial relations.[28] This is also true for the legal regulations governing the commercial activities law. The Civil Code features institutions of the commercial activities law, the legal regulations legal regulations of which have been transplanted from the Commercial Code (the fact that they are, essentially, only legal regulations introduced [restored] only after the year 1990 (!) is a paradox) and institutions of the commercial activities law, the legal regulations of which have been included for the first time in the Civil Code (another paradox is the fact that they were originally only legal regulations pertaining to state-owned economic entities, which were lifted in vast majority, and the remaining ones were fundamentally changed already in 1990 (!); at present, these are just legal regulations introduced only after 1990). The legal regulations of the former were created in a legal system where market economy principles and the dualistic model of the regulation of private law were applied, whereas the legal regulations of the latter came to being in a legal system where planned economy principles and the monistic model of the regulation of private law were applied, which had a major impact on their different underlying objectives, form, scope of application, and the legislative technique principles used. Both the former and the latter legal regulations of the commercial activities law have been subject to numerous legislative changes which have affected their original integrity and consistency.

When it comes to the legal regulations of the commercial activities law, it is hard to regard the current legal situation as successfully fulfilling the requirements of a coherent legal system and of the legislative technique principles that are applied therein. First, the internal consistency of the legal regulations of the commercial activities law is largely affected by its general assumptions, whose crucial elements are (should be) the definitions of an entrepreneur and of commercial activities. The term of an entrepreneur was defined in the Civil Code only in 2003[29] (however, there is still no equivalent with the function of Article 11 of the Commercial Code that is of importance to the safety of economic relations),[30] whereas the term of

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28 See: ibidem, p. 28, where it was argued that modern European codes already departed from that (dualistic – P.B.'s note) model, shaping civil codes in a way to encompass also the private-legal relations of professional business entities.

29 See: Art. 1 item 4 of the Act of 14 February 2003 on the Amendment of the Civil Code Act and Certain Other Acts (Journal of Laws of the Republic of Poland No. 49, item 408).

30 The Codification Commission on Civil Law initially proposed the introduction (restoration) of the equivalent of Article 11 of the Commercial Code in the future Civil Code (see: Komisja Kodyfikacyjna Prawa Cywilnego, *Księga pierwsza*..., p. 71), where it was argued that despite the general

commercial activities has been functioning since 1965 only as a doctrinal term. The form of that definition should serve as the basis for defining the idea of commercial activities as an entrepreneur's acts in law, connected with their conducting of their economic activity, and for determining the associated presumption that every act in law of an entrepreneur is a commercial activity – from the moment the term of an entrepreneur is defined in the Civil Code as an entity that conducts business activity in their own name in every form at the latest. Unfortunately, there are still no such regulations present in the Civil Code. Second, the position of the Civil Code in the private law system requires that it be the domain of legal regulations of the commercial activities law, which are essential to the practice of economic relations. The lack of acknowledgement of common law as the source of private law (including commercial law) in the Civil Code, which would act as the basis for the restoration of the due significance to commercial practice, surely does not contribute to the fulfilment of the said demand. Third, the position of the Civil Code in the private law system requires that it be the domain of legal regulations of the commercial activities law, which are adapted to the needs of contemporary economic relations. The persisting legal situation of the scope of application of the right of retention and liquidated damages in commercial relations certainly does not favour the fulfilment of the demand in question. Fourth, the position of the Civil Code in the private law system requires that it be the domain of legal regulations of the commercial activities law, which have been long and firmly present in the legal systems of states whose economies are based on market economy principles. The persisting legal situation regarding law of obligations in commercial relations surely does not favour the fulfilment of the demand at issue. Fifth, the position of the Civil Code in the private law system requires that it be the domain of legal regulations of the commercial activities law with a focus on consumer commercial activities.

'administrativistic' attitude, prevailing mainly in practice and partially in writings, the status of an entrepreneur was not a privilege which should be definitely taken away if the business activity of a particular person violated the law or, in particular, if it covered a prohibited object; also in such situations, an entrepreneur's business partners have the right to rely on that person's obligations resulting from the operation of a large-scale business; it is required for the security in business transactions. See also Article 64 of the draft according to which the provisions of the Code [Civil Code – P.B.'s note] pertaining to entrepreneurs also apply to a person who conducts a business activity despite being statutorily prohibited to do so or being in violation of statutory restrictions. In the end, however, the Codification Commission on Civil Law abandoned that idea in the revised draft of the first book of the Civil Code of 2015, explaining its decision with the fact that Articles 58–65 of the 2008 draft, concerning different types of entrepreneurs and their registration, entered into an area that belonged to public law (regulation of business activity), and they were not necessary for the application of further provisions of the Code which pertained to entrepreneurs. See: Komisja Kodyfikacyjna Prawa Cywilnego, *Kodeks cywilny. Księga I. Część ogólna, Projekt z 2015 r. z objaśnieniami*, Warszawa 2015, p. 9.

 DOI: 10.7206/kp.2080-1084.339

The persisting legal situation regarding the domain of regulation of the said legal institutions of the commercial activities law is yet again not in favour of the fulfilment of the above demand.

By way of conclusion to the discussion presented in this paper, one may claim that the present form of the legal regulations governing the commercial activities law in the Civil Code is significantly deficient in the relevant legal regulations. Furthermore, the published drafts of legislative changes do not signal any intention of any major amendments to be made to change the present legal situation.